




OREGON DEPARTMENT OF AVIATION

State Aviation Board
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Aurora Airport Master Plan Litigation summary

- November 2019 initial challenge by Cities of Aurora and Wilsonville, 1000 Friends and Friends of French Prairie, and Joseph Schaefer
- December 2020 LUBA ruling
- June 16, 2021 COA ruling #1 (on LUBA decision) reversed and remanded
- August 4, 2021 COA ruling #2 (reconsideration) re-affirmed earlier ruling. Started the clock on 35 days to file with Supreme Court
- Sept 8th deadline to file with Supreme Court
 - DOJ, as ODA/SAB attorney, must concur and file on ODA's behalf
- Circuit Court cases paused UFN
- At the July 15th SAB meeting, 12 speakers requested Board to direct ODA to file a petition for Supreme Court review.
- Board directed ODA to survey the public-use airports for potential impact

Survey results

- ODA asked all 97 public use airports:

- 1) Does your airport have development plans involving EFU lands?
- 2) If yes, is it in the next 1-3 years, 3-5 yrs, or more than 5 years? What is it for, and how many acres?
- 3) Will you have to acquire land, or do you already own it?

Total # of responses – 51 (53%)

8 airports indicated EFU land plans

- Locally owned airports (69)
 - 23 responses (33% return rate)
 - All no, except:
 - K-Falls (5 yrs +) 448 acres for RPZ
 - Eugene (5 years+) 4 acres for 2nd rwy
 - Hermiston (2024) 140 acres for road relocation
 - Bend (5 yrs +) 78 acres for 980' runway extension)
- State – owned Airports (28)
 - 28 responses (100% return rate)
 - All no, except
 - Independence (5 yrs +) 55 acres for hangar development
 - Aurora (3-4 years) 55 acres for RPZ
 - Bandon (5 yrs +) rwy extension
 - Mulino (5 yrs +) 6 acres rwy extension)

Applicable Statute and conclusion

- ORS 836.600 `...The policy of the State of OR is to encourage and support the continued operation and vitality of Oregon's airports...'
- ORS 835.106 (2) `Subject to ORS 835.017 and the policy direction by the State Aviation Board, the director shall ... intervene, as authorized by the board, pursuant to the rules of practice and procedure, in the proceedings of state and federal agencies that may substantially affect the interests of the consumers and providers of aviation services within Oregon.'
- Today's action will be to consider authorizing the Director to intervene and petition the Supreme Court for review of the COA ruling.

Three requirements for consideration, and our conclusions:

- 1) 'substantially affect'
COA's ruling will affect at least 8 public use airports within Oregon
- 2) 'interests of consumers and providers of aviation services'
Airports and the businesses located on them are providers of aviation services. Pilots, aircraft owners, passengers, businesses and governments are consumers of aviation services.
- 3) 'within Oregon'
Will affect both consumers and providers within Oregon, but we did not consider if this affects consumers and providers outside of Oregon.

Potential responses to COA ruling

- **Judicial (Supreme Court)**
- **Administrative**
 - DLCD/LCDC voluntary rulemaking
- **Legislative**
 - a) direct DLCD to do rulemaking or
 - b) address directly thru legislation

ODA considering all three options, and has started discussions with DLCD on administrative rulemaking. ODA is concurrently asking the State Aviation Board for authorization to request a judicial review.

ODA request

- To authorize the director to intervene and petition the Oregon Supreme Court to review the portion of the COA ruling related to EFU land and the UGB.

The Solicitor General for the Dept. of Justice will make the final decision on whether to request a SC review.

- ODA will go back to LUBA on the remaining COA rulings related to process.
- Questions for ODA staff or DOJ?

