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COPY

October 4, 2019

Via Email

Oregon Department of Aviation
Oregon Aviation Board
3040 25th Street SE
Salem, OR 97302

Re: Aurora State Airport Master Plan (Ongoing Hearings)

Dear Department and Board:

I am writing on behalf of Friends of French Prairie (FFP), to follow up on my written and oral testimony of September 24, 2019. Please place this letter in the record before the Oregon Aviation Board.

I want to remind you as gracefully as possible that the statute controlling these proceedings is ORS 197.180. The language of the statute supersedes any language of agency administrative rules and the text of any agency State Agency Coordination Program, whether or not properly adopted. The statute provides in material part:

197.180 State agency planning responsibilities; determination of compliance with goals and compatibility with plans; coordination between agencies and local governments; rules; exceptions. (1) Except as provided in ORS 197.277 or subsection (2) of this section or unless expressly exempted by another statute from any of the requirements of this section, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

(a) In compliance with the goals, rules implementing the goals and rules implementing this section; and

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(b) In a manner compatible with acknowledged comprehensive plans and land use regulations.

No such compliance or compatibility has been demonstrated in the master planning process to date which, for reasons I and others have previously stated on the record, is fatally flawed in any event.

An email from ODA Airport Director Rainse Anderson to FAA officials, dated May 13, 2011, appears at page 240 of the PDF of ODA's published December 2012 Aurora State Airport Airport Master Plan Update. (This is part of the document's "Appendix B.")¹ Here, Mr. Anderson states:

The use of declared distances at Aurora, while perhaps unconventional, is an attempt on our behalf to provide a viable airport that meets user needs and still be neighborly. Controversy over any true runway extension would likely thwart the environmental process, and we have good reason to believe it would be challenged on a legal basis for violation of Oregon's Statewide Planning Goals (farmland protection). * * *

(Emphasis added.)

For reasons set out by farmer Mike Iverson and others, Mr. Anderson was correct. (See e.g. Mr. Iverson's testimony of February 9, 2018, and Mr. Swecker's letter of February 12, 2017, attached hereto.)

At page 4-30 of the document, the following language appears:

If Marion County adopts this Master Plan, it would adopt it as a component of the Marion County Comprehensive Plan and all projects identified within the Plan would receive "conditional use" approvals for development. As such, a Traffic Impact Analysis would be necessary for any projects that would have a significant impact on area ground transportation, prior to the County's adoption, in order to meet Statewide Goal 12. Alternatively, ODA could not submit the Plan to

¹It is still unclear what constitutes the actual master plan. Parts regarding expansion alternatives appear to be missing.

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Marion County and instead apply for conditional approvals for individual projects.* * *

Thus, contrary to the requirements of ORS 197.180(1), the agency has simply failed to carry out the analysis required by Statewide Planning Goal 12.

Moreover, as of this afternoon, Marion County reports that it has taken no action whatsoever on the proposed master plan, and has not rezoned any of the farmland in the area of the proposed runway extension or buffer zones. Thus as part of its required coordination effort, ODA/OAB must demonstrate compliance with the Agriculture Goal and Agricultural Policies of the Marion County Comprehensive Plan. These provide as follows:

AGRICULTURAL GOAL

To preserve and maintain agricultural lands for farm use consistent with the present and future need for agricultural products, forest and open space.

AGRICULTURAL LANDS POLICIES

1. Preserve lands designated as Primary Agriculture by zoning them EFU (Exclusive Farm Use). Lands designated as Special Agriculture should be protected by the corresponding SA zone and farmland in the Farm/Timber designation should be protected by the Farm/Timber zone.
2. Maintain primary agricultural lands in the largest areas with large tract to encourage larger scale commercial agricultural production.
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.

* * *

It has been argued that the runway extension to the south will not actually occupy EFU land. This is unclear to us, so we would merely state that to the extent that it would take place on farmland, it would violate the above provisions. More obviously though, the proposed 1,000 foot extension would require a runway protection zone outside the

1,000 foot extension, achieved by acquiring prime farmland. This would force a significant change in accepted farm practices on the farmland in question. On the portion of the runway safety zone directly south of the runway, no functional farming whatsoever would be permitted. The area in question is now used for production of ryegrass. Because this area is six feet lower in elevation than the runway extension would be, it would have to be filled to allow aircraft to overrun onto it safely, eliminating several acres of farmland completely. Tree crops would be eliminated entirely as a possibility.

A second, conical restricted zone (apparently labeled “DEPARTURE SURFACE FOR INSTRUMENT RUNWAYS”) would extend an additional one-half mile or more south of the airport property and would be wider than the airport property. That is EFU land is well. Tree crops would be disallowed there, and farmers would not wish to work that land with corporate jets buzzing immediately over their tractors. The described restricted areas would also contain structures for new airport instrumentation/equipment, absorbing farmland completely, and making it impossible to effectively operate farm equipment in close proximity to those structures.

Further, the project as described above would require the relocation of Keil Road which lies at the current south boundary of the airport, implicating Statewide Planning Goal 12. The specific relocation in question would dramatically affect the farm practices of Mr. Iverson and at least one other farmer, who farm to both the east and west of the airport and depend upon the current alignment of Keil Road to move farm equipment back and forth, and not have to spend hundreds of thousands of dollars to have duplicate farm equipment, and sets of employees, and produce packing and transport facilities, equipment, and vehicles at each location. Keil Road provides an essential route for farm traffic; the proposed relocation would move that farm traffic onto highly congested roads, including within the City of Aurora, often adding 30 minutes to existing one-way travel time for the farmer (while his/her tractor slows movement for everyone else).

By the way, there has been some chatter about providing farmers with a replacement connection via a new gravel road. (See Director Swecker’s letter to Rep. Susan McLain dated February 12, 2017, also attached. We refer you specifically to “Question 2.”) However, this would have to be south of the runway protection zone described above, moving the farm traffic into the congested roads described above. Also, the hypothetical gravel road would connect to a state highway, Highway 551. There has been no agency coordination with ODOT, which is unlikely to allow such a new connection in the first place. In other words, that which is suggested as mitigation is

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nothing more than hot air and nonsense.

ORS 197.180(10) provides:

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

ORS 197.180(13) provides:

(13) State agency rules, plans or programs affecting land use are not compatible with an acknowledged comprehensive plan if the state agency takes or approves an action that is not allowed under the acknowledged comprehensive plan. However, a state agency may apply statutes and rules to deny, condition or further restrict an action of the state agency or of any applicant before the state agency if the state agency applies those statutes and rules to the uses planned for in the acknowledged comprehensive plan.

At page 8 of the Airport Master Plan PAC Meeting #6 Summary for September 15, 2011 (page 430 of the PDF), the following recap appears:

Jim [Hansen] asked whether the last time Master Plan update was adopted in the Marion County Comprehensive Plan. He said that we need to do it right this time and we need to answer questions about the impacts to roads and land use. He asked what the next step is for getting the plan adopted in the Marion County Comprehensive Plan. Nick [Kaiser] replied that the County must agree to change the Comprehensive Plan, but it takes funds to do it because it's an extensive process. He said that doesn't mean you can't implement it, but the land use portions need to be brought on board. He added that the Master Plan does have land use impacts that need to be addressed. Patti [Milne] said that the Comprehensive Plan adoption is another formal process with additional opportunity for public input, but we will have something to work from that will be presented and requested to be adopted. She added that doesn't eliminate anyone from coming forward and sharing any concerns that they might have. Jim said he

really wants to make sure it gets adopted as part of the Comprehensive Plan because that could help developers as well as create a greater understanding of the Master Plan. He said that we should make sure we are able to produce a profit and make some money for the community.

Note that the above discussion was not incorporated into the “master plan” itself. The document also includes Appendix G, “PAC Comments Compilation,” which includes responses to each comment from ODA’s consultant, WH Pacific. The only references to comprehensive plans here are to comments from the City of Aurora, which identified several applicable provisions. The city’s comments are described at pages 3, 14, and 25 of Appendix G (pages 473, 484, and 495 of the PDF), respectively. In each instance, the consultant’s comments state that the provisions in question would be addressed in the master plan, as appropriate. *Apparently, none were appropriate*, as none are in fact addressed in the master plan itself.

With the above exceptions, and certain references to traffic information in the Clackamas and Marion County comprehensive plans, there is no reference to the Statewide Planning Goals or local plan goals and policies in the entire “master plan” and assembled appendices, totaling 862 pages. Indeed, the Master Plan Goals themselves are instructive:

Master Plan Goals

The Master Plan goals guided the future development of the Airport. When it became time to evaluate alternative layouts for airport development, the goals were used as the evaluation criteria.

- Goal 1: Enhance safety
- Goal 2: Meet the current and projected needs of airport users, as feasible
- Goal 3: Consider all the off-airport impacts of Airport development; minimize negative impacts and maximize positive impacts

(page ES-2; page 13 of the PDF)

In other words, from the outset, zero emphasis was placed upon compliance or compatibility with the Statewide Planning Goals or local plan provisions. “Coordination”

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was not given even a passing thought. With a fully completed, ostensibly adopted airport master plan, *the transparent effort to tack on belated coordination as an afterthought does not pass muster*. The Department and Board must proceed in a sequence that actually takes the Goals and local plans into account in the actual formulation of the master plan.² This is the only way to achieve legally cognizable coordination, and to comply with the applicable OARs and agency flow chart we have previously addressed.

We have made reference to the Marion County Comprehensive Plan, above. We would note here that regardless of any other county planning document, the plan map has not been amended to indicate anything other than an EFU designation on the areas south of the proposed runway expansion we have discussed above. The cities of Wilsonville and Aurora are independently addressing provisions of their own comprehensive plans which have been overlooked throughout this process. We in turn will identify provisions of the Statewide Planning Goals which must be addressed, but have not been and which are likely to have been violated here.

Among the implicated goals are Goals 1 (Citizen Involvement) and Goal 2 (Land Use Planning). It appears that the city of Wilsonville has already addressed these, as well. Goal 3 (Agricultural Lands) has truly been given short shrift in this process. We again refer you to Mr. Iverson's testimony, and to the impacts of "relocating" Keil Road we have set out. The proposal before you cannot be approved without ODA/OAB taking an exception to Goal 3.

Goal 11 (Public Facilities and Services) and Goal 14 (Urbanization) are strongly implicated here. What is before you is essential a proposal for an international jetport, albeit for private rather than public benefit, on property without public water or sewer services. Potable water is hauled in by truck, and "black water" is hauled out by truck. Approval of the master plan would violate Goals 11 and 14 unless an exception to each is first properly sought and obtained.

²It should not be necessary for us to say this in the first place, much less to repeat it time after time. To point out the obvious, the agency's official position is that the Board already adopted the Aurora State Airport Master Plan at some point in 2011 or 2012. In taking that position, it has proven our point—that the current, rushed "coordination" process, is a sham.

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Goal 12 (Transportation) does not allow the relocation of Keil Road onto Class 1 and 2 soils as proposed unless there is no alternative. The required analysis has not been carried out here. The proposed relocation would require an exception to both Goal 3 and Goal 12.

The availability of “alternatives” must take into account the fact that there is absolutely no need for an airport of the nature proposed by this expansion *at this particular location*. This is a quasi-judicial proceeding, a characteristic consistently overlooked by its state agency and airport-related participants. Oregon law does not contemplate turning a quasi-judicial matter into a complimentary buffet lunch for those deriving a profit from a specific state airport. Accordingly, the relevant alternatives include existing airports in Salem, Portland, Troutdale, and Hillsboro. A good faith analysis would most likely demonstrate that the existing alternatives are quite sufficient to meet current and anticipated demand.

In this specific regard, please see the “constrained operations” analysis submitted by Ben Williams. Evidence procured by ODA’s consultants 8-10 years ago cannot serve to justify the adoption of an airport master plan in 2019, especially when available evidence in the meantime demonstrates the invalidity of the earlier assumptions and projections of need. The proposed master plan is utterly unsupported by substantial evidence.

To comply with the law, it will be necessary for ODA/OAB to effectively start over and conduct a good faith process taking into account the concerns raised on this record.

Very truly yours,

Jeffrey L. Kleinman

Jeffrey L. Kleinman

JLK:cme
Enclosures
cc: client (via email)

MIKE IVERSON - OWN & MY SON Aurora Farm

Thank you Madam Chair for the opportunity to voice an opinion shared by many people living and working around the Aurora Airport.

Since 1980, we have farmed fresh market vegetables on both sides of the Aurora Airport, now about 200 acres that are evenly split with 14-16 different varieties of vegetables, with 25-30 season long employees that work from early March through December. Payroll is currently over \$700,000 annually.

We use Keil Road, as do other nurseries, and it is understood that this road will essentially dead-end, if the proponents achieve their expansion goal. We use Keil Road daily, typically multiple times, moving both employee's and equipment to meet the daily demands of farming.

**IVERSON TESTIMONY
FEBRUARY 9, 2018**

I estimate that the increase in travel costs could triple due to being forced to take alternate routes that will not only greatly increase our travel distance, but also the exposure of farm equipment traveling on roads that are already too busy with commuters.

Many of the locals participated in the “2009-2010 Master Plan Meeting” which produced a no change to the airport footprint. A decision which was quietly manipulated and changed, which was quite a surprise to all of us. Now this House Bill 4092 to circumvent regular accepted land-use change brings home the problem of benefits for the few to the chagrin on the many! The entire transit system is seriously over-loaded at present. All of us deserve better by following the land use process and rules that are in place.

In closing, I and the majority of my neighbors will be hamstrung in our day to day movements and operations simply to facilitate the addition of larger jets to the fleet! Corporate small jets can certainly be accommodated as the airport sits today. The larger versions can just utilize the Salem, Hillsboro, Troutdale and/or PDX facilities. Perhaps the highway system is the bigger problem? I know us locals will get the usual NIMBY treatment, but this end run on the land use system just doesn't get it. This sweetheart deal needs to return to the normal, open and legal process that most of us all expect and have been following for years now!

Thank you.



Oregon

Kate Brown, Governor



February 12, 2017.

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Chair Susan McLain
House Committee on Transportation Policy
900 Court St. NE
Salem, Oregon 97301

Subject: House Bill 4092

Dear Rep McLain and members of the committee,

At the public hearing on HB 4092 on the 9th of February, a couple of questions came up regarding the Aurora State Airport and Oregon Department of Aviation (ODA) role in land use. Here are responses to those issues.

1. Question from Representative Salinas: Does Oregon land use laws apply to the Oregon Department of Aviation? Answer: Yes, ODA is required to comply with Oregon land use laws. The agency has recently updated its land use agreement, (State Agency Coordination (SAC)) with both DLCD and DOJ. It has been approved by the Oregon Aviation Board.
2. Question from Mike Iverson (farmer): Keil Road is a key farm road. Closure of Keil Road will cause farmers and their equipment to go extra distance via Ehlen Road putting additional wear and tear on their equipment. Answer: If and when Keil Road is closed, ODA is open to creating a farm and emergency equipment only gravel road around the perimeter of the runway safety area outside the fence for the convenience of agriculture and emergency response units.

If committee members have any questions, I can be reached at 503-378-2340.

Respectfully,

Mitch Swecker
Director