

Oregon State Aviation Board  
Approved Meeting Minutes

January 29, 2003

Keizer, Oregon

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Pursuant to notice made by press release to newspapers of general and local circulation throughout the state and mailed to persons on the mailing list of the Board, a meeting of the Oregon State Aviation Board was held at the Wittenberg Inn in Keizer, Oregon, on January 29, 2003.

Board members present included Bill Wilkins (Chair), Mike Burrill, Jack Loacker, Carrie Novick, Steve Schreiber and Joe Smith. Also present were Oregon Department of Aviation staff members Daren Griffin, Tom Franklin, Carolyn Bolton, Gary Viehdorfer and Carma Gale. Lynn Rosik, Assistant Attorney General, and Doug Parker, Community Development Manager for the City of Lebanon, attended by invitation. The attendance list signed by members of the public present at the meeting is on file at the offices of the Oregon Department of Aviation in Salem.

Chair Wilkins called the meeting to order at 8:00 a.m. Introductions followed.

### **Agenda Adjustments**

The 6<sup>th</sup> Quarter 2001-2003 agency budget report was postponed until the March meeting.

### **Consent Calendar**

The following corrections were made to the November 20, 2002, meeting minutes:

- Page 2, third bullet from the bottom. 738-035-0050 (6)(A) was changed to read 738-035-0050 (6)(e)(A).
- Page 2, second bullet from bottom. 738-035-0055(1)(a) was changed to read 738-035-0055(6)(a).
- Page 6, fourth paragraph. "hour" was added following 24 to read "24-hour vigil."
- Page 8 second bullet. The word "exhibitioners" was changed to "exhibitors."

The minutes were approved as amended.

### **Consider Approval of OAR 738-035 Operating Minimum Standards for Aeronautical Activity as State-Owned Airports**

Bolton distributed an updated draft of OAR 738-035 Operating Minimum Standards for Aeronautical Activity at State-Owned Airports. She reviewed changes made at prior Board meetings that had not appeared on the version of the draft included in the mailed January meeting board packets.

The following additional items were discussed by the Board:

- Wilkins requested that 738-035-0015(2) be correctly aligned with (1) and (3).
- Burrill commented that in 738-035-0030 the term "any appropriate provisions" seemed rather broad and asked if the Board wanted to have any involvement in determining appropriate provisions. Rosik clarified that the Department would work to develop appropriate agreements containing language that would carry out the policy of the minimum standards. Wilkins stated it was his understanding that the standard language, developed by staff, would come before the Board for review.
- Burrill asked if 738-035-0050(6)(e)(A) prohibited work by an FBO. Griffin clarified that an aircraft owner, FBO, SASO or MSP may perform preventive maintenance.

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- Smith referred to 738-035-0045(1)(a), suggesting that the language be changed to avoid confusion. He suggested the section read as follows:

*(a) Provide the sale and into-plane delivery of ASTM rated aviation fuels (to include either 100 LL octane avgas, Jet A fuel, or both) lubricants and other aviation petroleum products.*

Staff agreed. Smith moved that the above language be adopted. Locker seconded. The motion carried unanimously.

Wilkins noted that comments had been received from the general public and asked if additional comment had been received that the Board had not had opportunity to review. Bolton confirmed all written comments, as well as the verbatim transcript from the November 20, 2002, public rules hearing, had been distributed to the Board.

Wilkins asked for staff comment; there was none. Wilkins asked for comments from the Board.

Locker noted that he had reviewed all written comment. He stated that the Board had answered most of concerns Tim Miller expressed in his letter dated April 11, 2001. Locker commented that he felt Mr. Miller had made some good points in his letter, and that he understood Mr. Miller's concerns. Wilkins asked Locker if he felt any action was necessary at this time, based on Miller's comments. Locker stated he did not.

Smith observed that, in adopting the minimum standards administrative rules, the Board is effectively making the value judgment that, over time, a more effective aviation system will result by having minimum standards in place. Opponents to minimum standards purport that their adoption will make it less likely that people will want to provide services at state-owned airports due to constraints imposed by the standards. Smith indicated that it is the belief of the State Aviation Board that the existence of minimum standards rule will foster entrepreneurship and social change at the state-owned airports. Smith stated his opinion that a more formidable deterrent to entrepreneurship at state-owned airports is the issue of insurance. He asked to read into the record a statement calling for insurance-related legislation and asked the Board to contemplate addressing this at the 2003-2005 Legislative Session.

Smith's statement:

"We seek to encourage aviation activity. We therefore own and operate airports, and we want to foster service to the aviation public, by entrepreneurs, at those airports. We consider minimum standards relevant to that desire, seeking both to foster service and to protect the public, the Department and the State from unreasonable risk. Some points:

"1. The State has the right, and probably has the obligation, to protect itself, as agent of the taxpayers, from having to pay damages for the negligent or bad acts of private person or entities providing services to users of state owned airports. Indeed, it should probably protect against, or at least minimize, costs of defending lawsuits brought by persons who claim to have been hurt.

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“2. The State should also, as agent of its citizens, take reasonable steps to keep unfit persons or entities from hurting the public through services conducted on, or made possible by, State owned airports. This creates a need for regulations and standards.

“3. The state should not be insurer of non-State persons or entities. Once the State has reasonably fulfilled its obligation under point 2, it should not have to pay damages to, defend against claims of, other third parties who claim injury at the hands of a service provider.

“4. The State’s obligation per point 2 should be limited to specified entry requirements (that is, standards which must be met to provide services) and other periodic renewals, relying on information provided by regulates and other readily accessed sources. That obligation should extend to active investigation (that is, something more than periodic inspections), only upon being shown clear probable cause to believe that a regulated person or entity is causing unreasonable danger to the public.

“5. Because of the inevitable tendency of persons claiming injury to seek ‘deep pockets,’ the only way today to accomplish points 1 and 3 is to require all persons and entities providing service on, or because of, State-owned airports to carry insurance sufficient to indemnify the State against any claim arising from acts or omissions of the service provider.

“6. Frequently, and perhaps increasingly, the cost of such insurance is so high that it keeps prospective service providers from ever entering the marketplace. This leaves the public bereft of needed service, and carried to an all-too-likely conclusion, eliminates and/or prevents aviation activity in the first place.

“Catch twenty-two.

“Therefore, we need legislation eliminating State liability for injuries sustained due to acts or omissions of service providers so long as the State has reasonably met its obligations under point 2.”

Wilkins reminded the members of the Board that this body had already addressed the issue of insurance in great depth over many months, ultimately adopting the “Smart Contracting Insurance Policy” under which the Department now operates.

Wilkins asked if there was any further public comment on the minimum standards administrative rule. Jim Hutchins, Oregon Pilots Association, asked if language might be included in the administrative rule that require FBOs who operate on state airports to register student pilots with the state’s Pilot Registration Program. Griffin clarified that the rule language includes just such a requirement in several places. He referred the group to section (1)(c) of proposed OAR 738-035-0050 as an example.

Novick moved that the Division 35 Operating Minimum Standard for Commercial Aeronautical Activity at State-Owned Airports be adopted as amended. Schreiber seconded. Wilkins called for a roll call vote, which was met with an “aye” vote by all members of the Board. The motion carried unanimously. Wilkins expressed his appreciation for the diligent work of staff and Board.

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**Information Items**

Tee-Up for 2003 Legislative Session. Wilkins reported that he had appeared before the House and Senate Transportation Committees with Ann Crook. They were well received, and the Senate Chair had encouraged them to suggest legislation that would support aviation in Oregon.

Bolton talked briefly about the 01-03 Legislative session overall. Things got off to a slow start, as committee organization within the Senate was delayed by the difficulty in agreeing on leadership. She noted that non-general fund agencies are being held to the same budget restrictions as general fund agencies in the budgeting process for the '03-05 biennium, i.e. ( for instance, the wage freeze that had been imposed on state agencies). She stated that the Department's proposal for a new building in these tough budget times might draw a different level of scrutiny than anticipated.

She noted that the following bills had been introduced regarding the Department of Aviation budget:

SB 5503, which deals with the Agency general budget.

SB 5504, which deals with the agency's proposed increase in aircraft access fees.

Loacker asked if the aircraft access fee had been pulled into a separate senate bill for political reasons. Bolton clarified that there was no political agenda involved, but that the Legislative Fiscal Office is under mandate to separate into a separate bill any budget item that serves to increase or create new agency fees. This was standard protocol.

The Department has sponsored only one piece of legislation this session: HB 2173, which imposes penalties in the event an individual chooses not to comply with statutes requiring pilot or aircraft registration. A hearing date has not yet been set.

Bolton reviewed several other aviation-related bills, as well as bills that could have an effect on the Department, staff or the Board, including:

- HB 2009, which would allow Department of Fish and Wildlife to use state aircraft for wildlife management.
- HB 2994, which creates a charge of criminal trespass for individuals entering private property to fly model aircraft at an altitude of less than 500 feet.
- Myriad PERS-related legislation.
- A bill which specifically allows governing boards and commission to discuss security issues in executive rather than public session.
- Bills that change the manner in which administrative rules are approved, both of which refer proposed administrative rules to the Legislature for final action and decision.

Bolton is watching for other possible bills that are rumored to be in the works:

- A bill that would add a \$1 surcharge on pilot registration fees, with proceeds directed to go to the Civil Air Patrol.
- A bill that served to put forward the real estate disclosure notion regarding airport noise which the Board had discussed and decided to hold until the 2003-2005 session.

Doug Parker, City of Lebanon, recommended that the Board consider tying aircraft noise disclosure to specific property titles, rather than imposing disclosure requirements on an

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unwilling real estate community. He indicated it is a very effective strategy that works in his community.

Bolton reported that she had drafted a Resolution on the Centennial of Flight and provided it to Representative Betsy Johnson, who indicates she will sponsor the bill. Currently the language is being drafted into legislation by Legislative Counsel.

Bolton distributed a formal lobbying reporting form to members of the Board and reviewed the requirements for reporting. A simple overview of lobbying breaks down required-reporting into three activities:

- Directly advocating for anything that has to do with the Department of Aviation.
- Asking someone else to advocate, or educating them with the intention that they will use the acquired information to advocate, on behalf of the Department.
- Any contact or activity that is specifically intended to create goodwill and serve to be an advantage to the Department of Aviation.

Bolton noted that as the Department's Legislative Coordinator, she is legally responsible to maintain formal lobbying records for both the State Aviation Board and all Department staff for the period from January 1, 2003, through the conclusion of the legislative session. She asked the Board's support in fulfilling her legal obligation.

Rosik clarified that when Board members visit the Capitol, only "face time" is considered lobbying, which includes time during which the Board members are actually talking to legislators, legislative staff, etc. Actual testimony is considered lobbying. Not included in lobbying time are the windows of travel, waiting or preparatory time on their lobbying reports. If anyone exceeds an accumulated total of 24 hours of lobbying in a calendar quarter, or spends more than an accumulated total of \$100 during the session on meals, beverages, parking, etc., that individual would be required to formally register lobbyist.

Rosik also clarified that any Board member representing the interests of more than one group during legislative session must maintain separate records of lobbying time for each, and submit those targeted records to each entity's legislative coordinator. It is then be the responsibility of the individual to keep a running tally to determine if their overall lobbying time reaches the 24 hour threshold.

Wilkins requested that Bolton remind Board members to complete and submit their form at future meetings of the Board while legislature is in session.

### **Consider Adoption of Update to the *Oregon Airport Land Use Compatibility Guidelines***

Franklin reported that the Department has worked on the update of the *Oregon Airport Land Use Compatibility Guidebook* for more than a year. The guidelines were last updated in 1994, but were never formally adopted by the Oregon Transportation Commission. Many changes have occurred in land use laws since that time. The notebook will be used as a guideline for the Department and other public bodies throughout Oregon, including cities and counties, to develop land use laws and processes that support aviation and airports. Franklin made note of the numerous individuals who had served on the review team for the project and expressed appreciation for their contribution. He also recognized Viehdorfer's hard work bringing the

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lengthy project to completion. Wilkins thanked Viehdorfer and the review committee on behalf of the State Aviation Board.

Franklin introduced Doug Parker, Community Development Manager for the City of Lebanon. Parker noted that airport land-use compatibility planning for local jurisdictions is both complex and very difficult, due to myriad state and federal land use laws and regulations that must be met concurrently. The Department's guidelines document is essential to local governments. He urged the Department to offer a series of trainings on the *Airport Land Use Compatibility Guidelines*, perhaps with one occurring as part of the annual Oregon Planning Institute. He also urged the Department to make staff available to respond to questions from users. He finds the Department's model ordinances to be extremely helpful and suggested that comprehensive plan policies pertaining to aviation be added as a supplement to the guidebook. He also urged periodic review of the product to ensure that it keeps up with the current land use climate at any given time.

Franklin asked that the Board consider adopting the guidebook at the January 29<sup>th</sup> meeting, since Board adoption would enable the document to become Department policy. The Department plans to publish the guidelines for public distribution as soon as possible. Viehdorfer noted that these guidelines would have the same weight as the Aviation Plan once adopted by the State Aviation Board.

Novick noted that not merely planners, but also city officials also need to be aware of the guidebook. She recommended presenting it to the League of Oregon Cities.

Hutchins noted that this updated version of the Guidelines was a tremendous step above the previous version from 1994. He commended staff for the quality of work reflected in the notebook.

Viehdorfer noted the draft notebook had been mailed to more than 120 interested parties for their review, comment and suggestions. He then led the Board through a review of the notebook. The following discussions ensued:

- **Introduction, page 3, Local Level.** Smith suggested that a third area be added, focusing on that the importance of aviation to local communities. He requested that a statement be added noting that part of the value of a local airport is its potential influence on economic development opportunities, since many times entrepreneurs include airport access in their decisions about where to locate. The quality and accessibility of an airport are increasingly important considerations. He requested that language of this nature be added.
- **Table 1-1 Land Use Troubleshooting Matrix.** The Board asked Viehdorfer to review the matrix reference for page number accuracy.
- Novick suggested adding a reference to stress the importance of appropriate fauna in airport areas. There are fauna that discourage birds from nesting and feeding in the extended overlay zone.
- **Section 2, ODA Goals and Policies Related to Land Use Issues.** Smith suggested adding the category numbers to Table 2.2. Wilkins suggested adding airport sponsors to Table 2.2. It was decided to add the sponsors to Table 7.2.

Burrill asked how this product affects private airports. Viehdorfer stated that airports with three or more based aircraft (as of 1994) do have a certain amount of protection under

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the *Land Use Guidelines*, and are listed in an appendix. Airports with two or less based aircraft are not protected. Under the Airport Planning Rule, public owned public use airports with two or less based aircraft are also not protected. Burrill suggested the Board discuss this issue of providing protections to private airports at a future meeting.

- **Section 3, Importance of Land Use Planning.** Smith suggested a footnote be added noting that the cause of aviation accidents is rarely cut and dried. Novick suggested that Form 7460-1 be made available on-line.
- **Section 5, Federal and State Regulations Related to Airport Compatible Land Use Planning.** Smith suggested adding a citation referencing appropriate statutes and including on-line links.
- **Section 7, Resources for Airport Compatible Land Use Planning.** Viehdorfer offered to add language reminding local jurisdictions to think of the future and consider the possibility of instrument approaches as land is developed.

As the *Land Use Compatibility Guidelines* are amended in the future during periodic reviews, any revisions being noted in a revision table as replacement pages are adopted. The Board did not determine a time period for regular review.

Viehdorfer reported that the guidebook is a unique product. Aviation agencies in Minnesota, New Jersey and California have already requested copies. The Department plans to take the guidebook to Transportation Research Board and National Association of State Airport Officials. He noted that the Federal Aviation Administration paid for development and printing of the guidebook.

The Board asked Viehdorfer to check into the possibility of charging a fee for the guidebook. Franklin noted that initially the guidebook will be distributed to city and county planning departments absolutely free of charge, and that the guidebook will be on-line for downloading and printing by interested parties. Franklin also noted that if the Board acted to adopt the guidelines at this January 29<sup>th</sup> meeting, the guidebook could be distributed by the end of February. He stated that Viehdorfer would work with Smith on revising the definition of "approach" before publishing.

Novick moved that the *Update to the Oregon Airport Land Use Compatibility Guidelines* be adopted with the changes discussed. Locker seconded. The motion carried unanimously.

### **Public Comment**

Wilkins opened the meeting to public comment. There were no comments.

### **Set Agenda for March 19, 2003 Board Meeting**

The Board set the agenda for the March 19, 2003 meeting, to be held in the Salem area.

- Protection of private airports (if there is room on the agenda)
- Items resulting from the Board Intensive Work Session
- Legislative update
- 03-05 Biennial Budget Update
- 6<sup>th</sup> Quarter 2001-2003 Agency Budget
- 2002 Annual Report

Administrative Rules on FAM Grants will be a future meeting item.

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It was confirmed that the July meeting will be held on July 23, 2003, in Burns, rather than July 16, 2003 as originally planned.

Wilkins noted that the Board has now completed a major effort on policy-making. He also noted that the Board has offered to meet with the Governor's Transition Team. Crook met with the Governor's representative on boards and commissions regarding the vacancy on the State Aviation Board.

**Updates**

Griffin reported that the sales of Beaver Marsh Airport and Lake Billy Chinook are complete.

Burrill reported that he will be meeting with Crook and Schreiber during the course of the Intensive Work session to discuss strategies on the Aviation System Conference. He has met with Ryan Windscheimer, a field representative for Senator Ron Wyden, regarding economic development.

Griffin gave updates on vandalism at Chiloquin State Airport and unauthorized car races at Cottage Grove State Airport.

There being no further business, the meeting was adjourned at 11:29 a.m.

*Copies of meeting materials and written public comments are on file at the Department of Aviation in Salem, Oregon.*