Outlook

RE: Marion County Planning Comments on Draft Aurora Airport Master Plan ODAV Adoption

From MORRIS Alexis <Alexis.MORRIS@odav.oregon.gov>
Date Mon 11/2/2026 4:18 PM
To Brandon Reich <BREICH@co.marion.or.us>
Cc Austin Barnes <ABarnes@co.marion.or.us>; Steve Elzinga <SElzinga@co.marion.or.us>; Andrew Mittendorf <AMittendorf@co.marion.or.us>

Hello Brandon,

Thank you for submitting public comment to the State Aviation Board. I am writing to acknowledge that we have received two documents one titled “Marion County Planning Comments to ODAV” and the other “ORD 1487 and Exhibits A B C”.

Your comment will be forwarded to the board for their review, and I will add them to our website under the December 3rd board meeting after the public comment period deadline.

Thank you,

Alexis Morris
Communications & Administrative Specialist
State Aviation Board Administrator
Cell: (503) 507-6965
Alexis.morris@odav.oregon.gov

From: Brandon Reich <BREICH@co.marion.or.us>
Sent: Monday, November 2, 2026 2:57 PM
To: Oregon Department of Aviation <mail.aviation@ODAV.oregon.gov>
Cc: Austin Barnes <ABarnes@co.marion.or.us>; Steve Elzinga <SElzinga@co.marion.or.us>; Andrew Mittendorf <AMittendorf@co.marion.or.us>
Subject: RE: Marion County Planning Comments on Draft Aurora Airport Master Plan ODAV Adoption

You don't often get email from breich@co.marion.or.us. Learn why this is important

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

The ordinance that is attached to Marion County Planning’s comments is attached to this email.

Thank you,

Brandon

From: Brandon Reich
Sent: Monday, November 2, 2026 2:57 PM
To: 'mail.aviation@odav.oregon.gov' <mail.aviation@odav.oregon.gov>
Cc: Austin Barnes <ABarnes@co.marion.or.us>; Steve Elzinga <SElzinga@co.marion.or.us>; Andrew Mittendorf <AMittendorf@co.marion.or.us>
Subject: Marion County Planning Comments on Draft Aurora Airport Master Plan ODAV Adoption

Please find attached Marion County Planning's comments on the draft Aurora Airport Master Plan ODAV adoption. Because it is a large file, I will send the ordinance referenced in the letter by separate email. Please let me know that you've received both the comment letter and the ordinance by email.

Thank you,

Brandon

Brandon Reich | Building and Planning Division Manager
Building and Planning Division, Marion County Public Works
breich@co.marion.or.us
(503) 566-4175

County Commissioners
Colm Willis, Chair
Kevin Cameron
Danielle Bethell

Chief Administrative Officer
Jan Fritz

Director
Brian Nicholas, PE

MARION COUNTY PUBLIC WORKS

November 2, 2026

Via Electronic Mail: mail.aviation@odav.oregon.gov

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

Re: Comments on the Aurora State Airport Master Plan, Airport Layout Plan, and State Agency Coordination Findings

Dear Members of the Aviation Board and Director Sugahara:

Marion County has land use planning authority for the area around and including the Aurora State Airport. The county sent a coordination letter on September 19, 2025. Those comments do not appear to be addressed by the Draft Final Aurora State Airport Master Plan ("Master Plan"), Airport Layout Plan ("ALP"), and proposed State Agency Coordination Findings ("Findings") in their present form.

ORS 197.180(1) and OAR 738-130-0055 require ODAV to coordinate its State Master Plan with the County's comprehensive plan and make supported findings of compatibility. Among other things, this includes the 1976 Aurora State Airport Master Plan and Marion County Ordinance No. 1487 in Case CU/CPA 24-038 (a copy is attached) that expanded the Aurora Airport boundary. LUBA affirmed the boundary amendment on July 29, 2026.

The County comprehensive plan recognizes TLM's 16.54-acre parcel at 22515 Airport Road NE as within the Aurora State Airport's land use boundary and as acceptable for airport-related development under private ownership, separately from ODAV-owned land. The proposed master plan does not adequately address the county's approved airport expansion.

We respectfully request that you reconsider our prior comments and amend the draft Master Plan, ALP, and Findings to ensure the proposed master plan is in full alignment with Marion County's comprehensive plan, including Marion County Ordinance No. 1487.

Sincerely,

Brandon Reich
Planning Director, Marion County Public Works

Enclosure: Marion County Ordinance No. 1487

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the Matter of the	)	Conditional Use / Comprehensive Plan Change
	)	Case No. 24-038
Application of:	)	
TLM Holdings, LLC	)	

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1487

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of TLM Holdings, LLC for a conditional use permit to allow a facility for fixed wing aircraft and helicopters to include vertical takeoff and landing aircraft and a comprehensive plan amendment to amend the Marion County Comprehensive Plan to adjust the Aurora State Airport land use boundary to include the subject 16.54 acre parcel zoned EFU (Exclusive Farm Use) and located at 22515 Airport Rd. NE, Aurora. (T4S; R1W; Section 2D; Tax lots 800 & 900)

SECTION II. Procedural History

The Marion County Hearings Officer conducted a duly noticed and full evidentiary public hearing on March 6, 2025, and on May 20, 2025 issued a recommendation to approve the proposal. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board has considered all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises. The Board of Commissioners also conducted a full evidentiary hearing on August 13, 2025 and, upon its conclusion and their review of the record, the Board agreed with the Hearings Officer's recommendation and decided to approve the application. The Board adopted Ordinance 1485 on December 17, 2025, which was subsequently appealed to LUBA. The Board Withdrew Ordinance 1485 on January 20, 2026 by Order 26-013 for reconsideration of findings. The findings have been revised and adopted by this ordinance.

SECTION III. *Adoption of Findings and Conclusion*

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Additional Findings of Fact and Conclusions of Law contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested conditional use to expand an existing airport to allow a vertical takeoff and landing facility for aircrafts and a comprehensive plan amendment to adjust the Aurora Airport Land Use Boundary to include the subject parcel as shown in Exhibit C is hereby **GRANTED**, subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

SECTION V. Effective Date

Pursuant to Chapter 1.10 of the Marion County Code, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 4th day of February, 2026, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Commissioner

Commissioner

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

Exhibit A

I. Nature of the Application

This matter comes before the Marion County Board of Commissioners on the application of TLM Holdings, LLC for a conditional use permit to allow a facility for fixed wing aircraft and helicopters to include vertical takeoff and landing aircraft and a comprehensive plan amendment to amend the Marion County Comprehensive Plan to adjust the Aurora State Airport land use boundary to include the subject 16.54 acre parcel zoned EFU (Exclusive Farm Use) and located at 22515 Airport Rd. NE, Aurora.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Marion County Code, including MCC 17.119 (Conditional Use), MCC 17.136 (EFU Zone), MCC 17.177 (Airport Overlay Zone), the Marion County Comprehensive Plan Goals and Policies, The 1976 Aurora State Airport Master Plan which is a part of the County's acknowledged comprehensive plan, Statewide Planning Goals, Oregon Revised Statutes Chapters 215 and 836, and Oregon Administrative Rules, including OAR 660-012 (Transportation Planning Rule), and OAR 660-013 (Airport Planning Rule).

III. Public Hearings

The Marion County Hearings Officer conducted a full evidentiary hearing on the application, and recommended approval. The Board of Commissioners also conducted a full evidentiary hearing and, upon its conclusion and their review of the record, the Board agreed with the Hearings Officer's recommendation and decided to approve the application.

The public hearing before the Marion County Hearings Officer was conducted on March 6, 2025. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

1.	John Speckman	Marion County Planning Division
2.	Wendie Kellington	Applicant's Attorney
3.	Ted Millar	Applicant Representative
4.	Aron Faegre	Proponent of Application
5.	Tony Helbling	Proponent of Application
6.	Kevin Ferrasci O'Malley	Proponent of Application
7.	Betsy Johnson	Proponent of Application
8.	Mercedes Rhoden-Feeley	Individual Capacity / Opponent
9.	Mercedes Rhoden-Feeley	Representative Capacity for Aurora / Opponent
10.	Nancy Snyder	Opponent of Application

11. James Snyder Opponent of Application

No objections were raised as to notice, jurisdiction, or conflict of interest, or to evidence or testimony presented at the hearing. The following documents were presented, marked and entered into the Hearings Officer proceeding record, recorded as exhibits:

Exhibits 1-6 were submitted by Wendie Kellington on behalf of Applicant and include:

Exhibit 1:	Correspondence from Irl M. Davis, PhD addressing opponents' concerns.
Exhibit 2:	Correspondence from Aron Faegre, Airport Planning and Design, addressing buildings for support services and indicating there will be no stand-alone offices and including test results for potable water quality.
Exhibit 3:	Correspondence from DKS Associates regarding 2024 TIS findings, traffic planning rule and addressing opponents' concerns.
Exhibit 4:	Article regarding Orlando International Airport eVTOL vertiport development plans and vertiport development benefit.
Exhibit 5:	Correspondence in support of the application from Jason Montecucco, an owner of Montecucco Farms, LLC, which operates farms in the area including a farm along airport property, concerning drone usage and details minimal farm impact from existing airport operations on farm use and expected minimal impact from the proposal on farm use.
Exhibit 6:	Master Plan Map of Airport Expansion proposal

Additional exhibits were presented during the hearing from multiple individuals and were marked alphabetically:

Exhibit A:	Parking analysis and summary from Aron Faegre
Exhibit B:	Letter of support for application from Wilsonville Area Chamber of Commerce
Exhibit C:	Letter in opposition from Mercedes Rhoden-Feely regarding failure to seek Goal exceptions and noncompliance with statewide planning goals
Exhibit D:	Correspondence from Nancy Snyder addressing objection to proposal, specifically noise and safety concerns, and with photographs illustrating proximity of helicopters and her personal decibel counter.

The applicant's PowerPoint presentation was also entered into the record.

An open record period was requested. The original open record period was permitted with the record open to all parties for seven days, seven additional days to allow responses to new evidence, and an additional seven days for the applicant to submit final written arguments.

On March 17, 2025, the applicant requested the open record periods be extended by one week to accommodate the large submission that was received from the City of Aurora on March 11, 2025. Based upon the size of the submission (approximately 4,800 pages), on March 19, 2025, the Hearings Officer issued an order to extend the open record periods by one week.

First Open Record Period:

March 11, 2025:	City of Aurora Submission (4,836 pages including substantive analysis from City of Aurora, Development alternatives from other aviation facilities, Public Utility Commission of Oregon Order)
March 14, 2025:	Friends of Marion County statement in opposition
March 19, 2025:	Applicant's Supplement to Exhibit 6
March 20, 2025:	Submission from Bruce Bennett in support of the application
March 24, 2025:	Statement in support from Philip Mandel
March 26, 2025:	Annual Board of Directors Meeting for HDSE Association Members (January 15, 2025)
March 27, 2025:	Submission from Association for Uncrewed Vehicle Systems International in support of the application.
March 27, 2025:	Written submission and videos/photographs from Nancy Snyder detailing low flying aircraft and noise concerns

Second Open Record Period:

March 28, 2025:	October 2000 Master Plan Update prepared for Oregon Department of Aviation for the Aurora State Airport, including Chapters 1 through 7
April 10, 2025:	Documents submitted by Wendie Kellington on behalf of Applicant with Exhibits, including Response letter from HDSE President Lukas Nickerson; Response letter from Fournier (HTS Chief Pilot and Director of Flight Operations), Response letter from Tony Helbling, Response Letter from Oregon Department of Aviation Director Kenji Sugahara, Response Letter from Life Flight CEO Ben Clayton, and HTS Land Use Approval

On April 19, 2025, pursuant to the request of Applicant and based upon the complexity of the issues in the exceedingly large record, Applicant's time to submit its final written argument was extended until May 1, 2025.

Final Period:

May 1, 2025: Applicant's Final Written Argument (without any new evidence).

Thereafter, the Hearings Officer's Decision recommending the proposal be approved, was issued on May 20, 2025.

A public hearing was conducted on the matter before the Marion County Board of Commissioners on August 13, 2025. The Planning Division file and Hearings Officer proceedings record was made part of the record before the Board of Commissioners. Before the

Board of Commissioners, the following persons appeared and provided testimony on the application:

1.	John Speckman	Marion County Planning Division
2.	Wendie Kellington	Applicant's Attorney
3.	Aron Faegre	Proponent of Application
4.	Tony Helbling	Proponent of Application
5.	Kevin Ferrasci O'Malley	Proponent of Application

No objections were raised as to notice, jurisdiction, or conflict of interest, or to evidence or testimony presented at the hearing. The following documents were presented, marked and entered into the Board of Commissioners proceeding record, recorded as titled:

-August 12, 2025 "Potable Water Quality" Letter from Aron Faegre
-August 12, 2025 "Statement clarifying that this project is an expansion of a public airport by Aron Faegre
-August 13, 2025 "Aviation-related Issues at Aurora Airport" by Aron Faegre
-August 13, 2025 Letter and exhibit "Response to August 9, 2025 City of Aurora and Joseph Schaefer Submittals" by Kelly Huedepohl, Kellington Law Group
-August 13, 2025 Letter "RE: Support for CU/CPA[sic] 24-038 – North Marion County Vertiport & Heliport at Aurora State Airport" from Wilsonville Area Chamber of Commerce
-Email string between Wendie Kellington, Kellington Law Group and Tony Beach, Oregon Department of Aviation, submitted by applicant
-Applicant's Hearing PowerPoint
-Oregon Department of Transportation, Analysis Procedures Manual Version 2 dated July 2025, submitted by applicant
-"Exhibit 1" a 101 page document including Aurora Planning Commission agenda for July 1, 2025 and City of Aurora, Oregon Economic Opportunities Analysis dated June 2025, submitted by applicant

IV. Executive Summary

Following the instructions of the Oregon Court of Appeals, Applicant TLM Holdings, LLC proposes to expand the airport boundary for the Aurora State Airport to include the subject property to allow airport uses (as identified in ORS 835.616(2) and OAR 660-013-0100) to be established on the subject property, within the expanded airport boundary. The subject property is listed on the acknowledged Aurora Airport Master Plan, which is a part of the Marion County Comprehensive Plan, as an "Area Acceptable for Airport Related Development under Private Ownership." The Oregon Department of Aviation (ODAV) has acknowledged that the current in-process version of the Aurora Airport Master Plan will carry forward and include this language. The ODAV director has written a letter for the record supporting the proposal. ODAV – the Auora Airport "sponsor" - has confirmed via email in the record that the economic and forecast information required by OAR 660-013-0040(9) provided for the application from the current version of the in-process Aurora Airport Master Plan update is the most up-to-date information.

The proposed site plan illustrates the proposal's layout of airport related uses, facilities and services that are directed at electric-powered aircraft - both electric vertical take-off and landing aircraft ("eVTOL"), electric powered fixed-wing aircraft, as well as traditional helicopters and traditional fixed-wing aircraft. The proposal does not seek or need to change the subject property's Comprehensive Plan designation or zoning for the property. This is because the consolidated application is allowed under ORS 215.283(3)[1] and OAR 660-012-0065(3)(n)[2] as a conditional use. Therefore, the proposal includes an application for a conditional use permit for airport use on the property.

The application also seeks a comprehensive plan amendment limited to amending the airport land use boundary map for the Aurora State Airport, and to otherwise comply with the requirements of the Airport Planning Rule to expand the airport's land use boundary as was outlined as necessary by the Oregon Court of Appeals.

Per OAR 660-012-0065(3)(n), the proposal can be processed as a conditional use permit and airport land use map boundary adjustment without exceptions to Goals 3, 4, 11, or 14. First, the proposal is an "expansion *** of a public use airport." There can be no reasonable dispute that the Aurora State Airport is a public use airport. In fact, no one claims otherwise. Further, the OAR 738-005-0010(110) definition of "public use airport" is an airport that is open to the flying public. The Aurora Airport is owned and managed by the State of Oregon and is open to the flying public. Moreover, the statutory definition of "airport boundary" refers to "the c*ombined public and private properties* that are permitted to have direct access to the airport runway by aircraft." (Emphasis supplied.) ORS 836.640(1). Indeed, the Court of Appeals expressly decided that expanding the Aurora Airport land use boundary to include the subject property is the only way that the through the fence airport uses that the legislature in ORS 836.640-842 expressly contemplated on the subject and other private property adjacent to the Aurora Airport can occur, is through an expansion of the Aurora Airport land use boundary to include such private property, exactly as proposed here. *Schaefer v. Marion County*, 318 Or App 617 (2022). As the Court of Appeals explained, there is already "privately owned land that is part of the 'ultimate airport boundary' on the 1976 airport layout plan" that is "zoned P and is developed with airport related uses." *Id.* That has not changed the fact that the Aurora Airport is a public use airport. As the legislature contemplated, the subject property will be a "through the fence" operation at the Aurora Airport per ORS 836.640-642 that ODAV will control through the referenced "Through the Fence

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[1] ORS 215.283(3) authorizes approval of the following in EFU zones:

"Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993."

[2] OAR 660-012-0065(3) states that "the following transportation improvements are consistent with Goals 3, 4, 11, and 14" and do not require goal exceptions. One of the "following transportation facilities and improvements" are at (3)(n) of that rule: "Expansions or alterations of public use airports that do not permit service to a larger class of airplanes."

Agreement," a copy of the template for which is in the record. The proposal is an expansion of a public use airport.

Second, the proposal does "not permit service to a larger class of airplane" but rather accommodates airplane classes that already use the airport or that are no larger than airplane classes that now use the airport. A condition of approval is imposed to ensure compliance with that requirement is maintained.

The proposal must demonstrate compliance with the farm impacts test (ORS 215.296). The Hearings Officer and Board found the evidence most credible and persuasive that farm operations and the extensive aviation activities at the Aurora Airport have co-existed for decades without significant increases in costs of accepted farming practices or significant changes to accepted farming practices. Farmer Jason Montecucco of Montecucco Farms testified he has farmed adjacent to and around the airport for years without any problems and also the testimony of Dr Irl Davis that there will be no significant added conflicts under the proposal between farmers using drones near the airport or subject property. The proposal meets the farm impacts test.

Applicant must also demonstrate compliance with the aviation facility planning requirements set forth in OAR 660-013-0040. As explained in greater detail herein, the Board decided that the applicant demonstrated that those requirements are met.

As noted, the proposed aviation facility will operate as a "through-the fence" ("TTF") operation at the Aurora State Airport which is specifically allowed and is strongly and expressly encouraged by the Oregon legislature in ORS 836.640-642. As contemplated by those statutes, the TTF operation proposed for the subject property would allow aviation uses of the subject property access to the airport's facilities to include its runway, without being physically located on property owned by ODAV.

Since the adoption of the Aurora State Airport Master Plan in 1976 which includes the 1976 Airport Layout Plan as part of the acknowledged Marion County Comprehensive Plan, the subject property has been designated as acceptable for development with aviation uses. Following closure of the retreat facility that was previously on the subject property for more than 40 years, Applicant sought to put the subject property into productive aeronautical use consistent with the long-since acknowledged Marion County Comprehensive Plan designation for the property that is established in the County's adoption and incorporation of the 1976 Aurora State Airport Master Plan.

The 1976 Aurora State Airport Master Plan, including its airport layout plan, which is a map of the airport, is part of the acknowledged Marion County Comprehensive Plan. That means, by definition, the 1976 Aurora Airport Master Plan complies with the statewide planning goals. That Aurora Airport Master Plan was coordinated with the City of Aurora, City of Wilsonville, and with Marion County. The 1976 Aurora State Airport Master Plan, including its airport layout plan, designates the subject property as acceptable for airport related development under private ownership.

The Application, including its exhibits, and the evidence entered into the record demonstrates that the proposal satisfies all applicable state and local land use regulations necessary for approving an expansion of the Aurora State Airport boundary and to authorize airport uses within the

expanded airport boundary. As detailed below, the Board of Commissioners finds that Applicant has met the burden of establishing compliance with the applicable standards and criteria for a conditional use permit and comprehensive plan amendment to amend the airport land use map to include the subject property located at 22515 Airport Rd. NE, Aurora.

Therefore, the Marion County Board of Commissioners **GRANTS** the conditional use and comprehensive plan amendment applications, subject to the conditions of approval herein imposed that that the Board herein finds necessary for the public health, safety, and welfare.

V. Applicable Standards

Several Marion County Code ("MCC") standards apply to this application. As discussed above, the proposed airport uses are an allowed conditional use on EFU land. MCC 17.136.050(J)(4)[3] authorizes, as a conditional use on EFU land, other transportation facilities and improvements not otherwise allowed on EFU land under certain circumstances. OAR 660-012-0065(3)(n) allows expansions of airport uses that do not permit a larger class of airplane as is the case with this proposal, to be approved as consistent with Goals 3, 4, 11 and 14 without taking a goal exception. Consequently, Applicant is submitting this Conditional Use Permit application subject to the criteria set forth under MCC 17.136.060 and the procedures set forth under MCC 17.119 to expand the airport boundary and to allow airport uses on the property. Because OAR 660-012-0065(3)(n) applies to expansions of public use airports, Applicant is not requesting an exception to Goals 3, 4, 11 and 14 because the rule states the uses are consistent with those Goals.

Also, the subject property is within the Airport Overlay (AO) zone, the applicable MCC Chapter 17.177 AO standards are addressed as part of the conditional use application.

Finally, OAR Chapter 660, division 13, the Airport Planning Rule, requires that a map showing the airport boundary expansion be adopted and, among other things, incorporated into the comprehensive plan. The Applicant proposed, and this decision approves, a Comprehensive Plan Amendment that will adopt the updated Aurora Airport Boundary into the County's Comprehensive Plan. Approval requires compliance with applicable Comprehensive Plan Policies, any applicable Statewide Planning Goals and the Airport Planning Rule. The proposal does not seek to change the plan designation or the zoning for the subject property. This is because the proposed use is a conditional use under the subject property's current EFU zoning.

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[3] To reiterate, MCC 17.136.050 provides, in relevant part,

> "The following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria, requirements, and standards specified for the use:
> * * * *
> "J. The following transportation uses:
> * * * *
> "4. Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12."

The Board notes that ultimately, implementation of the proposed airport land use boundary expansion and approval of airport related uses on the subject property requires approvals from several different bodies. The focus in this decision is on the required land use approval from the County. The County notes that the applicant will also need to obtain various other approvals from ODAV, the Federal Aviation Administration ("FAA"), and the Oregon Department of Environmental Quality ("DEQ") prior to any construction or operations. Consequently, the findings demonstrate that the proposal complies with each of the relevant land use standards and demonstrates that it is feasible to obtain all other necessary permits. Furthermore, this decision imposes conditions of approval to ensure the required permits are obtained before the proposed uses are developed and become operational.

VI. Proposed Airport Uses Within the Airport Boundary

Each of the proposed uses and related development fall within the list of airport uses permitted at the Aurora State Airport, considered under the relevant laws to be a "non-towered airport",[4] which local governments are required to allow within the airport boundary. ORS 836.616(2); OAR 660-013-0100. *See also*, ORS 836.616(3) and OAR 660-013-0110 (listing other uses within an airport boundary that a local government "may" authorize if consistent with applicable regulations).

ORS 836.616(2) provides:

"Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:

(a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;
(b) Emergency medical flight services;
(c) Law enforcement and firefighting activities;
(d) Flight instruction;
(e) Aircraft service, maintenance and training;
(f) Crop dusting and other agricultural activities;
(g) Air passenger and air freight services at levels consistent with the classification and needs identified in the State Aviation System Plan;
(h) Aircraft rental;
(i) Aircraft sales and sale of aviation equipment and supplies; and
(j) Aviation recreational and sporting activities."

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[4] OAR 660-013-0030 provides "(4)'Non-Towered Airport' means an airport without an existing or approved control tower on June 5, 1995." *See also*, ORS 836.616(4) (provisions of ORS 836.616(1) - (3) do not apply to airports with an existing or approved control tower on June 5, 1995). While the Aurora State Airport currently has an air traffic control tower ("ACTC"), the ACTC was constructed in 2015. Consequently, for statutory and administrative rule purposes, the Aurora State Airport is a non-towered airport. *See also*, *Schaefer*, 318 Or App at 625 n 8 (concluding, "For purposes of the rule, the Aurora State Airport is a non-towered airport.").

OAR 660-013-0100 reiterates the above list, expanding on what each use means, what types are excluded from the identified uses, and the development that is authorized for the identified uses. *See*, Exhibit 15 (OAR Chapter 660, division 13). The administrative rule also adds an additional permitted use. OAR 660-013-0100(10) authorizes:

> "Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a 'farm use' as defined in ORS 215.203 or 'farming practice' as defined in ORS 30.930."

The proposal is to develop within the expanded airport boundary only airport uses as defined by the above statute and administrative rule. As shown in the site plan (Exhibit 1 submitted at the March 6, 2025 Hearings Officer Hearing), and discussed herein, the proposal is to develop: landing pads for rotorcraft takeoffs and landings, rotorcraft, fixed-wing airplane tiedown areas, electric charging stations,[5] fueling facilities, hangars for rotorcraft and fixed-wing aircraft, maintenance and repair facilities for those aircraft, operations areas that include sleeping bunks, meal preparation and rest areas for shift-work pilots, and small offices to manage the aeronautical operations on the property. The application also requests approval of accessory support facilities to handle electrical peak-load periods and power supply during natural disasters and other emergency situations as well as accessory facilities such as water, stormwater, and wastewater facilities. Despite demonstrating that the proposal can develop an on-site wastewater system, Applicant is also requesting that the County grant land use approval for connecting to the existing HDSE sewer system or the Columbia Helicopters drain field should either of those systems be approved for such connection through a separate land use approval on those properties.

The types of uses that will take place on the subject property include the movement of people and goods, either directly from the subject property or via taxi lanes to the KUAO runway for such things as firefighting and utility facility repair operations (serving, for example, the needs of Columbia Helicopters), emergency medical evacuation (Medevac) flights (serving, for example, Life Flight Network), medical transport (to include air ambulance and organ transport for transplants), business flights, and itinerant operations. The site will enable the charging and maintenance of eVTOL and electric-powered fixed-wing aircraft, to include itinerant aircraft. Approval of the applications will make Aurora State Airport one of the first (or the first) airports in the state capable of serving this new generation of electric aircraft and will provide transportation facilities for renewable energy-based vehicles.

Each of the above uses, elaborated in more detail below, falls within one or more of the airport uses identified under ORS 836.616(2), which are identified following the description of the use:

- Use of the site for all types of rotorcraft and fixed-wing aircraft to include, but not limited to: emergency medical, firefighting and natural disaster response operations; support to commercial natural resource sector and oil industries, and

[5] Charging stations are necessary for electric rotorcraft and electric aircraft, and for surface vehicles that provide transportation to the subject property. Under DEQ's rules – OAR 340-257-0030 - by 2035, all new passenger cars, SUVs, and light-duty pickup trucks must either be battery electric or plug-in hybrid electric vehicles. Therefore, having charging facilities for the steady uptake of electric terrestrial vehicles leading to that transition, is essential.

forest and stream restoration efforts; forestry and agricultural related activities; aerial construction, infrastructure, repair and heavy lift operations; aerial transport of persons, aerial transport of goods to include shipping and receiving of parts and supplies for repair of aircraft and operational needs; electronic news gathering and motion pictures support; engineering and technical support services; rotorcraft and fixed-wing aircraft maintenance, overhaul and repair services; itinerant and facility-based rotorcraft and fixed-wing aircraft use; flight instruction; accessory uses such as fueling of rotorcraft and aircraft, storage of maintenance parts, and uses related to the development proposed below. ORS 836.616(2)(a), (b), (c), (d), (e), (f), (g), (j).

- Landing pads for rotorcraft to use for landing and taking off. While on the landing pad, people and goods are loaded onto or removed from the vehicle. ORS 836.616(2)(a).

- Taxi ways for fixed wing aircraft to move around the site and to access taxi ways to the Aurora State Airport runway. ORS 836.616(2)(a).

- Tiedown areas where rotorcraft and fixed wing aircraft can be temporarily "parked," ready for next use. ORS 836.616(2)(a).

- Hangar space where rotorcraft and fixed-wing aircraft can be temporarily parked in a covered, protected location, ready for next use. ORS 836.616(2)(a).

- Maintenance and repair facilities for rotorcraft and fixed-wing aircraft. ORS 836.616(2)(a), (e).

- Refueling and energy facilities to provide both aviation fuel for turbine or piston engine rotorcraft and electrical recharging stations for all-electric rotorcraft and fixed wing aircraft. This will include peaking/resilience systems for peak power load draws or disaster response such as private battery storage systems, and an on-site hydrogen storage tank, filled by truck deliveries, and a standby generator that can run on hydrogen fuel. Note, Applicant is not requesting approval for an energy generating facility to produce the hydrogen that will be stored and used on the site; rather hydrogen will be trucked to the site in the same way that petroleum is trucked to sites to provide petroleum-based vehicle fuels. ORS 836.616(2)(a).

- Electric charging stations for electric cars that transport people and goods to the facility. ORS 836.616(2)(a).

- Small offices to manage traffic and operations on the subject property. ORS 836.616(2)(a).

- Operations areas, sleeping bunks and break areas for shift-work rotorcraft pilots and for emergency operations. ORS 836.616(2)(a), (b), (c).

- Rotorcraft and fixed wing flight training. ORS 836.616(2)(d).

- Related accessory structures and incidental uses. ORS 836.616(2)(a).

- Related accessory uses include development of on-site water, wastewater and stormwater facilities, with authorization to connect to the HDSE wastewater system should that operator receive land use approval to serve additional parcels or to utilize the Columbia Helicopter drain field if a similar land use approval is obtained from the operator, as well as the extension to the subject property of existing and available electrical, gas, internet and telecommunications and other existing services necessary for the proposed use. ORS 836.616(2)(a).

The Board expressly finds that the proposal does not seek approval of, and this decision does not approve authorization for, any uses not listed as an airport use or identified under the administrative rule as not constituting an airport use such as commercial, industrial or manufacturing uses not provided by the rule, instruction for flight attendants or ticketing agents, or manufacturing of aircraft for sale to the public. *See*, e.g., OAR 660-013-0100(1), (4), (5) (identifying such uses as not airport uses under the statue and rule).

This decision contains a condition of approval that limits uses permitted on the subject property within the expanded airport boundary to those airport uses permitted pursuant to ORS 836.616(2) and OAR 660-013-0100.

VII. Findings of Fact and Law

The Board of Commissioners, after careful consideration of the testimony and evidence in the record and recommendation of its Hearings Officer, issues the following findings of fact:

1. The subject property is 16.54-acres in size and is designated Primary Agriculture in the Marion County Comprehensive Plan, and correspondingly is zoned Exclusive Farm Use (EFU). The subject property consists of tax lots 800 & 900 of Section 2D of Township 4 South, Range 1 West.

2. The subject property is on the west side of Airport Rd NE. The property is vacant and, in neither farm nor forest use and has not been in farm or forest use for at least the past 50 years. In this regard, for more than 50 years the subject property was used as a church camp and has not been farmed for at least that long. There are no rivers, streams, wetlands, floodplains or other natural hazards on the subject property or within its vicinity. The Pudding River is more than a half mile east of the subject parcel. The floodplain of the Pudding is almost exactly half a mile east of the subject parcel. The section of the Pudding directly east of the subject parcel is buffered by a wooded area 600-feet wide at its narrowest point.

   The subject property does not have any direct link to the Pudding River and is only connected to the river via a stormwater ditch serving the area along Airport Road. There is

a perennial stream that connects to the Pudding River that is mapped as beginning roughly 700-feet east of the southeast corner of the subject parcel.

3. The subject property is entirely within the Airport Overlay (AO) Zone. Special Exception 77-37 (SE77-37) approved the property's current configuration and therefore the property is considered a legal parcel for land use purposes.

4. The subject property is roughly level and is largely undeveloped. Structures from the previous use have been removed. An internal roadway for the former use was graveled and partially remains. The subject property has metered electricity and is connected to a gas main from when the property was used as a church camp and then a retreat.

5. The subject parcel is bordered to the north, west and south by parcels in the Public (P) zone that are either part of the Aurora Airport or are otherwise in aviation-related use. To the east, on the other side of Airport Rd NE, are EFU zoned lands in primarily agricultural use that stretch to woodlands adjacent to the Pudding River. The Pudding River serves as the county line between Marion and Clackamas counties. The properties to the south and west are part of the Southend Corporate Airpark and include a number of hangars, aviation related offices, maintenance, repair, engineering and design facilities for various aviation related businesses and several Fixed Base Operators ("FBO"). One of those operators is Life Flight Networks.

   The property to the south of the subject property is the site of Helicopter Transport Services (HTS) headquarters and main campus. HTS is one of the largest heavy-life helicopter companies in the world. HTS charters heavy lift and fire suppression helicopters and has repair and training facilities on-site. Like Columbia Helicopters located to the north of the subject property, HTS is not within the Aurora State Airport boundary and does not have through-the-fence (TTF) access to the Aurora State Airport.

6. The subject property is within the Horizontal Surface District of the Aurora State Airport and is subject to the AO zone's use and development restrictions. The subject property has a taxi lane easement to the Aurora Airport's runway and rights to access the runway over a strip of property that TLM sold to ODAV several years ago.[6] The Airport also holds a Flight Strip Easement over portions of the subject property, which grants the United States and the State of Oregon use of the easement area for aircraft use and further provides the United States and the State of Oregon the right to limit, control, and remove obstructions extending into the space above the subject property. The southwest corner of the subject property touches upon an airport access way that allows for through-the-fence (TTF) operations as envisioned by Aurora State Airport master planning, including the 1976 Aurora Airport Master plan that is an acknowledged part of the County's Comprehensive Plan.

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[6] "The subject parcel is benefited by an easement that allows its owners use of a paved taxi lane on adjoining property, which provides access to the airport runway." *Schaefer, supra*, 318 Or App 621.

7. The Aurora Airport is a public use airport. Applicant's proposal is for a conditional use permit to expand the land use boundary of that public use airport to include the subject property, and to approve the airport uses identified in Oregon Revised Statute (ORS) 836.616(2) and Oregon Administrative Rule (OAR) 660-013-0100 on the subject property. The application also includes a proposed comprehensive plan change to amend the Aurora Airport boundary land use map in the Marion County Comprehensive Plan to include the subject property, concurrent with the expansion of the airport boundary.

8. The proposal is an expansion or alteration of the Aurora Airport that does not permit service to a larger class of airplanes than are already served by the Aurora Airport and, as to new types of airplanes, none served by the proposal will be of a larger class than those that are already served by the Aurora Airport. The Board finds that the expert opinion of Mr. Aron Faegre on this topic as explained on Application Exhibit 40 to be credible and persuasive to demonstrate that the proposal does not permit service to a larger class of airplane. This will be ensured through a condition of approval. Therefore, no goal exception is included or required for the proposal per OAR 660-012-0065(3)(n).

9. Airport uses are allowed as a conditional use in the EFU zone as an "other transportation facilit[y]" in MCC 17.136.050(J)(4), "*Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12.*"

10. MCC 17.136.050(J)(4) implements ORS 215.283(3), "*Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:*

(a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or

(b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993."

11. Applicant is required to meet the farm impacts test of ORS 215.296, which is implemented in MCC 17.136.060(A)(1), for approval of the proposed alteration or expansion of the Aurora Airport to include and develop airport uses on the subject property. The Board finds more credible and persuasive the written testimony of farmer Jason Montecucco than that of opponents that the proposal will not significantly increase the cost of accepted farming practices or significantly change accepted farming practices on area farms. As Mr. Montecucco testified "No activity at the airport has ever hindered our ability to farm." The Board finds that farming has co-existed without significant added costs to accepted farming practices or significant changes to accepted farming practices on the farmed property around the airport including the farmed property that is directly across from the Aurora Airport and "P" zoned areas occupied by significant heavy lift helicopter uses that are directly across the street from farming operations. The Board also finds most credible and

persuasive the testimony of expert Dr. Irl Davis than that of opponents, that the proposed aviation activities on the subject property are safe and regulated by the Federal Aviation Administration (FAA), and that area farm drone use will not be required to significant change when the proposal is established but rather in fact will co-exist with the proposal in the same manner that it now co-exists with the significant aviation activity at the Aurora Airport. Concerning the latter, there is no dispute that the Aurora Airport is now one of the state's busiest airports and the Board so finds.

12 ORS 836.625(1) states, "*The limitations on uses made of land in exclusive farm use zones described in ORS 215.213 and 215.283 do not apply to the provisions of ORS 836.600 to 836.630 regarding airport uses.*" The proposed uses on the subject parcel are those that are expressly listed in ORS 836.616(2) and OAR 660-013-100 as uses that shall be authorized within airport boundaries.

13. Expansions of airport boundaries are guided by OAR 660-013. The application is not subject to demonstrating compliance with the Transportation Planning Rule of OAR 660-012 as per OAR 660-013-160(3), "*Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.*"

14. The Application addresses MCC 17.119.070 *Conditional Use,* MCC 17.136.060(A) *Conditional use criteria in EFU*, MCC 17.177 *Airport Overlay Zone*, applicable policies in the Marion County Comprehensive Plan, Oregon Statewide Planning Goals, and applicable Oregon Administrative rules in 660-13.

15. The Planning Division requested comments from various governmental agencies. The comments received from the various agencies are summarized below:

Marion County Land Development, Engineering, and Permits requested that the following be included:

ENGINEERING CONDITIONS

Condition A – Prior to building permit issuance, design rural type frontage improvements along the Airport Road subject property frontage that are anticipated to include a new access, removing prior existing accesses, vegetation clearing, 5-foot gravel road shoulder, proper foreslope and drainage ditch relocation, and obtain a Major Construction Permit for same. Prior to issuance of a Building Department Certificate of Occupancy, acquire final inspection approval of the public roadway related improvements.

Condition B – Prior to building permit issuance, contribute a proportional share in the amount of $24,000 as presented in the February 2024 TIS Update toward the cost of planning, designing, and constructing signalization and turn lane improvements at the intersection of Ehlen Road and Airport Road as identified in the County RSTP and in the City of Aurora TSP, as a traffic mitigation measure.

ENGINEERING REQUIREMENTS

C. A maximum of one (1) direct driveway access point to Airport Road, not including Stenbock Lane, will be allowed. Access locations must meet the Major Collector minimum centerline spacing standard of 300 feet.

D. Storm water detention will be required; however, water quality treatment is not and therefore optional. Acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system as required must be constructed and approved prior to issuance of a building Certificate of Occupancy.

E. Transportation System Development Charges (TSDCs) will be assessed upon application for building permits.

F. Evidence of a recorded Road Maintenance Agreement regarding Stenbock Lane, from which access is shown to be taken, is required prior to issuance of building permits.

ENGINEERING ADVISORIES

G. DEQ regulates ground disturbing activities of > 1 acre for construction stormwater erosion.

H. Airport Road is functionally classified a Major Collector and as such has a Special Setback of 40 feet from which building setbacks are to be measured.

Marion County Building Inspection commented: Permit(s) are required to be obtained prior to development and/or utilities installation on private property.

Oregon Department of Aviation (ODAV) reviewed the proposal and prepared the following comments:

(1) Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the applicant must submit an application for approval of the airport site to ODAV, as described in Oregon Revised Statutes (ORS) 836.090.

(2) Prior to the construction or establishment of the proposed facility, the application fee must be paid to ODAV, as described in ORS 836.085.

(3) The proposed development must adhere to the approval criteria for the establishment of an airport as described in ORS 836.095 and OAR 738-020 (Minimum Standards for Airports).

(4) In accordance with FAR Part 77.9 and OAR 738-070-0060, the proposed development is required to undergo aeronautical evaluations by the FAA and ODAV. The

aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an obstruction to aviation safety. The applicant should receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.

(5) The height of any new structures, trees, and other planted vegetation shall not penetrate FAR Part 77 Imaginary Surfaces, as determined by the FAA and ODAV.

(6) Any proposed external lights shall be designed so as not to interfere with aircraft or airport operations.

All other agencies either had no comment or did not respond.

16. In addition to the Application, submissions in support of and in opposition to the Application were received and included in the record.

17. Friends of Marion County (FOMC) submitted statements in opposition to the application. Friends of Marion County opposes the application asserting safety and security concerns with respect to the use and development of electric vertical takeoff and landing aircraft or "eVTOLS". FOMC argues that the application seeks an urban use, is not in harmony with the purpose of the EFU zone, and that there are other sites that can reasonably accommodate the proposed use. FOMC alleges conflict between the proposal and use of agricultural drones in the area. The Board finds that the proposal does not present significant safety or security concerns and finds the testimony of Dr. Irl Davis most persuasive on those issues. As explained in more detail below, the Board finds that the proposal is in harmony with the purpose and intent of the EFU zone and the fact that there may or may not be other locations for the proposal is irrelevant to any approval standard that applies. The Board also finds that the subject property has a dual Comprehensive Plan designation of both Primary Agriculture but also an area that is acceptable for airport related development under private ownership per the express terms of the 1976 Auora Airport Master Plan that is expressly incorporated as a part of the County's acknowledged plan and so is itself acknowledged. As such, the Board also finds that the plan has already determined that putting the subject property to airport related uses under private ownership, as is approved here, is already contemplated by the County plan and so is necessarily "harmonious" with the purpose and intent of the EFU zone.

18. Joseph Schaefer objects to the application asserting that the proposal is neither a public use airport nor an expansion of the Aurora State Airport boundary, so OAR 660-12-0065(3)(n) cannot apply, given the Court of Appeals' determinations in *Schaefer v. Marion County*, 318 Or App 617 (2022). Mr. Schaefer also alleges that the proposal is not authorized by ORS 215.283(3)(b), and requires exceptions to Goals 3, 11, and 14. The Board finds that, as explained in detail in these findings, the proposal is an expansion of a public use airport, meets the requirements of ORS 215.283(3)(b) as well as OAR 660-012-0065(3)(n) and that means that no goal exceptions are required.

19. Similarly, Friends of French Prairie (FOFP) opposes the application asserting that the proposal is a private development on private land adjacent to the Aurora State Airport and is neither a public use airport nor an expansion of the Aurora State Airport. FOFP argues that the proposal is for a transportation facility which cannot be approved on rural lands without an exception. The Board finds that whether the proposal involves private development on private land is irrelevant to the applicable standards – the issue is whether the proposal is an expansion of a public use airport and the Board finds that it is for all the reasons discussed in these findings. As is also explained in detail herein, the proposal does not require a goal exception for approval, therefore no goal exception to Goal 12 is required.

20. Opponents (in particular FOFP) relatedly assert that "ODAV is not expanding the Aurora State Airport to include this piece of private property" because "it is private property adjacent to the airport not physically part of the ODAV ownership" and then claim that "ODAV apparently agrees that a private entity lacks the authority to unilaterally expand a public use airport for its private use." The Board finds that there are two different airport boundaries at work. One is the airport boundary that includes the property owned by the state. That is what FOFP is talking about in their assertions concerning their perception of ODAV's position. The other is the airport land use boundary that is at issue in this case and that is being expanded here. The Board finds that the credible and persuasive evidence in the record is that ODAV supports the proposed land use boundary expansion sought in this case as is plain from ODAV's Director's letter of support in the record. The Board also finds credible and persuasive the evidence in the record from ODAV Airports Manager Tony Beach that the subject property would continue to be designated on the current Aurora Airport Master Plan as suitable for airport development under private (or public) ownership, a designation the Board finds that the subject property now has under the County's acknowledged comprehensive plan. The Board also finds that the state law definition of the land use "airport boundary" the Court of Appeals was talking about in deciding that the boundary must be adjusted to allow airport related uses of the subject property and that is being adjusted by this decision in ORS 836.640(1), "includes the combined public *and private properties* that are permitted to have direct access to the airport runway by aircraft." (Emphasis supplied.) The Board expressly decides that nothing requires the land use boundary being expanded here per ORS 836.640-642 and the Court of Appeals' roadmap for approving airport related uses on the subject property, can only include publicly owned property.

21. FOFP asserts that ORS 215.283(3)(b) and "Section 3 of chapter 529, Oregon Laws 1993" always require goal exceptions for proposed "transportation facilities on rural lands". The Board disagrees. OAR 660-12-0065(3)(n) expressly states that certain transportation facilities, to include expansions or alterations of public use airports that do not permit service to a larger class of airplane, as is proposed here, are deemed to be consistent with Goals 3, 4, 11 and 14. Therefore, as explained in greater detail below, the proposal is deemed to be consistent with those goals and that means that no exceptions are required for Goals 3, 4, 11 or 14.

22. FOFP claims that the 2024 TIA is inaccurate because it should count trips for 83,916 sq. ft. of office space and does not do so and that only counting 83,916 sq. ft. of offices is a "reasonable worst case scenario." The Board rejects FOFP's claim. As explained by Mr. Faegre, the proposal is only for 15,658 sq. ft. of offices in the proposed development. The Board finds that the 2024 TIA is adequate and appropriate, credible and more so than FOFP's claims otherwise.

23. Jason Montecucco, an owner of Montecucco Farms, LLC, which operates farms in the area including a farm along airport property, testified in writing that the proposal is expected to have minimal impacts to farm uses in the area, that there have been no significant adverse impacts between the significant aviation related activity that now exists at the airport and farming operations in the area, and that the proposal will not interfere with farm drone use – that there is an existing process for gaining permission from air traffic control for using farm drones and that process is unimpeded by the proposal. The Board finds this testimony more credible and persuasive than opposing testimony otherwise.

24. Irl M. Davis, PhD, an expert in uncrewed technology and the use thereof, submitted a response to the objections of Friends of Marion County, Joseph Schaefer, and Friends of French Prairie. Dr. Davis testified in writing that the introduction of new rotorcraft pads and associated uses will have no impact on the use of agricultural drones in the area. Dr. Davis also responded to allegations of safety and security concerns noting that commercial eVTOLs are not ultralights and any use is subject to oversight through FAA regulations. The Board finds this testimony more credible and persuasive than opposing testimony otherwise.

25. Michael Weimer, Chief Operating Officer for LifeFlight Network submitted a statement in support of the proposal. Mr. Weimer encourages approval of the application because the proposed facility will strengthen Life Flight's operational capacity to meet service demands. Mr. Weimer notes that Life Flight Network has outgrown its existing space and is actively evaluating relocation options. The Board finds Mr. Weimer's testimony to be credible and persuasive.

26. Mr. Schaefer objects to the proposal asserting it violates ORS 660-012-0060(5) which states "the presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional, or industrial development on rural lands." The Board finds that the proposal does not violate this provision. The proposal neither seeks nor requires a goal exception. Mr. Schaefer also claims that LUBA and the Court of Appeals ruled that TTF aviation activity at the subject property is prohibited. The Board finds rather that both LUBA and the Court of Appeals determined only that in order to establish aviation uses on the property as proposed here, that the processes being followed in this case must be pursued.

27. Mr. Schaefer seems to argue that the proposal is not a "transportation facility." The proposal clearly seeks approval of a transportation facility, service, or improvement as is evident from the plain language of OAR 660-012-0065(3)(n) that in turn characterizes expansion or alteration of a public use airport that does not permit service to a larger class of airplane as being consistent with Goal 3, 4, 11 and 14 and so no exceptions to those

goals are required. As explained in detail in these findings, the proposal falls squarely within OAR 660-012-0065(3)(n). The Board also notes OAR 660-013-0160(3) provides: "Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 regarding Airport Planning." The Board finds that the proposal complies with OAR 660-013-000 et seq and so is deemed to satisfy the requirements of OAR 660 Div12..

28. Mr. Schaefer argues that MCC 17.136.0060(I) applies. He speculates that the proposed facility "will have a design capacity of more than 100 people" and asserts that "exceptions must be approved ***". The Board finds that Mr. Schaefer uses a superseded site plan that no longer applies. The correct site plan that reflects the proposed use with the correct chart of uses and associated square footages, is the one the applicant submitted in the Hearings Officer's March 6, 2025 hearing. Second, Mr. Schaefer incorrectly assumes that the proposal will have 83,916-squarefeet of offices and from there draws the incorrect conclusion that there will be 277 employees in the offices alone. The evidence submitted in the record does not align with Mr. Schaefer's argument. The evidence in the record demonstrates that the enclosed structures here are primarily hangars for aircraft, maintenance shops for aircraft and the vertiport headquarters with 15,658-squarefeet of offices and the rest of the building devoted to industrial shops for working on aircraft and storing aircraft parts. Three (3) people for every 1000-squarefeet of offices, out of 15,658 squarefeet of office space, is 47 people – which is less than 100. The spaces here are large because they are designed to accommodate aircraft, not people, and aircraft are large.. The same is true for maintenance areas. There is no reasonable basis to conclude that the design capacity of the structures on the property will have a design capacity of more than 100 people and the Board finds that they will not.

Third, the Board specifically interprets MCC 17.136.0060(I), to either be satisfied or inapplicable here. MCC 17.136.0060(I) states:

> "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 within three miles of an urban growth boundary unless an exception is approved pursuant to OAR Chapter 660, Division 004."

The Board interprets MCC 17.136.0060(I) to only require exceptions for uses where a statewide planning goal would otherwise prohibit the use, when the capacity limitation applies in code. Otherwise, the exception process is pointless because there is no goal and no goal policy to vary from, which is what a goal exception is – a variance from the requirements of a goal. ORS 197.732(1)(b). The Board finds it persuasive that the referenced OAR 660-040-000(1) states:

> "Rules in other divisions of OAR 660 provide substantive standards for some specific types of goal exceptions. Where this is the case, the specific substantive standards in the other divisions control over the more general standards of this division."

OAR 660-012-0065(3)(n), is an "other division" of "OAR 660" and it provides "substantive standards" for" "specific types of goal exceptions" expressly determining that in some circumstances, particular uses such as the proposal here, are deemed to be consistent with Goals 3, 4, 11 and 14 and so in that circumstance no goal exception is required. Thus, the Board interprets its standard to mean that if a facility has a design capacity of 100 people an exception to a goal that the proposal is inconsistent with is required. But the Board also interprets this provision to mean that if another provision of law such as OAR 660-012-0065(3)(n), determines as a matter of law that the particular use is deemed to be consistent with Goals 3, 4, 11 and 14, then no exception is required to those goals. Thus, MCC 17.136.0060(I) does not require exceptions to Goals 3, 4, 11 or 14 with which state law expressly says the proposal is consistent.

The Board further interprets the standard to only require an exception if there is a different goal that the proposal is not consistent with. The Board finds that there is not any such goal with which the proposal here is inconsistent and that the standard does not require a goal exception in this case. The Board finds that, in fact taking an exception to a use that is consistent with the goals, is improper *DLCD v. Yamhill County*, 183 Or App 556, 562 (2002) r*ev dism* 336 Or 126 (2003). ("It is only when a use is *not* permitted at all under the applicable goal that the exceptions process may come into play.") (Emphasis in original.); *but see Young v. Jackson County*, 49 Or LUBA 327, 336 (2005). The Board further finds that even if not improper to take an exception to a use that the goals allow, the question still becomes what goal or goal provision would one take an exception to? The state law that MCC 17.136.0060(I) apparently implements provides the most plausible answer to this question. In this regard, OAR 660-033-0130(2) has language that is nearly identical to MCC 17.136.0060(I). OAR 660-033-0130 implements Goal 3. That means that the goal to which an exception is supposed to be taken is Goal 3. But here, state law expressly states the proposal is *consistent with* Goal 3 and so no purpose is served by taking a Goal 3 exception where LCDC has adopted a specific rule that says the proposal is consistent with that goal. The Goal 3 use table - OAR 660-033-0120 table - lists "Transportation improvements on rural lands allowed by OAR 660-012-0065" as a reviewable EFU use; there is no cross-reference to "(2)" – OAR 660-033-0130(2) that appears for that line. Under OAR 660-033-0130's opening paragraph, the absence of a numeric reference means 0130 does not add any minimum criteria—which includes subsection (2)'s 100-person cap. Put differently, the Board finds that LCDC deliberately did not attach the 100-person/three-mile limit to TPR-authorized transportation improvements in OAR 660-012-0065(3)(n).

Therefore, the Board finds that MCC 17.136.0060(I) either does not apply or it is satisfied because no goal exception is required.

29. Mr. Schaefer and other opponents argue that the proposal requires an alternatives analysis under OAR 660-012-0070(3). The Board finds that OAR 660-012-0070 in its entirety by its terms does not apply. Rather, the proposal can be and is approved under OAR 660-012-0065(3)(n).

30. Opponents assert that the proposal is contrary to OAR 660-004-0022 and other goal exception provisions. The Board finds that they are mistaken. The Board finds that no goal exceptions are required and that the goal exception rules do not apply.

31. The Aurora Airport Improvement Association (AAIA) submitted a statement in support of the proposal. President Tony Helbling states that the site presents a unique opportunity to allow an industry "cluster" of aviation related companies in particular those operating vertical lift aircraft. Currently, Life Flight, Columbia Helicopters, Winco Powerline Services, Wilson Construction Company, Helicopter Transport Services, Portland General Electric, and Teledyne/FLIR operate vertical lift aircraft at and immediately around the Aurora Airport. He stated that the proposal would support the Oregon Business Plan in promoting the concentration of these similar aviation related uses and will bring development and jobs to a "long-time unproductive property." The Board finds Mr. Helbling's testimony credible and persuasive.

32. FOMC claims that "there is no Airport Layout Plan for the Aurora State Airport that includes the subject property within the state-owned airport facility." The Board finds that claim to be irrelevant to this proceeding. The Board finds that there is an Airport Layout Plan in the acknowledged Marion County Comprehensive Plan that designates the subject property as acceptable for airport related development under private ownership. The Board also finds that contrary to FOMC assertions otherwise that the fact that the subject property will be developed as a private through the fence operation does not prevent the Aurora Airport land use boundary from being expanded as proposed to include the subject property as the Court of Appeals said ORS 836.642 contemplates to enable the development of aviation uses on the property.

33. The Board finds that opponents assert incorrectly that the 1976 Aurora Airport Master Plan is not a part of the County's current comprehensive plan. The Board expressly decides that the 1976 Auora Airport Master Plan is an acknowledged part of the county's comprehensive plan, as the Court of Appeals has repeatedly explained.

34. The City of Aurora submitted comments in opposition to the airport boundary expansion. The City of Aurora objects to an extension of the two-year limitation on the duration of the approval established in MCC 17.119.190 in general, asserts that an exception to Goal 12 is required, and asserts that the proposal is not consistent with ORS 215.283(3)(a). As explained in detail in these findings, the Board agrees with the applicant that the requested extended duration for this approval is appropriate and allowed by the County code given the circumstances that the opponents to this application have proven to be litigious when it comes to the subject property and the airport and will likely appeal any approval as they have for the other approvals for this property and the airport itself over the past several years. As is also explained in detail in these findings, no Goal 12 exception is required and the proposal is wholly consistent with ORS 215.283(3)(b), and that ORS 215.283(3)(a) is an alternative to ORS 215.283(3)(b) and ORS 215.283(3)(a) simply does not apply.

35. The City of Wilsonville objects to the application. The City of Wilsonville argued it does not support use of EFU land for non-agricultural uses in the French Prairie area of the Willamette Valley, and objects to intensification of airport uses, asserting environmental

and infrastructure issues that might negatively impact the City of Wilsonville. The City of Wilsonville asserted a concern about downstream impacts of stormwater discharge from the proposed facility. The Board finds that state law and the acknowledged County code allow the proposal on EFU zoned land, ORS 836.640-642 expressly encourage and contemplate intensification of airport uses at the Aurora Airport through increased TTF activity and the stormwater discharge for the proposal will not cause adverse downstream impacts.

36. Wendie Kellington (Kellington Law Group), attorney for Applicant went over the application, and discussed the exhibits presented with the application and for the hearing on behalf of the applicant.

37 Wendie Kellington gave a PowerPoint presentation explaining the application and put a hard copy of that presentation into the record.

38. Ted Millar, principal of TLM Holdings, LLC, testified in favor of the application. Mr. Millar testified that the property was purchased from "Beyond the Reef" church camp with the understanding that it was intended as airport property. Mr. Millar noted that the property was never on tax rolls, but if approved, will contribute approximately $350,000.00 in annual tax revenue. The Board finds Mr. Millar's testimony to be credible and persuasive.

39. Aron Faegre testified in favor of the application. Mr. Faegre is an architect and civil engineer who specializes in airport planning and development. The Board finds Mr. Faegre to be an expert in aviation planning and airport development. The Board finds the testimony of Mr. Faegre persuasive and credible and more so than that of opponents. Mr. Faegre testified about the noise study and indicated that electric aircraft, including eVTOLs are significantly less noisy than helicopters. Mr. Faegre stated that the noise impacts from the proposed use are fully captured within the existing noise contours for the Aurora Airport and are lesser than existing Aurora Airport noises. Mr. Faegre provided evidence showing the existing noise contours of the airport and the noise contours associated with the proposal which supported his testimony.

40 Tony Helbling, an air ambulance and helicopter pilot, testified in favor of the application. Mr. Helbling testified that the proposal creates additional space for aircraft that use the runway as well as additional needed room for helicopters in medical transportation and construction. Mr. Helbling testified about the "clusters" of similar use companies centered at the Aurora Airport. The "cluster" of companies, including direct competitors, benefit by their proximity to one another to share services and workforce. Mr. Helbling noted that the industry "clusters" also reduce impact to surrounding areas. The Board finds Mr. Helbling's testimony to be credible and persuasive.

41 Kevin Ferrasci O'Malley, CEO of the Wilsonville Chamber of Commerce, testified in favor of the application. Mr. Ferrasci O'Malley will have a significant positive economic impact on the area in revenue and jobs. The proposal, if approved, will enable the County

to capitalize on emerging technology, and will be a strategic investment in the County's growth. The Board finds Mr. O'Malley's testimony to be credible and persuasive.

42 At the Hearings Officer proceeding, Betsy Johnson testified at the hearing in favor of the application. Ms. Johnson was formerly the Director of the Oregon Department of Aviation, is a commercial helicopter pilot, and is on the Board of the Life Flight Network. Ms. Johnson encourages approval and supports the development of the next stage of aeronautical development and air operations in Marion County. Ms. Johnson noted the economic development benefits of the proposal and the benefit of "through the fence" legislation which specifically identifies the Aurora Airport as a "pilot site" for the growth of aviation related industry and directs the state to support proposals like this one at the Aurora Airport. The Board finds Ms. John's testimony credible and persuasive.

43. At the Hearings Officer proceeding, Mercedes Rhoden-Feely testified in opposition to the application in her individual capacity and in her representative capacity as a city councilor with the City of Aurora.

44. At the Hearings Officer proceeding, Nancy Snyder testified in opposition to the application. Ms. Snyder owns a house and farm across the street from the Aurora Airport. Ms. Snyder testified that she objects to the application based upon environmental concerns, noise concerns, and impacts on surrounding farms and community. Ms. Snyder discussed an incident in which fluids were dropped over her field from existing operations at the Aurora Airport. Concerning the latter, the Board finds that while the issue pertaining to alleged conduct by HTS has limited relevance to the proposal here. However, the Board finds the testimony of HTS' chief pilot and director of flight operations is credible and persuasive regarding these allegations.

45. At the Hearings Officer proceeding James Snyder testified in opposition to the application. Mr. Snyder, Nancy Snyder's brother, opposes the application because of the impact of the existing helicopter operations associated with the Aurora Airport, on his residence property that is across Airport Road from the subject property/airport and on which he recently built his home. Mr. Snyder stated concerns about Airport Road maintenance and the noise from increased helicopter presence. Concerning the latter, the Board finds most credible and persuasive the testimony from Mr. Faegre that the noise associated with the proposal will be no greater than noise already experienced at the Snyder property. Concerning road maintenance, a condition is imposed requiring a recorded road maintenance agreement for maintaining Stenbock Lane which accesses Airport Road from the subject property and the Board also notes that Airport Rd upon which the property has frontage is a major collector that the County maintains. The Board further finds that there are no special features about the proposal that warrant imposing any ongoing Airport Rd. maintenance obligations on the proposal. Transportation mitigation conditions are imposed as conditions in this decision that adequately mitigate for surface transportation impacts from the proposal following the transportation analyses by DKS Transportation engineer Lacy Brown, which DKS testimony/analyses the Board finds more credible and persuasive than opposition assertions to the contrary. In summary, the Board finds that the proposal does not add any

road maintenance issues that are not adequately addressed by the proposal as approved and conditioned herein.

45. Attorney Kelly Huedepohl submitted written testimony into the record on behalf of the applicant observing that the City and its planning commission chair Mr. Schaefer "dismiss the airport's projected economic benefits as inadequate to justify development of the subject property. At the same time, these same decision-makers are advancing a plan to expand the City's urban growth boundary (UGB) by 354.24 acres —202.11 acres of which is EFU-zoned farmland, including the subject property—based entirely on their own "optimistic" predictions of airport-driven economic growth over the next 20 years. This is selective reasoning at its worst: when the City wants the land for itself, speculatively-optimistic economic growth at the airport is a compelling justification to convert massive areas of farmland to urban uses; when the applicant seeks to develop just one of those parcels for immediate airport related use, however, suddenly the 'economic advantages of expanding the Aurora State Airport' do not adequately protect farmland." The Board agrees that there can be no reasonable dispute that the proposal will provide significant economic benefits to the area and that Aurora Airport has long been credited with doing so.

VI. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met.

GENERAL STANDARDS

2. MCC Chapter 17.136 EFU (Exclusive Farm Use) zone allows conditional uses in the EFU zone. MCC 17.136.050(J) allows certain transportation uses, to include:

(4) [O]ther transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12.

This standard implements ORS 215.283(3), quoted above, and must be interpreted consistently with the statute. *Wetherell v. Douglas County*, 209 Or App 1 (2006). The standard allows transportation facilities and transportation improvements not otherwise allowed under the code (or statute) to be approved if certain requirements are met. Here, the expansion of the airport boundary (an airport is a transportation facility) and allowed airport related uses is a transportation facility and improvement that is not otherwise allowed under the code.

The standard provides that an "other transportation facility or improvement" is subject to OAR Chapter 660, Division 12 and, if necessary, an exception to applicable goals. Here OAR 660-012-0065(3)(n) allows

"(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplane[.]"

The proposal does not permit service to a larger class of airplane as that phrase has been defined by the Court of Appeals. See *Schaefer v. Oregon Aviation Board*, 312 Or App at 345 (discussing what is meant by different class of airplane). All airplanes that would use the proposed facility are airplanes that have permitted service at the airport – the proposed facility does not permit the airport to service to any larger airplanes than are otherwise permitted at the airport. The facility simply serves airplane classes that are already at the airport. Furthermore, as explained by expert Aron Faegre in Application Exhibit 40, which the Board incorporates by this reference into these findings, the taxiway access to the property is limited to 82 feet in width due to existing structures, which precludes larger airplanes than those already permitted service at the airport, to access the subject property – the largest fixed-wing aircraft that could utilize the subject property's access to the taxiway and runway under the proposal would be those with wingspans no larger than 75 feet which generally describes Class B-II aircraft. The Board finds Mr. Faegre's testimony to be credible and persuasive. Last, nothing about the proposal requires the airport to implement any design standards to permit a larger class of airplane to use the Airport

The rule also provides that an expansion or alteration of a public use airport is deemed to be consistent with Goals 3, 4, 11 and 14. Consequently, an exception to statewide Goal 3 is not required and, as explained below in the section addressing the Statewide Planning Goals, no exceptions to any other goals are required either.

Furthermore, ORS 836.625(1)[7] states that the limitations on uses in EFU zones described in ORS 215.283 do not apply regarding airport uses within airport boundaries. Consequently, the airport uses described in ORS 836.616(2) are allowed conditional uses within an airport boundary in the EFU zone.

The Oregon Court of Appeals in *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 345, *aff'd on recon,* 313 Or App 725 (2021), interpreted OAR 660-012-0065(3)(n) and held:

"an 'expansion[ ] or alteration[ ] of a public use airport that do[es] not permit service to a larger class of airplane' is an expansion or alteration that does not authorize the airport, by increasing design standards or otherwise, to serve a group of fixed-wing aircraft with a greater variety of approach speeds, a greater variety of MTOWs, or a greater variety of wingspans or tail heights."

Under that definition, the proposal – either the airport boundary expansion or the allowed airport related uses - clearly does not permit service to a larger class of airplane. All the fixed-wing airplanes that would use the proposed facility are permitted service at the airport – the proposed facility does nothing and provides nothing that permits the airport to provide service to larger airplanes than are otherwise using the airport. Nothing

[7] ORS 836.625 provides, in relevant part:

"(1) The limitations on uses made of land in exclusive farm use zones described in ORS 215.213 and 215.283 do not apply to the provisions of ORS 836.600 to 836.630 regarding airport uses."

about the proposal allows airplanes that are heavier, have a taller tail height or larger wingspan or greater approach speeds to use the airport. The Aurora Airport design standards do not need to change under the proposal.

The Board further notes that rotorcraft are not "fixed-wing aircraft" and, therefore, rotorcraft are not relevant to this standard. However, regardless, the Board finds that the proposal does not permit service to a larger class of rotorcraft than already use the airport by weight, tail height, wingspan, or approach speed and requires no design changes to the Aurora Airport to permit service to such larger classes of airplanes either. The evidence in the record clearly establishes that the airport already is adjacent to both HTS and Columbia Helicopters which serve rotorcraft that are among the largest and heaviest in the industry. Opponents do not contend otherwise. Instead, opponents contend that the aircraft that will use the proposed use will be *different* than the aircraft that now use the airport. That is true in the sense that the proposal will provide facilities for electric fixed-wing and rotorcraft aircraft to include eVTOLs and that neither electric aircraft nor eVTOLs are now served at the Aurora Airport. But the operative terms under OAR 660-012-0065(3)(n) is "*larger* class of airplane" as the Court of Appeals has defined the term, not *different* airplanes – class or otherwise. The Board finds that the proposal **does not** constitute an expansion or alteration that authorizes the Aurora Airport, by increasing design standards or otherwise, to serve a group of fixed-wing (or other) aircraft with a greater variety of approach speeds, a greater variety of maximum take-off weights, or a greater variety of wingspans or tail heights. Therefore, the proposed alteration or expansion of the airport boundary and allowed airport related uses within the expanded boundary does not provide service to a "larger class of airplane."

The Board observes that the term "expansions" in the context of OAR 660-012-0065(3)(n) means expanded pursuant to OAR Chapter 660, division 13 by a local government adopting a map showing an airport boundary that includes a larger area than the boundary shown on the previously adopted map of the airport. *See, Schaefer v. Marion County*, 318 Or App 617, 619-20, 509 P3d 718 (2022) (interpreting OAR 660-012-0065(3)(n)). The Board further observes that the term "alterations" as used in the rule means changes or modifications to the development and uses permitted within an airport boundary, whether they are uses and development within an existing airport boundary or those allowed within an expanded airport boundary. Consequently, OAR 660-012-0065(3)(n)'s "consistent with Goals 3, 4, 11, and 14" provision applies both to the expanded airport boundary and to the airport uses and related development permitted within that airport boundary.

Accordingly, the proposed expansion of the Aurora Airport land use boundary and alteration to allow airport related uses within it, is deemed to be consistent with Goals 3, 4, 11 and 14 under OAR 660-012-0065(3)(n) and exceptions to Statewide Goals 3, 11 and 14 are not required.

To round out these findings, the Board further notes that within the expanded airport boundary, the Applicant requests authorization only for "airport uses" as they are expressly defined by statute and administrative rule. *See*, ORS 836.616(2) and OAR 660-013-0100. These proposed airport uses represent "alterations" of the public use Aurora State Airport

and, pursuant to OAR 660-012-0065(3)(n) are considered consistent with Goals 3, 4, 11 and 14. These uses, and their related development, are permitted on EFU zoned land because ORS 826.625(1) provides:

"The limitations on uses made of land in exclusive farm use zones described in ORS 215.213 and 215.283 do not apply to the provisions of ORS 836.600 to 836.630 regarding airport uses."

ORS 836.616(2) and OAR 660-013-0100 provide a list of airport uses and activities that "shall" be authorized within airport boundaries. Once a property is within an airport boundary, those listed uses must be allowed by the County. As discussed in detail below, each of the proposed airport uses and supporting development fall into one or more of the airport uses identified by the statute and rule. By comparison, ORS 836.616(3) and OAR 660-013-0110 address uses that "may" be allowed by the County within an airport boundary. None of the uses proposed in this application fall into the list of ORS 836.616(3) or OAR 660-013-0110 "may" uses.

Additionally, the Board notes that Mr. Schaefer and FOFP insists that OAR 660-012-0065(3)(n) is beyond LCDC's authority to promulgate. The Board does not understand why that would be so. As the Court of Appeals explained in commenting on the same objection in one of Mr. Schaefer's cases against the airport in which he also asserted that the rule is invalid:

"*** nothing in the text of the rule suggests that LCDC intends to allow any transportation improvements on EFU land without applying the farm impacts test; the rule does not purport to supersede the statutory requirement that "[r]oads, highways and other transportation facilities and improvements" not otherwise addressed in ORS 215.213 and 215.283 can be allowed without a goal exception only if they are also "subject to" "ORS 215.296," the farm impacts test. ORS 215.213(10); ORS 215.283(3). The proposed expansion of the airport boundary and proposed airport uses are permitted conditional uses under MCC 17.136.0050." *Schaefer v. ODAV*, 312 Or App n 26 (2021).

The Board agrees with the Court of Appeals that the rule – OAR 660-012-0065(3)(n) - is consistent with the authority granted to LCDC to promulgate it in ORS 215.283(3)(b) and that the application here is as required, subjected to the farm impacts test of ORS 215.296, and implemented by the Marion County Code.

Finally, Mr. Schaefer argues that under MCC 17.136.050(J)(4) that because a heliport is specifically allowed as a conditional use in the County's commercial and industrial zones, that it may not be allowed as an "other transportation facilities and improvements" under MCC 17.136.050(J)(4). The Board finds that Mr. Schaefer misinterprets the County code. The Board finds that there is no basis for Mr. Schaefer's negative inference - just as no negative inference was appropriate in *Western Land & Cattle, Inc. v. Umatilla County* (Flying J, Inc), 230 Or App 202 (2009) in which the court affirmed LUBA's determination that no negative inference was warranted where "The

'express language' of UCDC 152.262(H) permits 'truck stops and truck terminals' as a conditional use in the CRC zoning district; it says nothing about truck stops anywhere else. ***." Similarly, here the fact that a heliport is listed as an allowed use in the commercial zone, says nothing about heliports anywhere else – especially where as in this case, heliports are a type of transportation facility or improvement that is expressly allowed in the subject EFU zone. The Board interprets MCC 17.136.050(J)(4) to specifically subsume and allow all other transportation facilities and improvements that are not otherwise expressly allowed by the chapter. Heliports are not otherwise expressly allowed under the chapter. The Board finds that it is unnecessary to specifically list every possible type of transportation facility or improvement that refers to. The Board further finds that the MCC 17.136.050(J)(4) reference and link to OAR 660-012 is a reference designed to clearly establish that the provision allows all of the uses that rule allows because that is what the provision says. The Board reinforces that it is unnecessary for MCC 17.136.050(J)(4) to list the entire universe of "other transportation facilities or improvements". The Board finds it is acceptable for the provision to say that other transportation facilities and improvements are allowed under that provision and the provision's citation to OAR 660-012 which includes OAR 660-012-0065(3)(n). Here, the Board finds, OAR 660-012-0065(3)(n) to which MCC 17.136.050(J)(4) expressly points as containing allowed uses, allows expansions or alterations or public use airports in the circumstances here. The proposal includes a request for an alteration of a public use airport to include a heliport as the MCC defines that term in MCC 17.110.262. A heliport is an "area used for the takeoff and landing of helicopters or other VTOL aircraft capable of hovering and may include any or all of the area of buildings which are appropriate to accomplish these functions." The Board finds that is a customary and usual aviation-related activity that is a permissible conditionally permitted alteration of the public use airport on land zoned EFU under MCC 17.110.262. The Board finds that the legislature, and LCDC both intended that local governments allow the transportation facilities outlined in ORS 215.283(3), OAR 660-012-0065 and ORS 836.640-642, as well as ORS 836.616 on land zoned EFU as is being proposed here. The Board choses to interpret its code to be consistent with the statutory and administrative rule scheme. The Board also chooses to interpret its code in a manner that is consistent with the Marion County comprehensive Plan designation for the subject property from the 1976 Aurora Airport Master plan that designates the subject property as being acceptable for airport-related development in private ownership. A heliport is airport related development. The Board finds that it is inappropriate to interpret the County code in a manner that forecloses the very airport related uses that the plan states the subject property is acceptable for. For all these reasons, the Board expressly rejects Mr. Schaefer's claim that the fact that helipads are allowed in commercial or industrial zones means they cannot be allowed as an other transportation use under MCC 17.110.262.

Similarly, Mr. Schaefer argues that the proposal is for a public use airport and a public use airport is not listed as an allowed conditional use in the EFU zone and rather that because an airport is listed as a use that is allowed in the P zone and that must mean that the proposal is not allowed in the EFU zone under MCC 17.136.050(J)(4). For the same reasons listed above, the Board finds this to be a misinterpretation of the County code. The Board expressly interprets its code to allow the proposed expansion or alteration of the Aurora Airport – a public service airport - under the terms of MCC 17.136.050(J)(4)

which points to OAR 660-12-0065(3)(n) which expressly allows certain airport related land use actions. The Board rejects Mr. Schaefer's interpretation of the code that allowing an airport in the P zone forecloses an airport from being an allowed "other transportation facilities and improvements" that is expressly allowed by state law and the County code.

The Board finds that the County has specifically authorized the uses that the legislature allowed under ORS 215.283(3) in the County EFU zones and that includes the uses allowed by ORS 215.283(3)(b) and thereunder per OAR 660-012-0056(3)(n). Therefore, the Board finds that the proposal is an allowed conditional use in the county EFU zone.

3. MCC 17.119.020/025 concerning ownership and signature requirements for the application

MCC 17.119.020 states that an application for a "conditional use or to enlarge, expand or alter a conditional use" is to be filed by "the owner of the property that is the subject of the application" on a county form. Similarly, MCC 17.119.025 requires the signature of "all owners of the subject property." The Board interprets the phrase "the owner of the property that is the subject of the application" and "all owners of the subject property" to refer to the conditional use application for particular uses, not to owners of areas where a possible future septic system connection might occur when and if another property receives appropriate land use approval to make such a connection. The application has been filed by the property owner as required and signed by the owner as required. Opponents assert that the application is not on behalf of and signed by all of the owners of the property because the application seeks approval to connect to an expansion of the HDSE or Columbia Helicopters sewer system to serve the subject property, **if** HDSE or Columbia is approved to do so in a subsequent land use application. The Board rejects opponents' contention concerning the meaning of MCC 17.119.0020 and 00025. The owner of the property that would connect to the HDSE or Columbia Helicopters sewer system has filed and signed the application. When and if HDSE or Columbia Helicopters seek to expand their sewer systems to serve the subject property, they will file and sign an application to do so.

The proposal here is to manage septic onsite and does not require connecting to HDSE's septic system or Columbia Helicopter's system for sewerage disposal – that is merely an option if HDSE or Columbia someday seeks and receives independent approval to connect to the subject property, that the subject property's land use approval would not need to be modified to do so. But in all cases before the subject property can connect to either the HDSE or Columbia Helicopters sewer systems, the owners of such systems and property will have to file applications and obtain such land use approval to do so – meaning that HDSE or Columbia Helicopters would need to file land use applications that are signed by the appropriate persons with the requisite legal interests.

This conditional use permit was signed by the people who are required to sign it under MCC 17.119.020 and MCC 17.119.025 and the Board finds that both of those standards are satisfied.

Opponents also assert that the County's zone change procedure in MCC 17.123.020.C "also requires a signature from the owners of all property where the proposed development will occur." (City of Aurora City Attorney Robinson, August 9, 2025 Letter, p 11, Para 2 and Mr. Schaefer March 2, 2025 Letter, p 5, Para 3). Mr. Robinson and Mr. Schaefer misread the county code. The County code at MCC 17.123.020.C actually states: "A quasi-judicial zone change may be initiated by a property owner(s) consistent with the application requirements of MCC 17.119.020 and 17.119.025." It says nothing about its scope pertaining to development. Regardless, the Board finds that the zone change provisions of the County code do not apply because the proposal is not for a zone change and the scope of the cited chapter is limited to zone changes. Moreover, the Board also finds that, as explained above, the owner of the subject property has both submitted and signed the application.

Opponents also assert that the application to expand the airport boundary – which requires a comprehensive plan amendment - is inconsistent with Plan Amendments Policy 2 that says "Quasi-judicial amendments may be initiated by the subject property owners with an application form supplied by the Marion County Planning Division." As explained above, the application is submitted by the owner of the subject property and when and if HDSE or Columbia wish to connect their systems to the subject property then they must obtain appropriate land use approvals, on forms they sign, to do so. The plan amendment application is submitted and signed by the owner of the subject property, as required.

The proposal meets all required ownership and signature requirements, which are established in MCC 17.119.020/025.

5. MCC 17.119.060 governing conditions of approval

Under MCC 17.119.060, the County may prescribe restrictions or limitations for the proposed conditional use but may not reduce any requirement or standard specified by this title as a condition of the use. The County imposes conditions only after it has been determined that such conditions are necessary for the public health, safety or general welfare. Conditions of approval that relate to approval criteria and ensure the proposal complies with the mandatory approval criteria are appropriate. Applicant indicates that it does not oppose appropriate conditions of approval to include those recommended by the Hearings Officer. Various conditions of approval are imposed as a part of this approval. The Board finds that all of the imposed conditions of approval are necessary for the public health, safety or general welfare and are within the county's authority to impose. No one claims otherwise.

6. Under MCC 17.119.070, before granting a conditional use, the director, planning commission or hearings officer shall determine:

A. That is has the power to grant the conditional use;

The Board finds that it has the power to grant the requested conditional use. MCC 17.110.680 grants the planning director the authority to handle all matters pertaining to

conditional uses and other administrative matters as prescribed by the Marion County Code. The planning director approved the conditional use in the sense that he provided findings for and recommending approval of the conditional use as well as the plan amendment with which it is consolidated. The Board finds and interprets its code to mean that when the proposal is a consolidated request for a conditional use permit that also requires a comprehensive plan map amendment that the Marion County Code requires to be decided by the Board of Commissioners following a hearing before the Hearings Officer, the Board of Commissions has both the authority and obligation to be the final decisionmaker. Accordingly, the Board finds that the consolidated request is required to be approved by the Board of Commissioners and so the proposal is consistent with MCC 17.119.070(A).

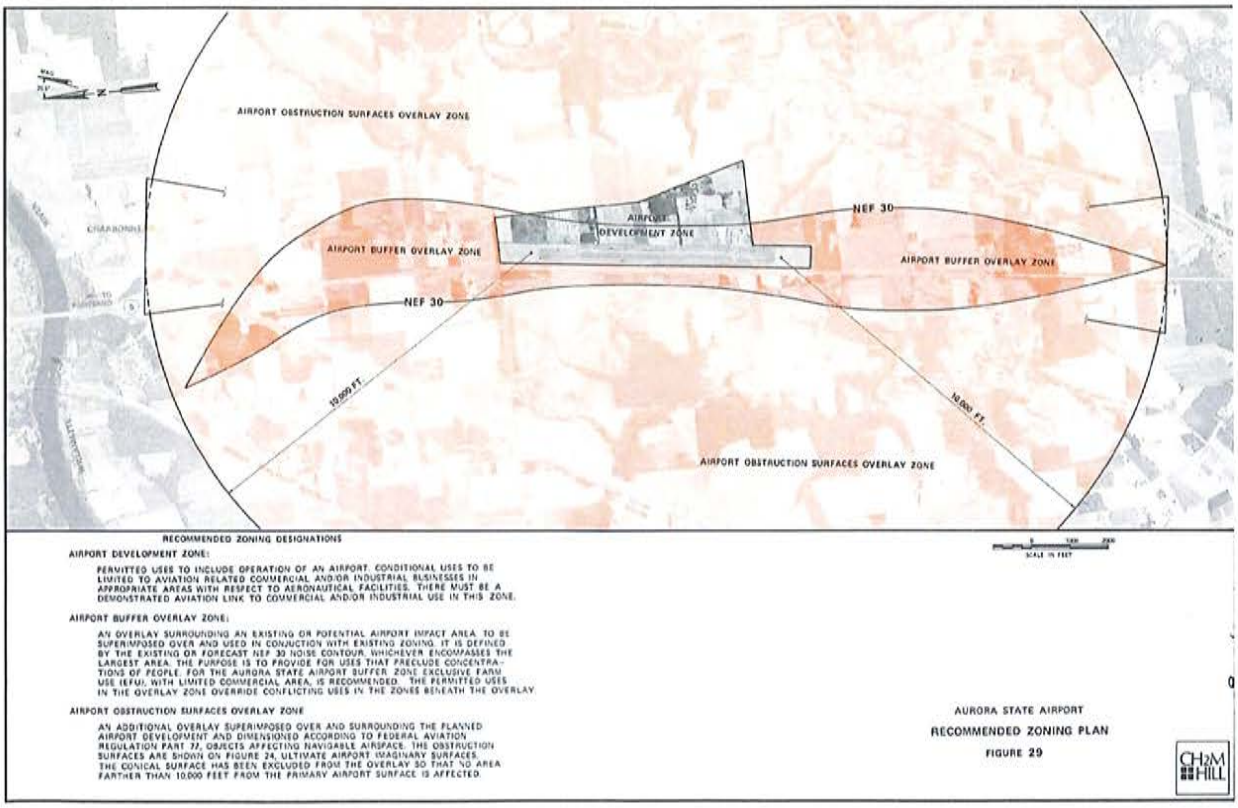
B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;

MCC 17.136.010 states the purpose for the EFU zone and provides in part "The purpose of the EFU zone is to provide areas for continued practice of commercial agriculture." The policy statement is ends with, "The EFU zone is intended to be a farm zone consistent with OAR 660, Division 033 and ORS 215.283." The Board finds that the above standard is met on evidence that the use allowed in the EFU zone both under state law and under the County's code. The Board also finds that the proposal does not impose any significant adverse impacts on nearby agricultural operations. Specifically, first the Board interprets this provision to mean that where the proposed expansion of the airport boundary and permitted airport uses is authorized by ORS 215.283(3)(b), which is implemented by MCC 17.136.050(J)(4), that the proposal is consistent with the cited authorities. The Board further finds that MCC 17.136.010 recognizes a broad range of non-agricultural uses allowed on agricultural land that are deemed to be consistent with Goal 3 and harmonious with zones that implement Goal 3. OAR 660-012-0065(3)(n). The Board finds that the proposed use, as authorized by ORS 215.283(3)(b) and OAR 660-12-0065(3)(n), is harmonious with the purpose and intent of the EFU zone.

Second, the Board finds that compliance with this provision is demonstrated by the evidence in the record from Jason Montecucco of Montecucco Farms establishing that the proposal will not have an adverse impact on surrounding agricultural operations, which have operated harmoniously with the adjacent helicopter operations (HTS and Columbia Helicopters) and airplane operations (Aurora State Airport) for decades. Similarly, the Board finds that compliance with this provision is established under the testimony of expert Dr. Irl Davis that the proposal will not interfere with agricultural drone operations. Furthermore, the Board finds that the 2024 TIA prepared by DKS Associates and its supplement, demonstrates that transportation impacts on traveling farm vehicles will be minimal. The 2024 TIA concludes that there will be less than a 5-second increase in the travel time required to go half-way around the combined subject property and airport in either direction during both the AM and PM peak hours. Application Exhibit 39, page 32 (2024 TIA). The Board notes that opponent Schaefer claims that "an urban development that requires a Goal 3 exception is by definition not in harmony with the purpose of the

EFU zone." The Board finds that this objection is misplaced. The Board finds that the proposal requires no Goal 3 exception.

Last the Board finds that the proposal is necessarily one that is in harmony with the purpose and intent of the EFU zone because the subject property has a plan designation whose zoning allows for the expansion of an airport as a conditional use. The subject property is in an area that the 1976 Aurora Airport Master Plan designates as acceptable for airport related development under private ownership. Application Exhibit 6, p 40, 44, 55. The Board finds that 1976 master plan is a part of the County's acknowledged comprehensive plan and is itself acknowledged. The 1976 Master Plan's "Suggested Land Use Designations" for the subject property is "Airport Development". Application Exhibit 6, p 50. The 1976 KUAO Master Plan's "Recommended Zoning Plan" for the subject property is "Airport Development zone" as shown on Application Exhibit 6, p 51:



The recommended Airport Development Zone's "Permitted Uses" "include operation of "airport conditional uses to be limited to aviation related commercial and/or industrial businesses in appropriate areas with respect to aeronautical facilities. There must be a demonstrated aviation link to commercial and/or industrial uses in this zone." Application Exhibit 6, p 51. The Board finds that the proposal approved herein is for an airport conditional use, consistent with the 1976 master plan. The Board finds the proposed airport conditional use to be limited to aviation related commercial and/or industrial businesses, and finds that the applicant has demonstrated the proposal's clear link to such aviation related commercial and/or industrial uses. The Board interprets this provision to mean that areas in the recommended zoning plan as "Airport Development Zone" are

"appropriate areas" under that plan for such aviation related uses as are approved here. The Board finds that the proposal is approved in an "appropriate area" under and as contemplated by the 1976 Master Plan. Further the Board finds that the referenced aviation related uses that the acknowledged 1976 Master Plan determines to be appropriate for the subject property includes facilities to be developed under private ownership as here, and do not refer to airport facilities developed by, owned by or on land owned or leased by, the state or federal government. The Board interprets the 1976 Master Plan's reference to the "Airport" to include all land in public and private ownership that that plan states is to be in "Airport Development" and that the reference to "airport" in the 1976 master plan is a reference that includes the subject property that the 1976 Master Plan designates as acceptable for airport related development in private ownership. Put another way, the Board expressly interprets the 1976 master plan as contemplating that the subject property will be a part of the airport's land use boundary, developed under private ownership with airport related uses, but not owned by the state or federal government. The Board further finds that it is important to apply the 1976 master plan and other County land use regulations in a manner that is consistent with ORS 836.640-642 which designates the Aurora Airport as a pilot site that the legislature encourages and expects will be developed with significant private through the fence aviation operations exactly as is proposed here. The Board finds that once the subject property is brought into the Aurora Airport's land use boundary as the Court of Appeals explained was required and in the manner that the court required, which is being done here and with which the proposal is wholly consistent, that both state law and the County Plan allow, expect and encourage the development of the aviation related uses in private ownership that are proposed here.

The Board finds that the EFU zone that is applied to the subject property is necessarily burdened and informed by the above unique airport related land use regulatory program that is established, imposed on the subject property and contemplated by the Marion County Comprehensive Plan's inclusion of the 1976 Aurora Airport Master Plan as a part of the County's Comprehensive Plan. Accordingly, the Board finds that in addition to the reasons stated in other findings under this provision, that the proposal is in harmony with the purpose and intent of the EFU zone because the EFU zone applied to this property is applied to the subject property with the understanding that the airport related designations from the 1976 Master Plan establish the ultimate contemplated uses of the subject property.

For the above reasons, the Board finds that the proposed airport expansion and airport uses are in harmony with the purpose and intent of the EFU zone. The Board finds that the proposal is consistent with this standard.

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.

The Board finds that this criterion is met by ensuring that the conditions imposed are 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. The Board finds that the conditions herein imposed meet this standard.

Conditional Use Review Criteria

7. The criteria for a conditional use in the EFU zone are found in MCC 17.136.060(A):

1. 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. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.

This criterion implements the farm impacts test of ORS 215.296. Farms near the Aurora State Airport have operated for decades alongside the Aurora Airport, which the Board finds is and has been one of the busiest airports in the state. The Board finds that the credible and persuasive evidence in the record demonstrates that the proposal will not cause significant changes in accepted farming practices or significant increases in costs of accepted farming practices. The Board finds that the impacts from the proposed use are substantially similar to impacts already experienced by farm operations in the area from the existing airport and helicopter-based operations immediately adjacent to the airport and in the vicinity of the subject property. The proposal does not differ significantly from those uses immediately north or south of the subject property in terms of potential impacts to the land to the east of Airport Road that are devoted to farm use or located anywhere else around the airport or airport related lands.

The specific assertions in the record alleging farm conflicts came from written testimony from Aurora Farms, objecting that the proposed facility will foreclose or make it more difficult or expensive from them to use drones in farming missions because they will have to start coordinating with air traffic control (ATC) suggesting they do not have to do so now, and arguing that the proposed facility's traffic will make it hard or unsafe for farm equipment to move around. FOFP and Friends of Marion County (FOMC) made similar assertions, as did Nancy Snyder, who additionally claimed that farm workers will stop working and stare at aircraft flying to and from the subject property and that this is a significant farm impact.

However, the Board finds more persuasive and credible the testimony from Montecucco Farms, Dr. Irl Davis, and the traffic analyses provided by Lacy Brown and her firm DKS, that the proposal will not make it significantly harder or less safe to farm and importantly will not cause significant changed to accepted farming practices or significantly increase the cost of accepted farming practices on Aurora Farms or any other area farm operation.

Concerning the claim that farm workers will stop and stare at aircraft operations from the subject property, the Board finds that claim unpersuasive. If farm workers are

inclined to do that, they are inclined to do so now because there are significant large aircraft including rotorcraft operations taking place across from the Snyder farm now including aerial practice exercises on the HTS property across from the Snyder property, as well as large rotorcraft flying to and from that property. The Board is unpersuaded that the aircraft flying to and from the subject property – even if they are electric aircraft to include eVTOLs – will cause farm workers to so stop working as to cause a significant change in accepted farming practices they perform or to add a significant cost to those accepted farming practices. The farming operation must now manage its workers who now work next to one of the state's busiest airports and the Board finds that it is more likely that that management will remain substantially the same after the proposed operation begins.

Relying on the expert testimony of Dr. Davis, the Board finds that the proposal will not make it less safe to farm and the proposal does not introduce the potential for domestic terrorism as claimed by FOMC and FOFP and the Board also finds that the proposal will be fully regulated by the FAA.

Concerning slow moving farm traffic, the Board finds that at most there will be less than a 5 second delay experienced by farm vehicles moving around area roads per the expert testimony of Lacy Brown of DKS, which testimony the Board finds to be credible and persuasive. The Board finds that a 5-second delay will not and does not cause a significant change in accepted farming practices or cause significant costs to accepted farming practices.

Aurora Farms expressed concern that the proposal may cause conflicts with agricultural drone usage. Concerning drone use, the Board finds that use of drones in farming operations adjacent to the Aurora Airport already requires ATC permission, a process which will not change as a result of the proposed airport uses on the subject parcel. The Board finds persuasive and credible the evidence presented by the applicant's expert Dr. Irl Davis, that ATC permission is currently required for lawful drone operations to occur as a part of the agricultural enterprise that takes place on Auora Farms due to their proximity to the existing operations at the Aurora Airport. (Applicant's March 6 Hearings Officer Hearing Exhibit 1, p 6.). As Dr. Davis explained, any drone flight for agriculture applications or monitoring or any other use for that matter right now, regardless of the proposal, must get approval from ATC to fly because of the proximity to the Aurora Airport and the fact that the area around the airport is strictly controlled airspace. Dr. Davis specifically testified that "[a]ny drone operator – on a farm or otherwise – who is within controlled airspace is now required to get approval from the Air Traffic Control Tower before undertaking almost any drone mission. *** Drones are aircraft. The airspace around Aurora Airport to include over the property of the farmer who wrote the objection (Aurora Farms) is controlled airspace. ***" and also "*** The particular farmer's drone operations are already significantly constrained by the Aurora State Airport's controlled airspace. The proposal does not change the controls that apply to the farmer's potential drone use at all.***."

Further, the Board finds persuasive and credible that area farmer, Jason Montecucco of Montecucco Farms, farms directly across Airport Road from Columbia

Helicopters, as well as on other land around the airport and states that the airport has not presented any problems whatsoever for his farming operations and testified that he supports the proposal. (Applicant's March 6, 2025 Hearing Exhibit 5). Mr. Montecucco explained that he in fact uses drones in his farm operations and that getting ATC permission to fly drones for his farm-related missions is seamless and fast. He also explained that he has never experienced any problems with slow moving farm equipment conflicting with traffic on airport road, does not expect to have any such issues under the proposal, and importantly "no activity at the airport has ever hindered our ability to farm." Moreover, the Board finds credible and persuasive that Applicant's TIA explains that at most, farm equipment moving on Airport Road will experience a 5-second delay and the proposal presents no traffic safety concerns. The Board finds that a 5-second delay does not cause a significant change in accepted farming practices or significantly increase the cost of accepted farming practices. On this point, the Board finds that the testimony from Dr. Davis, Jason Montecucco of Montecucco Farms and DKS (DKS re traffic) is credible and is more persuasive than that from Aurora Farms and FOFP and FOMC and other opponents.

Ms. Snyder testified that her family built a new home on the subject property across from HTS and across from one of Oregon's business airports and is disappointed with noise from HTS' operations on its property and that sometimes fluids have been observed dripping from HTS helicopters and this concerns her. The Board finds credible and persuasive that HTS' operations on its property constitute lawful aviation activity adjacent to the Aurora Airport and is an operation that is authorized not only on HTS' property but also in the national airspace system. The Board finds persuasive and credible HTS' letter in the record stating that HTS has never flown over Ms. Snyder's residences. The Board finds credible and persuasive the written testimony of HTS' chief pilot who explains that "there is ADS-B information (available as public record) showing our flight paths on every flight." The Board finds credible and persuasive that HTS' chief pilot also explained that HTS is committed to "being considerate to our neighbors within the confines of the flying we must absolutely do as a minimum to accomplish as *** federally mandated life and property critical contractors. This flying is done at the Aurora Airport, within the parameters of our approved land use agreement and in compliance with the rules and regulations set forth by the [FAA]. ***."

The Board finds credible and persuasive HTS' chief pilot's testimony explaining that the water that Ms. Snyder has seen drip from HTS helicopters is river water from practice missions over the Willamette River and that HTS does "endeavor to fly neighborly for all operations[they] conduct". The Board finds that if Willamette River water has been released on property belonging to the Snyder's that (1) there is nothing to suggest that will happen in conjunction with flights to and from the subject property as a part of the proposed operation, and (2) that Snyder does not claim and the Board does not understand how, unintended release of river water on their property from the Willamette River could cause a significant change to Snyder's accepted farming practices on their farm or cause a significant increase in the cost of accepted farming practices on the Snyder farm.

The Board also agrees with the testimony of the HTS chief pilot and others that aircraft operations are typically more frequent at an airport, as to be expected.

The Board further finds that there are other helicopter business and missions that currently operate out of Aurora Airport to include those associated with LifeFlight (whose headquarters are at Aurora Airport) and Columbia Helicopters, the headquarters for which is on private property adjacent to the Aurora Airport.

As noted above, because the proposal seeks to attract and support electric aircraft which are quieter than traditional aircraft, the Board finds that the proposal will involve aircraft operations that will likely be less noisy than those experienced by the Snyder's concerning HTS' operations. The Board finds the evidence persuasive and credible that the proposal will not significantly increase the costs of accepted farming practices or cause significant changes to be made to accepted farming practices on the Snyder farm operations, because all the impacts referenced by the statements in opposition are presently occurring and will not significantly increase with approval of the proposal. Rather, with respect to the possibility of electric aircraft the impacts of the proposal are likely to be less.

While opponents do not tie their noise objections specifically to farming, as a precaution the Board also finds at this juncture that the noise associated with the proposal will operate within the noise parameters of existing airport operations and, to the extent the proposal is able to attract electric aircraft to use the site, the Board finds the evidence credible and persuasive that electric aircraft are less noisy (and have fewer emissions) than traditional aircraft, thus making it likely that the proposal will have fewer impacts than now arise at farm operations from the existing airport. The Board finds that the evidence from Aron Faegre including in the Noise Report to be persuasive and credible that the noise impacts from the proposal are at the very least no different than those that area farms now experience and will not significantly change accepted farming practices or add significant cost to accepted farming practices in the area.

Determining whether a use will force a significant change in, or significantly increase the cost of farm practices on surrounding lands devoted to farm use requires applying a three-part analysis set out in *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991). Under that test an applicant must (1) identify the accepted farm and forest practices occurring on surrounding farmland and forestland; (2) explain why the proposed use will not force a significant change in the identified accepted farm and forest practices; and (3) explain why the proposed use will not significantly increase the cost of those practices.

The closest farmland in the area is to the east of the subject property, across Airport Road. There, six large parcels are engaged in farming activity, growing hay or grass seed. To the south, south of Keil Road, there are several farms in orchard and row crop use. To the north, north of Arndt Road, are a variety of farms ranging from growing hay and grass seed to ornamentals, nursery trees, plants and row crops. Opponents FOFP focus on farm operations distant from the proposed facility (on the west side of the Aurora Airport), and on Arndt Rd. The Board finds that proposal will not have a significant adverse impact on either the accepted farming farm practices on any farm identified in the record or cost of farm practices on those operations.

Each of these properties being farmed is now encumbered by the County's existing AO Airport Overlay zone, which imposes restrictions on those properties unrelated to the proposed airport boundary expansion and proposed uses. The accepted practices on these farms include the operating of large farm machinery to plant, irrigate and harvest crops. And as noted, the use of drones in farm practices.

Given that the proposal will allow rotorcraft operations and there are already rotorcraft operations presently occurring at the Columbia Helicopters, LifeFlight and HTS properties, which have co-existed with area farm uses without significantly impacting those farm uses, the proposed use will be difficult to discern from those existing uses. As noted, the farming operations have not had to significantly change or bear significant cost increases as a result of existing rotorcraft operations. Similarly, any airplane operations on the subject property will involve ground movement from the subject property to the taxi ways to utilize the Aurora State Airport's runway. Such movement is similar to the existing ground movement on property immediately north of the subject property. That activity also has not forced a significant change in farm operations or increased the cost of those operations.

The potential adverse impacts that could flow from the proposal include noise, dust, air, water and transportation impacts both on the ground and in the air and are addressed herein.

Noise impacts are discussed in greater detail under the findings for MCC 17.136.060(A)(4) below. Aircraft, whether rotorcraft or fixed-wing aircraft, generate noise. However, agricultural uses, such as farm uses in the vicinity of the subject property, are generally not noise sensitive uses and the associated agricultural practices are not significantly impacted by rotorcraft or airplane operations.

The application mitigates potential noise impacts to farm operations and the cost of farm operations by placing the rotorcraft take-off and landing pads on the western portion of the parcel, farther away from farm activities and separated from farm activities not only by distance, but by buildings, parking areas and Airport Road. The noise generated by rotorcraft are greatest during landing and takeoff. The fixed wing aircraft based at the facility will take off and land from the existing runway at the airport. The Board finds that any noise impacts from the proposed use on farm practices is not significantly increased by the proposal given the similarity in the proposal's rotorcraft uses with historic, existing surrounding uses from Columbia Helicopter. LifeFlight and HTS as demonstrated by the submitted noise impact study and noise contour diagram in the record. The noise contour diagram from Application Exhibit 35 shows the 55 Ldn noise contour for helicopter operations falls within the existing Aurora Airport 55 noise contour, which means the noise impacts will be similar to the airport's existing noise impacts, which have had no significant adverse impacts to farm operations or the cost thereof.

As for airplane noise and potential impacts, airplanes are noisiest when taking off. As noted, no fixed-wing aircraft will take off from the subject property, rather they will

taxi to the KUAO runway and takeoff there as does every airplane at the airport. Given the extensive number of flights that currently take off from the airport runway, the Board finds that the additional airplane flights generated from airplanes taxiing from the subject property is minor by comparison and the impacts to farm practices or cost of operations from such aircraft taxiing from the subject property is not significant.

Regarding dust, the Board finds that dust impacts will likely be decreased by the establishment of the proposed development when compared to the property's current status as undeveloped land. The subject property is currently undeveloped with little vegetation, which can create, theoretically at least, dust clouds in certain weather conditions. The paving of extensive areas of the property, needed for landing pads, tiedown areas, buildings and parking, will reduce the potential for dust being generated on the property. This decrease in dust from the subject property will not force a significant change in or significantly increase the cost of accepted farm practices in the area.

As established by the technical materials submitted with the application (Application Exhibits 36 and 37 re: stormwater and wastewater respectively), the Board finds that the proposal's environmental impact will be nominal and will not force a significant change in accepted farming practices or significantly increase the cost of accepted farm practices. The proposed uses can feasibly be served by wastewater and stormwater systems that will comply with all DEQ requirements for wastewater and all requirements for stormwater metering and discharge such that the individual impacts and cumulative impacts from stormwater and wastewater are mitigated. The Board finds that this will ensure that there are no detrimental environmental impacts on the surrounding farm practices, nor will any environmental impacts create conditions that would increase the cost of farm uses.

The final consideration relates to transportation impacts. Vehicular traffic is further discussed below in the findings addressing Goal 12, which are herein incorporated. In summary, Applicant's transportation impact study prepared by DKS demonstrates that the increased trips created by the proposal will not force a significant change in accepted farm practices or significantly increase the cost of those practices. (Application Exhibit 39, TIA) During the day, the TIA indicates that, at most, the increased traffic from the proposed use will cause a less than 5 second delay for farm vehicles when driving half-way around the entire Aurora State Airport. (Exhibit 39, page 32) The Board finds that this slight delay in transit on the surrounding streets cannot be enough to change farm practices or to significantly increase the cost of those practices, nonetheless, constitute a significant change or cost.

Public comments raised the issue of potential traffic conflicts with slow-moving farm vehicles along Airport Road, citing the high speeds reached by drivers largely commuting from the City of Aurora to work in Clackamas County. The Board finds that those farm vehicle – high-speed driver conflicts are existing and are not the result of the proposed use. Vehicles departing from the subject property will, like farm vehicles entering Airport Road, initially be starting at a slow speed, and vehicles bringing persons to the subject property will be slowing down to enter the subject property, not traveling at high

speeds. The proposed use will not be generating the type of high-speed through traffic about which comments expressed concern.

Finally, there are comments from opponents, in particular FOMC, that helicopters and eVTOLs cannot function safely at airports with fixed wing aircraft. Along the same lines, they assert that eVTOLs are unregulated aircraft that will be used by terrorists as an attack mechanism to spur invasion of surrounding communities. The Board finds that such assertions are wildly speculative and without merit.

The Board finds persuasive and credible the testimony of Dr. Davis who observes that the proposed facility is for commercial aircraft, not recreational aircraft and explains that eVTOLs are not ultralights and must operate consistently with FAA rules. (March 6, 2025 Hearing Exhibit 1, p 3-5) The Board finds that the testimony of the Airport Director of the Chehalis Centralia Airport in Washington State credible and persuasive, who the Board finds is also an expert in the matter of aviation and in particular eVTOLs, reinforces this truism explaining "I am advised there have been concerns expressed that commercial eVTOL and eCTOLs are unregulated ultralight aircraft that cause safety concerns. That is incorrect. These aircraft are not unregulated ultralights in any respect and are strictly regulated by the FAA. The most recent FAA regulated program for 'Powered-Lift' aircraft came out in October 2024 and established requirements for pilot training and operations. The eVTOLs and/or eCTOLs planned on the subject property at Aurora are certified aircraft subject to a network of FAA safety, aircraft and flight rules." (Applicant's Post Hearings Officer Hearing Submittal, Exhibit 11) The Association for Uncrewed Vehicle Systems International (AUVSI) also provided testimony, which the Board finds to be credible and persuasive stating essentially the same thing in its expert support letter "FAA strictly controls the national airspace system which means no electric aircraft autonomous or otherwise, will be allowed to fly unless FAA determines that it is safe for them to do so." (Applicant's Post Hearings Officer Hearing Submittal submitted March 27, 2025)

Dr. Davis further explains that any autonomous eVTOLs will not be allowed to fly until the FAA approves type certification for them. The Board finds this testimony persuasive and credible. As Dr. Davis explained, when drones or any other aircraft fly, they are governed by FAA's airspace rules, particularly when operating near airports. All operations at the subject property will have to coordinate with the KUAO ATC, including all autonomous or piloted operations within a 5-mile range of the tower, while flying below an altitude of 2,700 feet. Furthermore, the Board finds that per the testimony of Dr. Davis that the subject property and the surrounding farms are already within the horizontal surface areas of the airport and, under 14 CFR Part 107 (Application Exhibit 38), are required to have ATC (air traffic control) authorization to operate drones on their farms. The Board finds that operations under the proposed expanded airport boundary changes none of these requirements and does not introduce any conflicts not already present because of the helicopter operations at Columbia Helicopter, LifeFlight and HTS, the Aurora State Airport generally, or airplane operations from the KUAO runway which have been operating safely under these same regulations for decades. Second, the Board finds credible and persuasive Dr. Davis's testimony that there are no documented reports of drones causing accidents at airports and there is no justification for opponents' conclusion that

eVTOLs cannot safely operate at the Aurora Airport. In fact, the Board finds that the information provided by the applicant sourced from the Orlando International Airport in Florida to be persuasive and credible and that airport is developing eVTOL vertiport facilities at that very busy airport that has existing fixed wing and helicopter operations and the "Greater Orlando Aviation Authority (GOAA)" is quoted as explaining "Developing a vertiport at Orlando International Airport is a key step in advancing our mission to be the global leader in the evolution of mobility." (Applicant's March 6 Hearing Exhibit 4, p 3)

Mr. Helbling, the President of the Aurora Airport Improvement Association (AAIA) and also an expert who works at Wilson Construction at the Aurora Airport, holding an FAA Commercial Instrument Multi-Engine Airplane and FAA Commercial Instrument Helicopter license for over 30 years, to include army night vision operations, explains in his expert letter (Applicant's April 10, Exhibit 3), that helicopters and fixed wing aircraft routinely operate successfully in extremely close proximity to one another. The Board finds Mr. Helbling's testimony to be credible and persuasive. Mr. Helbling explains that HTS and Columbia's operations that abut the Aurora Airport are "two of the busiest heliports in the state" and are the bases for several types of heavy lift helicopters. He explains that four other companies maintain significant helicopter operations adjacent to the Aurora Airport runway to include Wilson Construction, LifeFlight, WINCO Powerline Services, and PGE. He explains that according to the FAA there have been no reported conflicts between helicopters and airplanes, except for a report where an incoming small airplane approaching the airport reported that "approximately 5 miles away, he could see a departing helicopter" and that such distance is "well outside the allowed minimum separation found in FAA flight regulations." He explains that helicopter operations at airports are important to successful missions, citing examples that he "has personally participated in" such as of "a patient is picked up by a rescue helicopter in the field and flown to an airport where a waiting airplane is going to move the patient to an appropriate care facility." And another of "a firefighting helicopter is grounded for a mechanical reason and awaits delivery of a critical part" that is "delivered by airplane where a waiting helicopter delivers the part to a remote firebase where the grounded firefighting helicopter gets repaired and goes back to firefighting" and "critical electrical infrastructure parts are flown via airplane where a helicopter awaits at the ready to fly the part to a remote electrical substation in mountainous terrain – all to get the power restored to millions of people."

The Director of ODAV, whom the Board also finds to be credible, persuasive and an expert in the matter, explains that "[t]he Aurora State Airport is an "ideal site" for the proposal because the airport "already serves as a hub for aviation in Oregon and is uniquely positioned due to its existing infrastructure and public-private partnership opportunities" and that "the proposed project leverages Aurora's strategic role in the state's aviation ecosystem – particularly through its 'through the fence' agreements – to create a key node in the emerging electric aviation grid." He explains his support for the project because "it is "vital that Oregon" prepares for" the transition to electric powered aircraft." He closes his letter explaining "Supporting this project is an important step toward" a future "where electric aircraft safely, cleanly and efficiently connect communities across Oregon – from

the coast to the high desert" and the project "will contribute to economic development, environmental sustainability and a more connected Oregon."

The Director of the Utah Department of Aviation, Matt Maas, who the Board finds to be credible, persuasive and an expert in the matter, explains that Utah has a robust program supporting eVTOLs development at airports as a part of the state's "Advanced Air Mobility program" and that "[a]irports are prime locations for AAM programs because they are already aviation centers and provide a logical destination for refueling (re-electrification), maintenance, resting, loading unloading both cargo and customers" and that [e]nhancing the electrification of the airport is critical in supporting this new mode of propulsion, which will enable these aircraft to charge in 30-40 minutes." Mr. Maas explains that "Aurora is a unique aeronautical asset positioned to play a positive infrastructure role for this technology as Aurora is a site for Oregon's legislative partnership between private and public aviation enterprises under a specific 'through the fence' program designed to support aeronautical innovation and economic development."

The Airport Director of the Chehalis Centralia Airport in Washington State whom the Board finds is credible, persuasive and an expert, writes that his airport is one of "six electric aircraft beta test sites in the state" based upon a Washington State "Electric Aircraft Feasibility Study" that "identified the benefits of electric aircraft" to include "efficient and affordable transportation for people and goods, economic growth, good jobs, additional business revenues for communities, and significant assistance to emergency preparedness and resilience in times of crisis." He further points out that the Study points out "that electric aircraft significantly reduce noise and emissions as compared to existing combustion-powered aircraft." (Applicant's Post Hearing Submittal, Exhibit 11)

Ben Clayton, the CEO of LifeFlight, explains "The concerns expressed by [FOMC] regarding rotary-wing activity mischaracterize both the nature of helicopter operations and the existing aviation environment at [the Aurora Airport.]" (Applicant's April 10 2025 submission Exhibit 5) Mr. Clayton states, "Helicopters have long coexisted safely with fixed-wing aircraft at this airport under FAA-established procedures" and that Life Flight Network alone has operated out of Aurora since 2007, providing thousands of life-saving flights to hospitals across Oregon – often under urgent or time-sensitive conditions when helicopters are the only viable options." Mr. Clayton explains that "Aurora is already home to multiple helicopter operators, including those supporting firefighting, utility restoration, and law enforcement missions. To claim that helicopters are incompatible with this airport is inconsistent with both the current reality and the broader public interest." He closes by stating "[l]imiting helicopter access at or near Aurora would undermine the state's emergency response infrastructure and delay access to critical care for Oregonians in need" and asks that "the County *** recognize the vital public service air medical operators provide" and that such service is "not compromised by misinformation or mischaracterization."

The evidence presented by the opponents does not undermine the evidence in the record presented by the Applicant that establishes that the proposed use would not cause any of the surrounding farm operations to significantly change their farm practices in any

way and nothing that would require farmers to incur significant additional costs as a result of the proposal. The area farms have been successfully operating in close proximity to airport uses which includes robust helicopter operations for decades and nothing about the proposal would require these farm operations to change their practices or incur additional expenses.

The proposed airport boundary expansion and airport uses 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. Based upon the evidence in the record and the analysis provided above, the Board finds that the proposal is consistent with this standard and that this criterion is met.

2. *Adequate fire protection and other rural services are, or will be, available when the use is established.*

The Board finds that the subject parcel is served by the Aurora Fire Department and Marion County Sheriff's Department. Both already serve the Aurora Airport and adjacent properties within the Aurora Airport's land use boundary, as well as the P zoned areas outside of that land use boundary and currently serve the subject property. Accordingly, the Board finds that like the existing adjacent uses which have been established outside the City of Aurora's UGB, the proposal will only rely on the County's transportation facilities, the Aurora Rural Fire Protection District and the Marion County Sheriff for fire protection and rural services. Given the proposal's location adjacent to existing users of these services, the Applicant will be able to receive the benefit of these same services as it can now and as do all the other properties within the KUAO airport boundary. Those services are already available and can be made available when the proposed uses are established. For example, the Airport formed a Water Control District for fire protection for properties at the airport, which the subject property will become a part of. Furthermore, as discussed elsewhere in this application, given the nature and scale of the proposed use and the availability of fire protection and other rural services that already exist on the property, there is no need to extend urban public facilities or services to the property. The Board finds that this criterion is met.

3. *The use will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.*

The subject parcel is flat, vacant and devoid of any identified fish or wildlife habitat. The stormwater and wastewater analyses submitted by the applicant show that neither system will cause significant adverse impact on the groundwater or watershed. The uses proposed include both gas and electric aircraft, but the applicant expresses specific intent in utilizing the subject property for the siting of electric vertical take-off and landing aircraft (eVTOLs) and electric fixed-wing aircraft which do not produce emissions.

Opponents raise concerns that the proposal may produce a significant adverse impact on the Pudding River which is over a half mile east of the subject parcel. The

floodplain of the Pudding is almost exactly half a mile east of the subject parcel. The section of the Pudding directly east of the subject parcel is buffered by a wooded area 600-feet wide at its narrowest point. The Board disagrees with opponents in this regard and finds more credible and persuasive the Applicant's evidence that the proposal will not have a significant adverse impact on the Pudding River.

The subject property does not have an immediate, direct link to the Pudding River and is only connected to the river via a stormwater ditch that runs along Airport Road for over 6,400 feet. There is also a perennial stream that connects the Pudding which is mapped as beginning roughly 700-feet east of the southeast corner of the subject parcel. The ODAV and FAA requirements will include preparation for potential spills. Applicant will be required to obtain permits to install and operate the proposed waste and stormwater systems and Applicant will be required to comply with state and federal standards. This compliance will ensure that there will not be any significant adverse impact on any of the resources identified in the standard. There is no indication that the proposed use will have a significant adverse impact on the Pudding River.

The FAA is the only agency that imposes standards for all rotorcraft and fixed-wing aircraft with respect to exhaust emissions to ensure that there is not a significant adverse impact to air quality. Aircraft that the FAA certifies as acceptable for use must meet the FAA's relevant standards. The proposal will be required to comply with those FAA standards by virtue of the FAA's certification authority. Also, Applicant notes that eVTOLs and electric fixed-wing airplanes are not expected to have any emissions because they are electric or hydrogen powered, which Applicant indicates presents an environmental improvement for air transportation. The Board finds that this criterion is met.

4. *Any noise associated with the use will not have a significant adverse impact on nearby land uses.*

The Board notes that this standard refers to "nearby" land uses, which includes the airport related uses and other uses on EFU land in the area. The Board interprets the standard to apply only to land zoned EFU because it is a conditional use standard that applies only to the EFU zone.

The applicant submitted a "Noise Compatibility Study" (Noise Study), which is Application Exhibit 35, into the record. The Board finds that Noise Study is credible and persuasive and incorporates it herein by this reference. The Noise Study explains that noise levels from aviation activity below 65 Ldn. are considered to be compatible with residential use, citing federal FAA regulations and a federal HUD study. The Noise Study also cites DEQ's noise boundary for an airport noise analysis beginning at 55 Ldn.[8] The Board interprets its own standard quoted above to mean that a "significant adverse impact" from

[8] As explained below, the Applicant must demonstrate to the DEQ that the proposal will comply with OAR 340-035-0045. The 55 Ldn is a boundary to start at for analysis purposes, but the 65 Ldn remains the strict criteria for significant adverse impact. As explained below, the Board finds such compliance to be feasible.

noise, refers to aviation related noise at a residence that is at or in excess of 65 Ldn. The closest are two home sites directly across from Airport Rd NE. One is 550-feet east, and another is 150-feet southeast from the eastern property line of the subject parcel. The Board finds credible and persuasive that the evidence in the record demonstrates that flights associated with the airport will be less than 65 Ldn and actually will be less than 55 Ldn at those and all other nearby residential land uses on EFU zoned land (and anywhere else for that matter), as demonstrated by the Noise Study.

Further, the surrounding P-zoned properties to the north, west and south are in either airport or airport related uses, which the Board finds are not noise sensitive and, in fact, are themselves noise intensive uses. *See* Exhibit 25 (Aurora State Airport Noise Contours Map); Exhibit 35 (Noise Impact Study and Noise Contour Diagrams). The Board finds that there is and can be no significant adverse noise impact on those uses from noise from the proposed use.

The Board finds that fixed-wing aircraft located and operating on the subject property will not be taking off from the subject property and will taxi to the runway located at the Aurora Airport on the ODAV-owned property. The Board finds that there is already significant rotorcraft noise on nearby EFU zoned land on which residences are located. The Board finds that the Snyders' testified that they are impacted by existing rotorcraft operations from HTS' flights. The Board finds that this testimony demonstrates that there are currently significant noise impacts on nearby residential uses to include the Snyders, making it difficult to see how noise from the proposal that will be less than 55 Ldn at the subject property, can be considered a significant adverse noise impact. The Board finds that noise from the proposal is not a significant adverse noise impact on nearby residential uses to include the Snyders' home.

Regarding the nearby farm uses to the east of the subject property, as discussed above and elsewhere in the application, normal farming activities are not considered noise-sensitive uses, which is why farms are commonly found around airports and other air-oriented transportation facilities. As can be seen in the Noise Study, farm uses of the types that exist in the nearby area here do not have aviation related noise limits.

For noise impacts, the Board further finds that distance is the great mitigator. To help mitigate noise and operational aspects of rotorcraft activity on the subject property, the Board notes that the Applicant's updated site plan (Exhibit 1 submitted at the Hearings Officer Hearing) locates hangars, structures, and parking (automobile and rotorcraft) between the landing pads where rotorcraft will be taking off and landing and Airport Road – on the other side of which to the south are residential uses. The take-off and landing area on the property is located on the central western portion of the site. This adds distance and noise barriers between the rotorcraft noise generating take-off and landing activities on the subject property and the residences (and farmlands) to the east. The Board finds that this minimizes noise impacts and further demonstrates that the proposal will not cause any significant noise impacts at nearby residential uses (whether they are on land zoned EFU or not). In particular, there is no serious dispute that noise from the proposal will be less than 55 Ldn at the closest residence to the subject property. Furthermore, the three

proposed flight paths are oriented to correspond to the established rotorcraft flight paths from Columbia Helicopters and HTS and to avoid the surrounding residential uses, which is expected to make the noise impacts to residential uses from the proposed use well within the federal compatibility standard and well below the level that could reasonably be considered to be a significant adverse noise impact. *See* Exhibit 2, (LO.1 showing flight paths). Additionally, each of the flight paths remain over the subject property for approximately 600 linear feet as the rotorcraft rises or lands, thereby adding vertical distance and reducing potential noise impacts even before the rotorcraft leaves the site.

Ultimately, aviation operations on the subject property will also be required to demonstrate compliance with DEQ's noise control regulations for airports[9] set forth under OAR 340-035-0045. This will require an application to and approval from DEQ. If DEQ determines that the Noise Impact Boundary for the rotorcraft operations from the subject property includes or may include noise sensitive property, the agency can request the Applicant to prepare a Noise Abatement Program. In such instances, DEQ approval will require implementation of the Airport Noise Abatement Program.

Therefore, in addition to the federal noise standard, the County finds that compliance with the DEQ OAR 340-035-0045 requirements also satisfy the County "significant adverse impact" from noise, standard and will further ensure that the proposed use will not have a significant adverse impact on nearby lands.

Furthermore, the County finds that given the existing surrounding uses (especially the various airport-related uses) and the background noise generated by those uses, the fact that there is no serious dispute that the proposal will generate noise at the nearest residence that is less than 65 Ldn – and less than 55 Ldn - the design of the proposed development which helps to minimize noise impacts, and the range of mitigation measures identified by OAR 340-035-0045(4)(b)(B)(i) through (xvi)[10] by which it is possible to further mitigate noise impacts, it is feasible for the Applicant to obtain the requisite approval from the DEQ. This decision imposes a condition of approval that requires the Applicant to submit, consistent with the requirements set forth under OAR 340-035-0045, an application for DEQ approval of the projected Noise Impact Boundary and, if necessary, a noise abatement program, that receives DEQ approval prior to receiving a building permit for construction of the proposed airport uses and that those DEQ-approved materials be provided to the County.

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[9] OAR 340-035-0045(2) Airport Noise Criterion provides:

"The criterion for airport noise is an Annual Average Day-Night Airport Noise Level of 55 dBA."
The Board finds that as explained in the Noise Report that the reference to Annual Average Day Night Noise Level refers to the Ldn, which DEQ expresses as above. That criterion is measured at the noise-sensitive property. The referenced 55 dBA is slightly louder than a normal conversation or background music and slightly quieter than office noise or the inside of a car going 60 miles per hour. *See*, "What Is 55 Decibels of Sound" at https://decibelpro.app/blog/what-is-55-decibels/

[10] Such measures include, but are not limited to, evaluating the appropriateness and effectiveness of: takeoff and landing noise abatement procedures; modification in the approach and departure flight tracks; higher slope angles; limitations in the times and locations certain types operations can be conducted; and the acquisition and use of noise suppression equipment or barriers. OAR 340-035-0045(4)(b)(B)(i)-(xvi).

The Board reinforces that the submitted noise contour diagram in the Noise Study shows two important things. First, is that each of the residences closest to the airport, directly across Airport Road from the subject property, lies outside the Annual Average Day-Night (Ldn) 55 dBA noise contour from rotorcraft operations from the proposed airport development. Second, that contour diagram also shows the Aurora State Airport contour diagram, which indicates those residences are also within the Ldn 55 dBA noise contour for the existing airport, from which fixed-wing aircraft that use the subject property will take off. That means the noise impacts from the proposed rotorcraft and fixed wing aircraft operations will be less than those from the existing airport operations.

Accordingly, the Board finds that based on the noise contours submitted by Applicant, the Nosie Study, design of the proposal, the fact that the proposal seeks to attract electric aircraft including rotorcraft, the noise from the proposal will be less than the noise already created by the Aurora Airport. The proposal will not increase the noise neighbors are already experiencing, nor cause any new significant adverse impacts resulting from noise. The Board finds that this criterion is met.

5. *The use will not have a significant adverse impact on potential water impoundments identified in the Comprehensive Plan, and not create significant conflicts with operations included in the Comprehensive Plan inventory of significant mineral and aggregate sites.*

There are no nearby water impoundments of significant mineral and aggregate sites identified around the subject parcel. As such, the proposal will not have a significant impact on any resources. The Board finds that this criterion is met.

8. MCC 17.119.180.190 guides the effective date of the Conditional Use:

17.119.180 Effective date of conditional use.

Conditional uses granted by the director, planning commission or hearings officer under the provisions of this title shall not be effective until 15 days after the mailing of the notice of decision; provided, however, in case call up of the proceedings has been requested by the board or an appeal has been taken as herein provided, the conditional use shall not be effective until the planning commission, hearings officer or board has acted on the call up or appeal.

17.119.190 Conditional use right must be exercised to be effective.
Conditional uses granted under this title shall be effective only when the exercise of the right granted thereunder shall be commenced within two years from the effective date of that conditional use, ***unless a longer period be specified or thereafter allowed by the*** *director, planning commission, hearings officer, or* ***board****. In case the right has not been exercised, or extension obtained, the conditional use shall be void. A written request for an extension of time filed with the director prior to the expiration of the conditional use*

shall extend the running of the conditional use period until the director, planning commission, hearings officer or board has acted on the request.

Based on the history of opponent appeals involving land use decisions related to the subject property and the Aurora State Airport and the need for several approvals from other agencies, the applicant reasonably requested that discretion be exercised under the above bold language of 17.119.190, to specify a longer period for the conditional use approval to enable the proposal to obtain final approval and to be able to actually begin construction. Accordingly, the applicant requested a delayed effective date pending final decisions from this land use application, Oregon Department of Aviation (ODAV) and Oregon Department of Environmental Quality (DEQ) approvals. In short, commencement of activities to implement this approval cannot begin until both the County conditional use and airport land use boundary adjustment decision and any necessary ODAV and DEQ decisions are final, and any appeals are resolved. Applicant anticipates that opponents to development at the Airport and subject property will file appeals during some or all of the above approval processes. The Board expressly interprets the above emphasized language to authorize this Board to approve the applicant's requested longer approval period.

The Board notes that Marion County Planning Staff and the Hearings Officer both agreed that it reasonable to accommodate the entire process by postponing the effective date of this conditional use permit, and the two-year exercise period, until such time that the ODAV and DEQ permit processes have been completed and appeals if any are resolved. Applicant specifically requested that the effective date for the commencement of the 2-year exercise period be the latter of either the date of the final order or decision by the County, LUBA, Oregon Court of Appeals, Oregon Supreme Court, or the date of the ODAV decision approving development of the site, or the DEQ decision approving the noise plan becomes final following all administrative and/or judicial appeals of those agency decisions, whichever of these dates occurs last. The Board grants that request and includes in this decision this delayed effective date as a condition of approval and that any extensions to the 2-year period will also be based on the effective date as specified in MCC 17.119.190.

Opponents argue that an extension is not reasonable when the reason for granting the extension is based upon the Applicant obtaining permits. However, opponent's objection is misplaced because Applicant anticipates a lengthy appeal process as opposed to seeking time to allow it to simply obtain permits. And the Board finds that based upon the well-documented history, the applicant's request is reasonable. The Board agrees that the appeal process could likely result in the lapse of the conditional use permit before the applicant was ever able to use it. The Board finds that it is reasonable that the 2-year exercise period be extended as a condition of approval as the latter of either the date of the final order or decision by the County, LUBA, Oregon Court of Appeals, Oregon Supreme Court, or the date of the ODAV decision approving development of the site, or the DEQ decision approving the noise plan becomes final following all administrative and/or judicial appeals of those agency decision.

Airport Overlay (AO) Zone

9. The standards for the Airport Overlay (AO) zone are found in MCC 17.117.

17.177.010 Purpose.
The airport overlay zone is intended to minimize potential dangers from, and conflicts with, the use of aircraft at public airports based on the adopted master plans for each airport. It is to be used in conjunction with the underlying zone. If any conflict in regulation or procedure occurs with the underlying zoning districts, the more restrictive provisions shall govern. This section is intended to comply with Federal Aviation Agency Regulation FAR-77 and all other applicable federal and state laws regulating hazards to air navigation.

The proposal would expand the Aurora Airport boundary to include the subject parcel. The proposed use would therefore be coordinated with the existing airport operations to minimize potential dangers and conflicts resulting from the use of aircraft. In most cases the more restrictive applicable provisions are those within the underlying EFU zone. The proposed expansion and airport use may be permitted as conditional use in the EFU zone as per MCC 17.136.050(J)(4).

The proposal includes expanding the airport boundary to include the subject property to facilitate both rotorcraft and coordinated airplane operations. Regarding rotorcraft, Application Exhibit 2A shows the approach and departure paths that are consistent with FAA standards. The historic safe coexistence of helicopter operations at Columbia Helicopters and HTS and airport operations is evidence that helicopter operations, even those on properties adjacent to the Aurora Airport runway area, can be conducted safely and consistent with the purpose of the AO zone.

Regarding fixed-wing aircraft, the subject property has direct access to a taxiway, used by other TTF operations, that leads to the Airport main taxiway and runway. Aircraft using the taxiway will operate similarly to the other TTF operations, which have operated safely.

Rotorcraft operations from the subject property will have their own imaginary surfaces. However, because the imaginary surfaces for vertiports/heliports are smaller than those for public use airports, the imaginary surfaces fall within the AO overlay zone established for the Aurora State Airport. The Board finds that all development in close proximity to operations on the subject property will be safely regulated and no additional properties will be burdened by the AO overlay zone after approval and development of the proposal. (Application Exhibit 59) (14 CFR Part 77 (showing heliport imaginary surfaces at FAR 77.23 and civil airport imaginary surfaces at FAR 77.19); (Application Exhibit 60) (Aurora State Airport FAR Part 77 Airspace Diagram); and Application Exhibit 61 (Exhibits for OAR Chapter 660 division 13 Airport Zone Standards (showing required distances for approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces for public use airports and heliports).

All aircraft departing from, arriving to, or operating in the vicinity of the Aurora State Airport must coordinate operations with the ATC or follow communications protocols when the control tower is not operating, the potential dangers or conflicts between the proposed uses and existing operations will be minimized.

The Board finds that there are no conflicts between the proposal and the AO zone, and the proposal minimizes potential dangers from or conflicts with existing airport and airport related uses. Therefore, the Board finds that the proposal is consistent with the purpose of the AO zone.

10. Marion County Code 17.177.030 – Airport Districts.

MCC 17.177.030 Airport districts.

In order to carry out the provisions of this airport overlay zone, three airport development districts are provided within the airport overlay zone. These three districts are shown on the official zoning map showing the height limits adopted at the time the airport overlay zone is applied.

A. Airport Development District. This district consists of those lands, waters and airspace area at or below the primary, transitional and approach surfaces described in MCC 17.177.020(C).

1. Use Limitations. Any use, accessory use, buildings and structures otherwise allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

a. No obstruction or object shall be permitted if it extends above the transitional and approach surfaces as defined in MCC 17.177.020(C).

b. Roadways, parking areas and storage yards shall be located in such a manner that vehicle lights will not result in glare in the eyes of the pilots, or in any other way impair visibility in the vicinity of the runway approach.

c. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

d. No game preserve or game reservation shall be permitted if the animals or birds have the potential to become a hazard to air navigation.

e. No structure or use intended for public assembly shall be allowed except by a conditional use permit.

B. Horizontal Surface District. This district consists of the land, water and airspace underneath the horizontal surface as described in MCC 17.177.020(C).

1. Use Limitations. Any use, accessory use, building and structure allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

a. No obstruction shall penetrate the horizontal surface as defined in MCC 17.177.020(C).

b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

c. Conical Surface District. This district consists of the land, water and airspace underneath the conical surface as described in MCC 17.177.020(C).

The subject property is within the transitional surface area for the Aurora Airport and is, therefore, within the Airport Development District as defined in MCC 17.177.020. Any development on the subject property shall be designed consistently with the listed standards that negate potential hazards to air navigation. A condition of approval is imposed to ensure that compliance. The proposal satisfies this standard.

11. MCC 17.177.040 provides the required information for an applicant seeking a building permit in an Airport Overlay Zone.

MCC 17.177.040 Procedure.

A. An applicant seeking a building permit involving any use or structure regulated by the airport overlay zone shall provide the following information in addition to any other information required in the permit application:

1. Property boundary lines as they relate to the airport approach and the end of the runway;
2. Location and height of all existing and proposed buildings, structures, utility lines and roads.

Applicant is not seeking a building permit involving any use or structure. This standard does not apply to this proposal. Applicant will comply with this requirement at the time a building permit is sought. The Board finds that this standard does not apply and that the applicant can and will comply with its terms when it seeks a building permit.

B. Proposed buildings or structures shall be approved by the building inspector if it is determined that they will not extend above the airport surfaces as defined in MCC 17.177.020(C).

Applicant is not seeking a building permit involving any use or structure. This standard does not apply to this proposal. As the site plan shown on Application Exhibit 1, as modified at the March 6, 2025 Hearings Officer hearing, and building descriptions in

Exhibit 1B as modified at the March 6, 2025 hearing demonstrate, Applicant can and will comply with this requirement at the time a building permit is sought.

C. An applicant seeking rezoning, a conditional use permit or a variance involving any use, building or structure regulated by the underlying zone or the airport overlay zone shall be reviewed in accordance with the applicable procedure in this title. During this review process, the State Aeronautics Division shall be notified of the proposal and any public hearing, be given an opportunity to comment and be notified of the decision.

Applicant is seeking a conditional use permit for uses within the AO zone. This standard applies. Applicant has submitted the required application materials for the proposed use within the proposed expanded airport boundary. The Board finds that proposed use has been reviewed as required by this provision and that the evidence in the record demonstrates that the proposal is consistent with the limitations on development imposed by the Airport Development District. ODAV has been notified of the proposal and will be subsequently notified of public hearings regarding the proposal. The Board finds that the proposal satisfies the requirements of the AO zone.

Statewide Planning Goals

12. The proposal involves a comprehensive plan amendment to adjust the boundary of the Aurora Airport in the County's Transportation System Plan (TSP) to include the subject property. The MCCP does not contain specific review criteria for plan amendments, however, amendments to a comprehensive plan, to include modifying a map for an expanded airport land use boundary, must demonstrate that the proposal is consistent with all the Statewide Planning Goals as well as demonstrate consistency with other portions of the Comprehensive Plan and with OAR 660-013-0040 Aviation Facility Planning Requirements. Goal compliance is demonstrated below.

Goal 1: Citizen Involvement

The County's procedures for notice and public hearings provide opportunities for citizen involvement. The goal is satisfied.

Goal 2: Land Use Planning

The application for expansion of the airport boundary to include the subject parcel, and airport uses on the subject parcel, has been submitted with Marion County Planning Department to review compliance with applicable zoning ordinances. Comments received on the application are included in the record. The Marion County Planning Staff recommendation was presented to the Hearings Officer for consideration and application of applicable case law. The Hearings Officer made her recommendation to the Marion County Board of Commissioners and the Board is making the decision for the County. Area local governments and ODAV were notified of the proposal and provided the opportunity to submit comments. Their comments were received and were considered in

this proceeding and in this decision and their concerns were accommodated as much as the Board finds reasonably possible. The goal is satisfied.

Goal 3: Agricultural Lands

The proposal seeks to expand an airport boundary onto EFU land and to allow airport uses within the airport boundary. The Oregon Legislature has adopted a statute that allows on land zoned EFU transportation facilities and improvements not otherwise allowed by the statute subject to LCDC rule and a demonstration of compliance with ORS 215.296, the farm impacts test.

The relevant LCDC rule is OAR 660-012-0065(3), which is addressed in detail above and which provides, in relevant part:

> "The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:
> * * * *
> "(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplane[.]"

As stated above, the Board finds that the proposed airport boundary expansion will not permit service to a larger class of airplane. As the Board explained above, its conclusion in this regard is supported by Application Exhibit 40 and other evidence in the record. The Court of Appeals has explained what this standard means and requires to include within the Aurora State Airport boundary, the private through the fence operations such as is proposed here on the subject property. The court also explained that the type of expansion that does not fall within the rule – that provides service to a larger class of airplane – refers to an expansion that increases the design standards or otherwise permits the airport to serve a group of fixed-wing aircraft that have a greater variety of approach speeds, a greater variety of maximum takeoff weights or a greater variety of wingspans or tail heights. *Schaefer v. Oregon Aviation Department*, 312 Or App at 345. The Board finds the proposal is wholly consistent with the instructions of the Court of Appeals.

The proposal does not increase or require changes to the design standards for the airport or otherwise permit the airport to serve groups of fixed-wing aircraft beyond those the airport has historically served. Therefore, under OAR 660-012-065(3), the proposed expansion of the airport and airport uses are consistent with Goal 3 as a matter of law.

Further, the Board finds that the farm impacts test of ORS 215.296 is mirrored in MCC 17.136.060(A)(1)'s "force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding land devoted to farm or forest use" standard. The demonstration of compliance with that standard in the findings demonstrating compliance with the County's conditional use standards above is hereby incorporated. Because the proposal satisfies the farm impacts test as explained above and is consistent with the requirements of OAR 660-012-0065(3)(n) as is also explained above, the proposed airport boundary expansion is consistent with the statute that implements Goal 3 and authorizes the proposal, ORS 215.283(3)(b).

Likewise, the Board finds that OAR 660-012-0065(3)(n) allows alterations in uses and development within a public use airport boundary such as the airport uses proposed here. Generally, uses allowed on exclusive farm use land, and the conditions under which such is allowed, are regulated by ORS 215.283. However, the Court of Appeals has explained:

> "ORS 836.625(1) clarifies that '[t]he limitations on uses made of land in exclusive farm use zones described in ORS 215.213 and 215.283 do not apply to the provisions of ORS 836.600 to 836.630 regarding airport uses'* * *. As explained above, the provisions of ORS 836.600 to 836.630 allow airport uses and supersede ORS 215.213 and 215.283 "[w]ithin airport boundaries." ORS 836.616(2); *see also* OAR 660-013-0100 (requiring local governments to 'adopt land use regulations for areas within the airport boundaries' that authorize the airport uses enumerated in ORS 836.616." *Schaefer v. Oregon Aviation Board*, 312 Or App at 334-35 (brackets in original).

The Board finds that the proposed airport uses are specifically allowed uses within airport boundaries under state law and are therefore allowed uses on EFU land – which is what Goal 3 regulates. Because the proposed uses also comply with the ORS 215.296 as implemented by the Marion County Code which expresses the farm impacts test, they are consistent with Goal 3.

The Board finds that the proposed expansion of the airport boundary for the public use airport and the proposed airport uses are consistent with Goal 3.

Goal 4: Forest lands.

The subject parcel is not itself, nor adjacent to, forest lands. The Board finds, however, that as a result of the proposed development, firefighting capabilities to respond to wildfires on forestlands may be expanded which would contribute to conservation of forest lands. The Board finds that this goal does not apply, but that regardless the Board finds that the proposal carries the potential to contribute to the conservation of forestlands, and so to the extent Goal 4 can be said to apply, the proposal is consistent with it.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources

The Board finds that the MCCP does not identify any Goal 5 protected resources on the subject property or immediately adjacent to the subject property. This includes wetlands, sensitive waterways, riparian ways, big game habitat, cultural or historic sites, or aggregate resource sites. Accordingly, the Board finds that this goal does not apply.

Goal 6: Air, Water and Land Resources Quality

LUBA has explained that compliance with Goal 6 involves whether there are findings supported by evidence in the record explaining why it is reasonable to expect that a proposal will be able to comply with applicable state and federal environmental quality standards. *See, e.g., Nicita v. City of Oregon City*, __ Or LUBA __ (LUBA Nos. 2020-037/039, September 21, 2021) (Slip op at 13-14); *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786, 802 (2003); *Salem Golf Club v. City of Salem*, 28 Or LUBA 561, 583 (1995).

The subject property is not located within an identified air or watershed protected area. The proposed uses within the expanded airport boundary are not the type of uses that will result in significant particulate discharges into the air inconsistent with federal and state air pollution regulations. As the evidence in the record shows and as discussed above, one of the drivers for this proposal is to provide facilities for emerging electric-powered eVTOLS and electric fixed-wing aircraft, which are by more environmentally benign than conventional piston-powered aircraft. Furthermore, federal regulations prohibit the application of state or local standards to regulate emissions from rotorcraft and other aircraft engines that are not identical to corresponding federal standards. *See* Exhibit 41 (40 CFR Part 1031 Control of Air Pollution from Aircraft Engines). Aircraft operating on the subject property under the proposal can and will comply with those standards.

The evidence entered into the record from EMS demonstrates that there are a variety of feasible solutions to handle the wastewater expected to be produced by development of the property as proposed within the expanded airport boundary. Application Exhibit 37 (EMS Wastewater Analysis). The EMS materials establish that each approach could comply with State and County regulations governing septic disposal and can be approved by DEQ. The Board finds that each of these potential solutions are both feasible and comply with DEQ standards. The Board also finds that the applicant's evidence adequately demonstrates that either proposal will not cause adverse cumulative effects under the identified systems. The Board finds that compliance with these environmental quality regulations will be administered through the County and will ensure consistency with this goal. Contrary to opposition testimony, the fact that the property has feasible septic options necessarily means that the proposal does not exceed the carrying capacity of the subject property and is not contrary to Goal 6.

The Board finds that the evidence submitted by applicant's engineer and consultants is credible and persuasive and demonstrates that the subject property can have its own, safe and adequate water system supported by an on-site well. The well was tested and found to be a high-volume, producing a steady 40 gallons per minute for two hours. Application Exhibit 42 (Water Analysis (Shiloh Water Systems test results)). The water was also of good quality water, with the only contaminant above the EPA's maximum prescribed level being arsenic. Applicant's Exhibit 42 (Water Analysis (Edge Analytical test)). Applicant has submitted evidence of a filtration system that will remove arsenic from the water and the cost for such a system, which is feasible to implement. (Application Exhibits 42-43) Applicant entered evidence into the record that proposes a pump and filtration system designed to provide adequate water flow and quality necessary for the site and proposed uses and includes provisions for maintenance and services of a certified water

systems operator. As Mr. Faegre explained in Applicant's March 6 Hearings Officer Hearing Exhibit 2 and August 12, Board of Commissioners Hearings Exhibit, there is arsenic in both City water and groundwater in the area and it is feasible and normative to filter it out as is proposed here. The Board finds Mr. Faegre's testimony to be both credible and persuasive and rejects evidence to the contrary as less so.

There are no MCCP identified wetlands or streams on the subject property. As explained above, the applicant has submitted a stormwater report and design, prepared by a registered professional engineer, into the record, that the Board finds to be credible and persuasive. Comments from the project manager notes, and applicant accepts, the need for stormwater drainage and detention improvements and DEQ NPDES permitting. Application Exhibit 36 (Mackenzie Stormwater Analysis). The Board finds that those materials demonstrate that a feasible solution exists for managing stormwater runoff from the property that complies with state and federal environmental quality standards. Opponents assert that storm water from the proposal will adversely affect the Pudding River, ignoring that "[t]he proposed site can detain the required amount of volume" utilizing "a combination of 18" strip drains, detention pipes, and detention ponds" that will "detain water ahead of release off site and allow some surface ponding to occur," and that when released, water will be released at a such that a post-developed 10-year storm will be discharged at the existing 5-year runoff rate and will not exceed "the 5-year design discharge" for the 6,426 feet (1.2 miles) it then travels along Airport way in the existing ditch. Application Exhibit 36, p 2. The Board finds that analysis to be credible and persuasive and finds that stormwater run-off from the proposed facility will not harm salmonids in the Pudding River more than a mile away from the subject property. The Board finds that the assertions otherwise by opponents are not credible or persuasive and rejects them.

The Board finds that the applicant's stormwater analysis contains basin-wide data and analysis that demonstrates that the basin has sufficient capacity to handle permitted levels of stormwater discharge from the subject property and other properties within the basin such that there will not be adverse cumulative impacts from the proposed and potential development within the basin.

Regarding issues concerning air quality such as potential dust or smoke discharges, many of the uses proposed resemble those of the adjacent helicopter businesses and aircraft operations and there have been no complaints of adverse air quality impacts from those rotorcraft businesses or the airport. The same is true for aircraft movement within the adjacent and significant TTF areas or from the TTF areas to the runway. Further, as demonstrated in the letters in the record from the various aviation experts (whom the Board finds to be credible and persuasive), the proposal's focus on providing infrastructure for electric aircraft means that there will be next to no emissions from electric motors because electric motors create virtually no emissions.

The Board finds that the credible and persuasive evidence in the record demonstrates that the proposal will not result in water or air waste discharges that,

individually or collectively with other discharges in the area, will threaten to violate or violate applicable state or federal environmental quality statutes, rules and standards.

The Board finds that the applicant provided adequate credible evidence that both well and septic are feasible on the property. DEQ approval of the septic system will ensure compliance with state standards.

Further, the Board finds that stormwater drainage, detention improvements and a DEQ National Pollutant Discharge Elimination System (NPDES) permit will be required to mitigate and manage stormwater runoff. As explained above, the Board finds that the applicant provided a credible and persuasive stormwater analysis demonstrating a feasible solution for managing stormwater that will comply with state and federal standards.

The Board finds that the cumulative effects of both stormwater and septic drainage were taken into account by the applicant's respective consultants. The applicant provided credible and persuasive expert evidence that the stormwater runoff from the proposal alone or cumulatively with other runoff in the area, will not exceed the capacity of the existing drainage system. The Board additionally finds that the applicant presented credible and persuasive adequate evidence that septic can be provided to the subject property to serve the proposed uses without discharge contributing to a cumulative negative impact on the soil or groundwater. The Board finds that the credible and persuasive evidence in the record demonstrates that septic can be provided for the property without the subject property having to connect to the HDSE or Columbia Helicopter septic systems. This decision authorizes land use approval for connection should HDSE or Columbia Helicopters seek and gain approval to do so if the owner of the subject property wishes to establish such connection. In that circumstance, this approval says that it need not be modified to allow such a connection. The Board here pauses to respond to Mr. Schaefer's objection that the Columbia Helicopter drainfield/system cannot be expended to serve the proposal asserting it is subject to a goal exception that allowed it to be approved and OAR 660-004-0018(2)(a) limits the exception to the intensity of uses that drove the exception in the first place. Nothing suggests that the Columbia Helicopter septic system was approved under a goal exception. The Board finds that it almost certainly is a septic system that predates the requirement that an exception be required to install it. The Board also finds that regardless, the objections about the limits on the existing approvals for HDSE and Columbia do not matter because in order for Columbia or HDSE to expand their septic systems to serve the subject property they would have to get whatever land use and DEQ approval is required to do so. This decision merely decides that if such occurs, that this decision need not be modified for the subject property to connect.

The Board further finds that the applicant addressed several different potential solutions for the septic system on the subject property. Applicant's consultant addressed the two options for septic disposal on the subject parcel itself. The first option addressed is a holding tank, a system which involves total removal of wastewater from the property for processing at a wastewater treatment plan. The second is a septic system meeting the standards for a Water Pollution Control Facilities (WPCF) permit. The latter system suggested by the consultant would be built to a higher standard than the minimum standards

for a WPCF permit, including effluent released with lower biochemical oxygen demand, lower total suspended solids, and a higher standard of bacteria treatment by ultraviolet light treatment at 99% efficiency prior to discharge.

The Board finds that the applicant provided credible and persuasive evidence that the proposal will be able to comply with all applicable state and federal environmental standards and will not decrease air, water, or land resource quality either by itself or cumulatively with the rest of the Aurora Airport. The Board finds that Goal 6 is satisfied.

Goal 7: Areas Subject to Natural Disasters and Hazards

The subject property is not within an MCCP identified floodplain or geologic hazard area. Applicant suggests that the establishment of rotorcraft on the subject parcel may enhance the Aurora Airport's ability to assist in emergency response during the next Cascadian subduction earthquake.

Applicant's consultant, GeoDesign, conducted geotechnical analysis at two other sites within the airport area, namely the Lima North Hangar Site to the west of the subject property and the Fuel Farm Site to the southwest of the subject property, for which GeoDesign did a site-specific seismic hazard evaluation (Application Exhibit 44). The consultant is familiar with the site-specific conditions of the immediate area, which were supplemented by an exploratory soil boring and a cone penetration (CPT) probe on the subject property site. The Board finds the GeoDesign analysis and report to be expert, credible and persuasive.

Analysis of the samples gathered from those two on-site probes indicate that the soil conditions of interbedded seams and layers of sand, silty sand, clay and silt at the subject property are similar to the geology and subsurface conditions from the Lima North Hangar site and the Fuel Farm site. Significantly, although the general Relative Earthquake Hazard Maps (Madlin, Ian P. and Wang, Zhenming, 1999) indicate an intermediate to high hazard earthquake risk to the southern portion of the airport (located beyond the subject property more than 2,000 feet away from the subject property), the work completed by GeoDesign on the subject property indicates a relatively low seismic risk exists for development on the subject property. Concerning liquefaction risks, GeoDesign's liquefaction analysis indicates that post-liquefaction settlement will be less than one (1) inch during a design-level earthquake and the differential settlement across the site will be less than approximately one-half an inch. Application Exhibit 44, p. 2. The analysis further concludes that there are no other geotechnical issues present at the site concerning lateral spreading, ground motion amplification, landslides, settlement, subsistence/uplift, lurching or seiche and tsunami.

Similar to the discussion above concerning firefighting operations and Goal 4, the proposed development of the property to support rotorcraft and fixed-wing aircraft operations will enhance the emergency response resiliency of the Aurora State Airport, and the Willamette Valley in general, when the Cascadia Subduction Zone earthquake hits. Recently, ODAV issued a report to the Oregon Legislature, entitled "The Day After" that discusses Oregon's airports' role following a megathrust earthquake. *See* Application

Exhibit 45 (ODAV, "The Day After"). That report explains that, in the immediate aftermath of the earthquake, helicopters will play a major role in the initial response, despite only making up 5% of the US aviation feet. Application Exhibit 45 (p. 9 of 91). The report lists the Aurora State Airport as a Tier 2 airport, which means ODAV predicts that the airport could resume fixed-wing runway operations within one month of major subduction event. Application Exhibit 45 (p. 15 of 91). During that one-month period, the only operations that may be taking place at KUAO would be rotorcraft operations. The proposal enhances KUAO's ability to respond to that and other emergency response efforts to major natural hazard events.

Finally, the Board finds that the septic system on the subject property will continue to function in the event of a Cascadia Subduction earthquake, while municipal systems are not expected to fare well: "The 2013 Oregon Resilience Plan estimates it will take 6 months - 1 year for wastewater systems to become 80-90% operational in the Willamette Valley (3 years to return to current operational state)." This further establishes that the subject property will be capable of assisting the airport with persistent emergency response when needed whereas other facilities are unlikely to have that luxury.

In summary, the Board finds that the applicant's geotechnical study is credible and persuasive and demonstrates that there are no geologic hazards that would present problems for development of the subject property in the future. Additionally, approval of the applications will enhance the Airport's and County's emergency response capabilities and resiliency in the event of a natural disaster.

The Board finds that the proposal complies with Goal 7

Goal 8: Recreation needs

No recreational space is present on the subject property. The aircraft allowed on the subject property are limited to those that the FAA considers as commercial operations. A condition of approval is imposed to that effect. The subject property is not designated for recreational use and is not currently used for recreational purposes. Goal 8 does not apply.

Goal 9: Economic Development

This goal does not apply outside of an urban growth boundary. However, the Board finds that the proposed development will create jobs and attract early adopters of electric aircraft that will have direct or indirect positive economic impacts on the surrounding area and County as a whole. The private side of Aurora State Airport annually contributes $1.9 million into the local schools, police, fire and other Marion County services through various tax payments made by the businesses and their employees. Private development as proposed will add to those annual contributions. The Board finds as persuasive and credible the testimony of Ted Millar who is a principal of the applicant, that the proposal will contribute approximately $350,000.00 in annual tax revenue. The Board finds that while Goal 9 does not apply, that nonetheless, the proposal is consistent with Goal 9.

Goal 10: Housing

This goal applies to land within urban growth boundaries. Moreover, the Board finds that housing is not encouraged in airport land use boundaries. As noted above, the Noise Study establishes that the FAA expects residential uses to be situated outside of the 65 ldn. This goal does not apply.

Goal 11: Public Facilities and Services

As with Goals 3 and 4, OAR 660-012-0065(3)(n) expressly states that expansions and alterations of a public use airport that do not permit service to a larger class of airplane are deemed to be consistent with Goal 11. The proposed airport boundary expansion and the proposed airport uses, to include authorization for the subject property to connect to an existing sewer system in the airport boundary, are therefore consistent with Goal 11 because the proposal does not permit service to a larger class of airplane.

The Board further finds that the applicant is not proposing any public water or sewage services to be extended to the subject property. The Board finds that the credible and persuasive evidence in the record demonstrates that it is feasible to provide adequate on-site water and stormwater and sewer facilities to serve the proposed airport uses. *See* Application Exhibit 42 (Edge Analytical, Water Analysis); Application Exhibit 37 (EMS Wastewater Analysis); Exhibit 36 (Mackenzie Stormwater Analysis). As discussed above, water will be provided by an on-site well that provides a high-volume rate sufficient for the proposed uses. Applicant submitted expert technical evidence that demonstrates that it is feasible to design and maintain a pump and filtration system that provides adequate water flow and quality necessary for the site and proposed uses. Similar technical evidence demonstrates that adequate sewer and stormwater systems can be designed that meet state and federal requirements. The subject property presently has electrical service and gas service provided to it. Establishing connectivity to support charging electric rotorcraft, electric fixed-wing aircraft and electric automobiles as proposed requires improving near-by electrical switches and a battery storage system, on-site hydrogen storage and a hydrogen-powered generator. The Board finds that the credible and persuasive evidence in the record establishes that the provision of such connectivity is feasible. Furthermore, existing fire and police services for the subject property are adequate for the proposed use. The proposal does not include any community or public facilities or services that will serve other properties. Because the proposal includes onsite facilities, no public facilities or services need be extended to the subject property from urban areas to support it.

The EMS analysis adequately and credibly explains that there are several different feasible approaches to managing the wastewater (sewage) from the proposed use. Application Exhibit 37. These include the use of holding tanks, either for each structure or for the site collectively, the treatment of wastewater and dispersal on site using raised bed treatment or an off-site drain field, the reuse of wastewater for other beneficial uses, subsurface discharge or connection to any of two existing systems. As EMS explains, while the site's soil conditions do not permit a traditional on-site septic tank and drainfield, all of the above alternative approaches are available and feasible to develop and DEQ would

approve appropriately designed systems. Opponents argue that septic and holding tanks are not a "sustainable option." The fact that some of the identified feasible options are more costly than others does not mean they are not feasible as a means of satisfying the applicable standards. The Board expressly finds the EMS analysis to provide adequate and feasible onsite solution options, and is credible and persuasive and that the opposition testimony to the contrary is not as credible or persuasive and is rejected. To be sure, each feasible solution for wastewater treatment has advantages and disadvantages. However, that a feasible solution is not the approach preferred by opponents is not a basis for denial.

The EMS materials also address the existing HDSE and Columbia Helicopters facilities that have excess capacity and represent potential options for wastewater disposal. The existing HDSE system provides treatment for multiple parcels to the west and southwest of the subject property that are located in the Southend Airpark within the airport boundary and has excess capacity available for expansion. As noted above, the expansion of the airport to allow airport uses and the alteration of the airport to provide sewer services as part of the sewer system that serves part of the airport are deemed consistent with Goal 11 pursuant to OAR 660-012-0065(3)(n). The proposed development should be allowed to connect to that existing system located within the airport boundary if appropriate approvals are obtained to do so. *See* Exhibit 48 which is the existing Goal exception for the HDSE system. Because the original proposal for the HDSE system entitled only six specific airport properties to connect to the sewer system, allowing the subject property to connect to the system likely requires new land use approval, which the Board notes would require prior notice and opportunity for public participation.

Similarly, Columbia Helicopters likely has excess capacity with its existing septic drain field system that could accommodate wastewater from the proposed uses. Use of that drainfield by the proposal would follow a proceeding in which Columbia Helicopters obtain required land use approval to do so.

To repeat from above, Applicant requests that this approval, in addition to approving an on-site system that includes any of the systems justified by the EMS evidence as feasible and permittable by DEQ, authorize connection to the HDSE facility or the Columbia Helicopters drain field/system, without the need to amend this land use approval, should the appropriate land use and DEQ permits for such extensions and connections be obtained by those owners. However, to be clear, connection to either the HDSE facility or the Columbia Helicopters drain fields/systems is not necessary to feasibly manage wastewater produced by the proposal, nor is an extension from an urban area required. Further, approval here to use either of those systems does not authorize the use of those systems without further action demonstrating that such use is allowed.

The Board finds that the evidence in the record supports the conclusion that multiple development options to appropriately manage wastewater are feasible and practicable, with the latter options requiring appropriate subsequent additional land use approval. Goal 11 is satisfied.

Goal 12: Transportation

Goal 12 is implemented through the Goal 12 rule at OAR chapter 660, division 12.

Airports are transportation facilities under Goal 12 and are subject to compliance with the Airport Planning Rule at OAR chapter 660, division 13. OAR 660-013-0160(3) provides:

"Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 regarding Airport Planning."

Thus, the Board finds that direct compliance with Goal 12 and OAR 660-012 (the Transportation Planning Rule or TPR), is not required because the proposal demonstrates compliance with OAR 660 Division 13, which therefore establishes that the proposal is consistent with Goal 12 and the TPR. In this regard, the findings below demonstrate compliance with the Airport Planning Rule for the proposed expansion of the Aurora State Airport and the proposed airport-related uses within the expanded airport boundary.

The proposed airport expansion and proposed airport uses within the airport boundary are allowed under the present zoning as a conditional use and there is no accompanying change to either the zoning or plan designation for the property to trigger the TPR. Accordingly, because the zoning and the plan designation for the subject property remain the same after approval of this Application, the allowed airport boundary expansion and airport uses are deemed to have already been factored into the transportation impacts analysis for the TSP and the County can reasonably conclude that the Goal 12 rule's significant impacts analysis is not triggered on the basis of the terms of the TPR as well. *See Ooten v. Clackamas County*, 70 Or LUBA 338 (2014), *aff'd*, 270 Or App 214, 349 P3d 1305 (2015) (to determine whether a redesignation "significantly affects" a transportation facility, a local government should compare the most traffic-generative use reasonably allowed in the current zone with the most traffic-generative use reasonably allowed in the new zone).

However, as a precaution only and without waiver of Applicant's position that OAR 660-013-160(3) means what it says that compliance with OAR 660-013 means that the TPR is complied with, provisions in the TPR are addressed below as a precaution only and without abandoning that such is wholly unnecessary.

Precautionary TPR Compliance Findings

OAR 660-012-0060(1) provides that if there is an amendment to an acknowledged comprehensive plan that would significantly affect an existing or planned transportation facility, then measures set forth under subsection (2) must be provided unless the amendment is allowed under section (3), **(9)** or (10) of the rule.[11] If the TPR were to apply,

[11] OAR 660-012-0060(1) provides, in relevant part:

then the proposal here would be consistent with the TPR. In this regard, the proposal would fall under subsection **(9),** and the proposal satisfies all of OAR 660-012-0060(9)'s requirements.

OAR 660-012-0060(9) provides:

(9) Notwithstanding section (1) of this rule, a local government may find that an amendment to a zoning map does not significantly affect an existing or planned transportation facility if all of the following requirements are met.

(a) The proposed zoning is consistent with the existing comprehensive plan map designation and the amendment does not change the comprehensive plan map;

(b) The local government has an acknowledged TSP and the proposed zoning is consistent with the TSP; and

(c) The area subject to the zoning map amendment was not exempted from this rule at the time of an urban growth boundary amendment as permitted in OAR 660-024-0020(1)(d), or the area was exempted from this rule but the local government has a subsequently acknowledged TSP amendment that accounted for urbanization of the area.

As noted above, the Board finds that OAR 660-013-160(3) states that compliance with the Airport planning rule is deemed to satisfy the TPR. Accordingly, the Board finds that the findings are unnecessary and are only provided as a precaution and without waiving that the proposal is consistent with the TPR. The Board finds that Lacy Brown, a transportation engineer at DKS Associates, prepared a transportation impact analysis (Application Exhibit 39 (2024 TIA)), that addresses not only traffic impact issues mandated by the MCC and applicable to the conditional use proposal, but also the TPR. The Board further finds that Brown (DKS) provided a supplement to the 2024 TIA in a letter dated March 5, 2025 which examined opponent claims that the 2024 TIA was inadequate. The Board finds that March 5, 2025 supplemental analysis adequately rebuts opponent allegations and demonstrated that opponents' claims concerning transportation and Goal 12 are unmeritorious. The Board finds that the 2024 TIA as well as the March 5, 2025 supplement are credible and persuasive and are more so than opponents claims about those documents and about transportation. The Board rejects the opponents' claims in this regard as unpersuasive and lacking credibility.

Where it applies the TPR, under OAR 660-012-0060(1), requires a determination by the County of whether the plan or zone amendment will "significantly affect a transportation facility" (generally a road) and provides the criteria used to evaluate whether a transportation facility is significantly affected. OAR 660-012-0060(2) and (3) prescribe

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"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."

what the County must or can do if it determines that an amendment will significantly affect an existing transportation facility.

The 2024 TIA (Application Exhibit 39) as supplemented in DKS' March 5, 2025 letter, provides the required (precautionary) TPR analyses and determines that the proposal does not further degrade the performance of any transportation facility and does not cause any facility to exceed its performance standard. The TIA concludes the proposal does not have a significant effect on a transportation facility. The Board finds that conclusion to be credible, persuasive and correct and adopts it as its own.

OAR 660-012-0060(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:

***

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection. If a local government is evaluating a performance standard based on projected levels of motor vehicle traffic, then the results must be based on projected conditions measured at the end of the planning period identified in the adopted TSP. ***.

***

(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 relevant Marion County Transportation System Plan (TSP) was adopted on December 21, 2005. Pursuant to OAR 660-012-0005(40), the planning period for the TSP is the 20-year period following the date of adoption, which makes the end of the planning period December 21, 2025.

The Applicant's transportation consultant, DKS Associates conducted transportation studies and memos concerning transportation related to the subject property and to the Aurora State Airport. The most recent of those studies is Application Exhibit 39, 2024 TIA and its March 5, 2025 supplement.

Based on the analysis contained in the 2024 TIA and its March 5, 2025 supplement, the Board finds that the proposed expanded airport boundary and proposed development does not have a significant effect on any transportation facilities. The 2024 TIA (Application Exhibit 39) analyzes seven (7) different transportation facilities/intersections involving five (5) roads in the vicinity of the subject property and the three (3) entrances/exits to the subject property. *See* Application Exhibit 39, p 1, page 6 its diagrams. The 2024 TIA includes an analysis of the existing conditions for each of the relevant intersections, as well as a safety analysis based on appropriate available data.

The evidence in the record supports the conclusion that the proposal will not have a significant effect on a transportation facility and that the proposal complies with the requirements of Goal 12 and the Transportation Planning Rule.

> *(2) 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 performance standards of the facility measured or projected at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in subsections (a) through (e) below, unless the amendment meets the balancing test in subsection (e) or qualifies for partial mitigation in section (11) of this rule.*
>
> * * * * *. (listing mitigation measures (a) through (e)).

Because the proposal does not significantly affect a transportation facility, if the TPR applied, no mitigation measures would be necessary to demonstrate compliance with Goal 12.

Even though Goal 12 compliance is demonstrated through compliance with OAR 660- Division 13, the proposal is consistent with Goal 12.

> As explained above, OAR 660-013-0160(3) provides:
>
> *Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 regarding Airport Planning.*

As is also explained above, direct compliance with Goal 12 and OAR 660-012 (the Transportation Planning Rule or TPR), are not required because the proposal demonstrates compliance with OAR 660 Division 13, which therefore deems the proposal to be consistent with Goal 12 and the TPR. Therefore, these findings must and do demonstrate compliance with the Airport Planning Rule for the proposed expansion of the Aurora State Airport and the proposed airport-related uses within the expanded airport boundary.

The proposed airport expansion and proposed airport uses within the airport boundary are allowed under the present EFU zoning as a conditional use and there is no accompanying change to either the zoning or plan designation for the property to trigger

the TPR. Accordingly, because the zoning and the plan designation for the subject property remain the same after approval of this Application, the allowed airport boundary expansion and airport uses are deemed to have already been factored into the transportation impacts analysis for the TSP and the County can reasonably conclude that the Goal 12 rule's significant impacts analysis is not triggered on the basis of the terms of the TPR as well. *See Ooten v. Clackamas County*, 70 Or LUBA 338 (2014), *aff'd*, 270 Or App 214, 349 P3d 1305 (2015) (to determine whether a redesignation "significantly affects" a transportation facility, a local government should compare the most traffic-generative use reasonably allowed in the current zone with the most traffic-generative use reasonably allowed in the new zone).

The relevant Marion County Transportation System Plan (TSP) was adopted on December 21, 2005.Pursuant to OAR 660-012-0005(40), the planning period for the TSP is the 20-year period following the date of adoption, which makes the end of the planning period December 21, 2025.

As explained above, the applicant's transportation consultant, DKS Associates, conducted transportation studies related to the subject property and to the Aurora State Airport, in the 2024 TIA (Application Exhibit 39), and its March 5, 2025 supplement.

As we have already explained above but reiterate here, based on the analysis contained in the 2024 TIA and its March 5, 2025 supplement, the Board finds that the proposed development does not have a significant effect on any transportation facilities. The 2024 TIA (Application Exhibit 39) analyzes seven (7) different transportation facilities/intersections involving five (5) roads in the vicinity of the subject property and the three (3) entrances/exits to the subject property. The TIA includes an analysis of the existing conditions for each of the relevant intersections, as well as a safety analysis based on the most recently available data.

The Board finds that the DKS analyses are credible, persuasive and expert, the Board adopts them as its own, and is the most credible evidence in the record and supports the conclusion that the proposal will not have a significant effect on transportation facilities and that the proposal complies with the requirements of Goal 12 and the Transportation Planning Rule.

Goal 12 is satisfied.

Goal 13: Energy Conservation

Goal 13 promotes a variety of land use practices to maximize the conservation of all forms of energy. The proposed airport expansion and airport uses are consistent with three of the Goal 13 planning guidelines. First, the proposal seeks to minimize the depletion of non-renewable sources of energy by including facilities that promote the use of electric rotorcraft and electric fixed-wing aircraft at the proposed facility. That energy is proposed to be provided by renewable hydrogen resources, which the Board finds to be feasible. Second, the proposal promotes the maximum efficiency in energy efficiency by expanding airport uses at an existing public use airport instead of locating them at a different, new

location. Third, the proposal re-uses now-vacant land, putting it into a more productive airport uses in close proximity to other aviation related uses on land that the county's acknowledged plan designates as "acceptable for airport related development under private ownership." Last, the subject property is located close to major transportation routes, thereby reducing potential travel times for persons traveling to and from the expanded airport to near-by urban areas. The proposal is consistent with Goal 13.

Goal 14: Urbanization

As with Goals 3, 4, and 11 above, OAR 660-012-0065(3)(n) provides that this proposed expansion and alteration of the public use Aurora State Airport, because it does not permit a larger class of airplane and so is deemed to be consistent with Goal 14.

The Airport Layout Plan (ALP) Aurora State Airport Master Plan adopted in 1976 and that is included as an acknowledged part of the Marion County Comprehensive Plan envisioned the subject property as appropriate for the type of airport uses and related development proposed here, whether one considers it urban or rural. This proposal represents the orderly and efficient transition to the use for which it is designated by the County Plan. The proposal is consistent with Goal 14.

Goal 15: Willamette River Greenway
Goal 16: Estuarine Resources
Goal 17: Coastal Shorelands
Goal 18: Beaches and dunes
Goal 19: Ocean Resources

The subject property and proposal will not affect the Willamette River Greenway, any estuary, coast or ocean. These goals do not apply.

Marion County Comprehensive Plan

13. The Marion County Comprehensive plan outlines policies to guide development. As noted, the MCCP does not contain specific review criteria for plan amendments, but plan amendments must be consistent with applicable MCCP goals and policies.

Rural Lands

14. The general development policies applicable to rural lands in Marion County are:

1. All land divisions should be reviewed by Marion County for their compatibility with County goals and policies.

The Board finds that the proposal is not for a land division and this policy does not apply.

2. "Strip-type" commercial or residential development along roads in rural areas shall be discouraged.

The Board finds that the proposal does not propose commercial or residential development, consequently, policy 2 does not apply. Hangars similar to those proposed here are found throughout adjacent properties and are typical for aviation-based transportation facilities and related uses. The use of such buildings will not appear out of context given the development of the adjacent surrounding properties.

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 Board also finds that the proposed expansion of the airport boundary and proposed airport uses are compatible with the existing airport development to the north, west, and south of the subject parcel. The Board finds that the proposed airport related use is better suited for siting near similar uses, and uses that are not noise sensitive such as the Aurora Airport and crop farming, than near dense urban residential development. The Board finds that the proposed location for the proposal is a well-suited rural location because it is surrounded on three sides by intensive airport related uses. The Board finds that the proposal's compatibility with agricultural goals is demonstrated by the proposal's compliance with the farm impacts test administered as part of the Conditional Use criteria (MCC 17.136.060(A)(1)). The Board rejects opponents' claim that this policy requires an analysis of alternative locations for the proposal like the Salem airport. The Board finds that the proposal is consistent with this policy.

Agricultural Lands Policies

15. The proposal is consistent with the County Plan's agricultural goals and policies as the Board explains below.

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.

The Board finds that this provision is inapplicable. The proposal does not involve changing the zoning or designation of the subject property, which is zoned EFU. Rather, the Board finds that the proposal seeks a use that is identified in both state law, the implementing County code provisions, and independent County code provisions as a permitted conditional use in the EFU zone that OAR 660-012-0065(3)(n) as a matter of law deems to be consistent with Goal 3, Agriculture. The proposal is consistent with this policy.

The Board also finds that the Marion County's acknowledged Comprehensive Plan specifically designates the subject property as appropriate for airport related uses under

private ownership. This is demonstrated because the County's Plan includes the 1976 Aurora Airport Master plan as an element and that 1976 Aurora Airport master plan designates the subject property for airport related development under private ownership and recommends that it be zoned "Airport Development." (See Application Exhibit 6, p 50). Accordingly, the Board finds that the subject property has a dual plan designation that designates the subject property not only as Primary Agriculture, but also as an area suitable for airport-related development under private ownership. Accordingly, the Board finds that this policy does not apply to areas that are designated both "Primary Agriculture" but also as land acceptable for airport related development under private ownership. This is because the airport related uses acceptability plan designation demonstrates that the land at issue here is not solely to be protected as farmland, but rather the land's dual designation supports that the subject land is intended to be and may be ultimately put to airport related uses per that designation in the County's acknowledged plan, once the airport's land use boundary is expanded, as here. The Board finds that this interpretation of the plan policy is not only correct but is also consistent with the legislature's designation of the Aurora Airport and surrounding lands as a "pilot" site for private through the fence airport related use development per ORS 836.640-642.

2. Maintain primary agricultural lands in the largest areas with large tract to encourage larger scale commercial agricultural production.

The subject property consists of two tax lots totaling 16.54-acres zoned EFU. While the subject property is planned and zoned for farm use, the Board finds that historically the property was used as a church camp and retreat since before the 1970s. The Board also notes that the County's acknowledged comprehensive plan – through the included and also acknowledged 1976 Aurora Airport Master Plan – recommends the subject property be zoned for airport development.

The Board finds that the subject property has not been farmed for more than 50 years and possibly longer. The Board finds that the subject property is not conducive to agricultural use given its 16.54-acre size and the poorer soils compared to near-by EFU parcels. The Board finds that this is evident from Application Exhibit 49 and Application Exhibit 50 (Soils Maps and NRCS productivity ratings for soils), and other credible and persuasive evidence in the record. The Board finds the subject property is entirely surrounded on its west, east and southern boundaries by airport related uses and its eastern boundary is Airport Road and it is only across airport road that there are farming operations and that it is infeasible to combine the subject property with farm operations. The Board finds that it is not now, and it is infeasible to make, the subject property a "large tract" for primary agriculture. The Board finds that the property is not in a "largest area" of primary agriculture but in an area of airport related uses. The Board finds as credible and persuasive the testimony of farmer Jason Montecucco that the subject property:

> "has very little to nearly zero value as production agriculture land. It is a small parcel, somewhat poorly drained soil, surrounded by airport infrastructure, with **no irrigation**. The parcel is so small the investment to

drill an irrigation well would be too large for very minimal return making it completely uneconomical to pursue farming it. The parcel is also surrounded by an airport, so there is zero opportunity make the field larger by adding it to neighboring land to farm." (Emphasis in original.)

The Board finds that evidence to the contrary from opponents is less credible and is not persuasive.

The Board interprets this policy to protect "larger areas" of EFU zoned land with a "large tract" or tracts that is designated as primary agriculture and the Board concludes that the subject property is neither within the "largest areas" of primary agricultural land or a "large tract" of primary agricultural land. The Board finds that the proposed use does not affect the maintenance of agricultural uses to the east, nor does it remove agricultural land that could be utilized for large scale commercial agricultural production. The Board finds that the proposal is consistent with this policy.

The Board further finds that the subject property has a Comprehensive Plan designation as primary agricultural land but also is suitable for airport related development under private ownership per the express terms of the 1976 Aurora Airport master plan which airport master plan is a part of the County's acknowledged comprehensive plan. The Board finds that dual designation means that the subject property is not only designated as primary agricultural lands but also as land acceptable for airport related development under private ownership, once the Aurora Airport's land use boundary is expanded as is approved here in the manner that the Court of Appeals directed be accomplished as is being accomplished here. Accordingly, the Board finds that the property's primary agriculture designation is intended to be and must be balanced against the subject property's other designation as land that is suitable for airport related development when the airport's boundary is expanded to include it, as here. Therefore, the Board finds that the subject property is not intended to be counted as a parcel of land that "maintains" the agricultural economy" because the subject land is intended by the County comprehensive plan to ultimately be put to airport related uses in private ownership.

3. Discourage development of non-farm uses on high-value farmland and ensure that if such uses are allowed that they do not cause adverse impacts on farm uses.

The Board interprets this policy to allow non-farm uses on high value farmland so long as they do not cause adverse impacts on farm uses. Concerning the latter, the Board interprets the term "adverse impacts" to not impose an absolute bar on miniscule impacts but rather applies to ensure impacts that are meaningful – in other words that non-farm uses not cause adverse impacts on farm uses that are significant to the farm operation in terms of costs or farm practices. The Board determines that a nominal or minimal adverse impact on farm uses is not prohibited by this policy. Finally, the Board interprets this standard to be satisfied where, as here, the proposal meets the farm impacts test of ORS 215.296 which the Marion County Code implements.

The subject property is mapped as having soils considered to be high value farmland, however for at least the past fifty years the property has been in non-farm use, first as a Methodist church camp and then a theological center/retreat. Furthermore, as demonstrated by Application Exhibit 49 and Application Exhibit 50, the testimony of Jason Montecucco and other information in the record, the Board finds that the proposal is located on soils with the lowest productivity rating for the area, lacks irrigation, is not suited for agricultural use investments, is poorly suited for agriculture and that the proposal will not have an adverse impact on farm uses. The Board herein incorporates by this reference its findings in this document demonstrating that the proposal meets the farm impacts test of ORS 215.296 and implementing MCC standards (i.e. the proposal does not cause a significant increase in the costs of accepted farming practices or a significant change to accepted farming practices). As Mr. Montecucco observes, the Board agrees that the subject property is not directly adjacent to any agricultural uses, being separated from those uses by Airport Road NE. Further and importantly, the County's acknowledged Plan designates the subject property is appropriate for airport related uses under private ownership and allows the expansion of a public airport as a conditional use.. Therefore, while the above policy generally discourages non-farm uses on property like the subject property with high value soils, the acknowledged County Plan designation for the property identifying the property as appropriate for airport related uses provides a competing policy that supports the expansion of the airport land use boundary to include the subject property and the establishment of the proposed aviation related uses on the subject property. That together with the facts that the Board finds that the proposal does not cause a significant increase in the cost of accepted farming practices and does not cause a significant change to accepted farming practices, that the subject property has not contributed to the farm economy of the area for at least 50 years, that the proposal is an expansion of airport uses on property adjacent to the existing airport and the airport and coexisted with farming in the area for decades, and that the County Plan designates the subject property for airport related use, all ensures that the proposal will not cause adverse impacts on farm uses within the meaning of this policy.

Moreover, the Board observes that much of the activity within the expanded airport boundary will occur indoors and have no impact whatsoever on farm uses or practices. As discussed under the farm impacts test findings above, the expansion of the airport boundary and proposed airport related uses on the subject property do not cause significant adverse impacts on the adjacent and surrounding farm uses. Those farm activities will continue as they have over the past decades and farmers will not have to significantly change their established farm practices or incur significant additional costs for those practices as a result of the proposed airport uses on the subject property within the expanded airport boundary. The proposed airport uses involve activities similar to those that the farm uses have long coexisted with in the area. The Board finds that the proposal is consistent with this policy.

Rural Services Policies

16. The proposal is consistent with the County Plan's rural services policies.

1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

The Board finds that the proposal does not impact existing services. All services required to support the proposal are thoroughly evaluated in this decision. The Board finds that expert evidence in the record demonstrates that water and stormwater needs can be met on-site and will not impact any existing services or require public facility extensions to the site. The Board finds that expert testimony in the record further demonstrates that it is feasible to develop and implement a viable, DEQ approved wastewater treatment plan to manage wastewater and that such system will not adversely impact groundwater. The Board finds that the 2024 TIA and its March 5, 2025 supplement, demonstrate that there are no significant impacts on a transportation facility. The recommended mitigation of ½ street frontage improvements on Airport Road and paying a fee in-lieu is imposed as a condition of approval. *See* Application Exhibit 39, p 39. This policy does not apply but regardless, the Board finds that the proposal is consistent with this policy.

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.

The Board makes the following observations that demonstrates that the proposal is consistent with the above aspiration. The subject property is within the area designated in the 1976 Aurora Airport master plan as being appropriate for airport related uses under private ownership. That designation and this decision is consistent with the general policy of maintaining the rural character of areas outside of urban growth boundaries. The character of the area is already significantly influenced by the presence of the Aurora Airport, one of the state's busiest airports.

The Board further finds that the proposal is contemplated under ORS 836.640 and 642 which states that "through the fence" areas as proposed here to take place at the Aurora Airport (a "pilot" site under those statutes), are to be encouraged and are to be included in the airport land use boundary to enable aviation related uses to occur. The Board finds that while opponents assert that the Court of Appeals (and LUBA) have determined that the subject property may not be developed with TTF uses and assert that these appellate authorities have declared that ORS 836.640-642 is unavailable to the subject property, the Board finds these assertions are wholly false, and miss the point of the Court of Appeals' instructions. The Board observes that the court outlined the process that must be followed for the subject property to be developed with the airport uses contemplated by ORS 836.640-642 and this proceeding and the Board finds that this decision follows the court's instructions to the letter. The proposal is authorized and contemplated by state law and the Board finds that it does not require the extension of urban services to the site, as opponents wish. The Board finds that all water, storm and sewer services will be provided on site, that sheriff and fire services are already provided to the subject property and will continue to be provided. In this regard, the Board finds that the credible and persuasive evidence in the record demonstrates that the subject property can be served with onsite water, sewer and stormwater facilities. Application Exhibits 42, 43, 36, 37 respectively. And the Board finds

that the subject property can be served with sheriff and fire services. The Board rejects the opponents' claims and evidence to the contrary as less credible and less persuasive than the applicant's evidence.

The Board further notes that the subject property is located immediately adjacent to other aviation-oriented TTF operations within the airport boundary and an adjacent rotorcraft-oriented business (HTS) that are presently not connected to urban services other than the existing HDSE wastewater system that serves multiple Aurora State Airport parcels and that is still performing at well below capacity. While the proposal need not connect to that system, this decision grants land use approval to do so if HDSE (or Columbia Helicopters) receive appropriate land use and DEQ approvals to do so.

While the policy does not apply as a mandatory standard, regardless, the Board finds that the proposal is consistent with this policy.

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 Board observes that the subject property is planned in the County's acknowledged Comprehensive Plan as a site appropriate for airport development in private ownership. The proposal requests approval to provide on-site services for water, sewer and stormwater management for that use of the site consistent with that Plan designation of appropriate uses. The proposed facilities and services are oriented to and limited to serving the proposed airport uses on the subject property that will be within the proposed expanded airport boundary only. The Board finds that it is feasible to develop each of these services on-site. Additionally, as noted throughout this approval, the application seeks approval to connect to the existing HDSE wastewater system located entirely within the Aurora State Airport boundary or to the Columbia Helicopters drainfield which is located adjacent to the airport boundary, only if but if other necessary land use and DEQ permits are obtained for those facilities to do so. Doing so will not encourage development inconsistent with the existing airport uses at the airport and adjacent properties in airport-related uses, nor will it encourage any development on surrounding farm uses on other properties, all of which are located on the east side of Airport Road. Consequently, the proposal will not encourage development inconsistent with maintaining the rural density and character of the area and will not promote the increased development on other rural properties. This policy does not apply, but regardless, the proposal is consistent with this policy.

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.

The Board finds that the applicant established that onsite services are feasible, and that there is also the potential for alternative wastewater options within the Aurora Airport

boundary. No public facilities are required, and the private systems would not be incongruous with rural character of the area. Services scaled to meet the requirements of the proposed airport uses within the expanded airport boundary will not require exceeding the rural densities specified in the MCCP. The proposal is consistent with this policy.

Air, Rail, Water, Energy and Pipeline Transportation Policies

17. The proposal is consistent with the County Plan's Air, Rail, Water, Energy and Pipeline Transportation Policies.

1. Airports and airstrips shall be located in areas that are safe for air operations and should be compatible with surrounding uses.

As explained in these findings, the Board finds that the proposal here meets the safety requirement. The proposal would expand the Aurora Airport boundary to encompass the subject parcel, which is itself designated within the Aurora Airport master plan as appropriate for airport uses. The southern adjacent parcel accommodates takeoff and landing of helicopters, and the north and western parcels contain hangers with aircraft that utilize the Airports runway. The parcel is within an area that has proven to be safe for air operations and is compatible with the surrounding uses.

The helicopter-based operations at the HTS and Columbia Helicopters properties and other evidence in the record that the Board has earlier in these findings determined to be the most credible and persuasive evidence, demonstrates that rotorcraft can safely take off, land and operate near the Aurora State Airport fixed-wing airplane operations as well as with the surrounding agricultural lands. The fixed-wing airplane operations at the surrounding TTF operations and ODAV-owned parts of the airport demonstrate that the area is safe for fixed-wing operations and are compatible with surrounding uses.

While unnecessary to establish under the second, the Board also finds that for all the reasons explained in these findings, that the range of proposed airport uses is compatible with the surrounding uses – both at the airport and on agricultural land. The Board finds that the proposal is consistent with this policy.

2. The County should review and take appropriate actions to adopt State master plans for public airports in Marion County.

The Board finds that it has reviewed and taken appropriate actions to adopt the 1976 Aurora Airport Master Plan into the County Comprehensive Plan. The Board finds that the proposal is consistent with Aurora Airport Master Plan of 1976 which, as noted, is adopted into the acknowledged County's Comprehensive Plan and is therefore itself acknowledged. The subject property is specifically designated as acceptable for airport related development under private ownership. The Board finds that the proposal is consistent with this policy.

3. The County will adopt appropriate provisions (including plans, ordinances and intergovernmental agreements) to protect the public airports from incompatible structures and uses. These provisions will be consistent with Federal Aviation Administration guidelines.

This policy does not apply as a mandatory standard for development on individual property but rather is a directive to the County concerning the adoption of rules to protect public use airports. The Board finds that the relevant "appropriate provisions" that the County is required to adopt by this policy have been adopted as required already, and are found within the MCC 17.177 Airport Overlay zone. The subject property falls within the Horizontal Surface District of the Aurora State Airport. A demonstration of compliance with the AO zone requirements is provided above and is herein incorporated. This provision does not apply to approval of the proposal but regardless, the Board finds that the proposal is consistent with this policy.

4. The County will discourage noise-sensitive uses from locating in close proximity to public airports.

The proposed expansion would be within the Aurora State Airport's Ldn 55-65 dBA noise contour, and the aircraft uses on the property would be compatible with those noise levels. The proposal is consistent with this policy.

Transportation System Management Policies

18. The proposal must be consistent with the County Plan's Transportation System Management Policies. The purpose of Transportation System Management (TSM) strategies is to maximize the capacity, safety, and efficiency of the existing transportation system through the application of traffic control improvements, access management, and land use controls. The relevant policies related to access management are addressed below.

7. Land use changes that could result in increased development levels and thus higher traffic levels will be assessed for their impact to current and future traffic volume and flow, and these impacts must be appropriately mitigated (as determined by the Public Works Director in accordance with applicable standards and practices) in order for the development to be allowed.

The Board interprets this policy as not being an approval standard, but rather a directive for how the County should proceed before approving development. The Applicant has submitted a TIA (Application Exhibit 39), its March 5, 2025 supplement and other supporting evidence and analysis that demonstrates the potential traffic impacts that will flow from the proposal and also proposed appropriate mitigation enabling the County to adequately assess potential negative impacts and mitigate for those impacts. The proposal is consistent with this policy.

Development and Access Policies

19. The proposal is consistent with the County Plan's Development and Access policies

Policy 7. To prevent exceeding the function and capacity of any component of the transportation system, the County will consider roadway functional classification, capacity and current conditions as primary criteria for proposed changes in land use designations and proposed land use developments. In addition, present and anticipated safety issues shall also be significant criteria.

Applicant submitted a Traffic Impact Analysis and supplement in which the roadway classifications are adequately addressed. That evidence and analysis also considers present and anticipated safety issues to be used in the County's consideration of potential traffic impacts from the proposed airport boundary expansion and airport uses. The proposal is consistent with this policy.

Policy 8. The County shall review land use actions, development proposals and large transportation projects in the region for impacts to the transportation system and facilities. If the impacts are deemed significant by the County and cannot be mitigated to the County's satisfaction, the action shall be denied or modified until the impacts are acceptable. The County shall also consider the impact these actions have on affected communities and urban areas.

The County has reviewed this land use action for impacts to transportation facilities. The Board finds that the 2024 TIA and its supplement submitted by the applicant demonstrates that the proposal does not have transportation impacts that the County deems to be significant. The 2024 TIA recommended appropriate transportation systems mitigation and those recommendations are adopted herein and required as conditions of approval. The proposal is consistent with this policy.

Policy 9. Access to developments must be from roadways with appropriate functional classifications and improved to appropriate standards. (Table 10-3 in the RTSP shows the maximum trip generation for new or expanded developments based on the functional classification and character of the roadway from which it gains access.)

The subject property will take access from Airport Road NE and Stenbock Way NE. Airport Road NE is a major collector road. Table 10-3 of the RTSP indicates that Airport Road has the capacity for an additional 3,000 trips per day. The DKS TIA demonstrates that the proposal will generate far less than 3,000 daily trips and that none of the three access points to Airport Road from the subject property trigger turn warrants (Application Exhibit 39). All access points will operate consistently with the functional classification of Airport Road. The Board finds that the credible and persuasive evidence in the record demonstrates that the proposal will not exceed the trip generation level indicated in Table 10-3. The proposal is consistent with this policy.

Policy 10. (A) The number of access points on arterial and major collector roadways shall be kept to a minimum to reduce the interruption to traffic flow and to promote

safety. All new or expanded-use accesses must meet the access management standards in the RTSP (see Section 10.1.3).

The obligation to minimize access points is not an approval criterion, rather the controlling criteria is the access management standards. The County will ensure that the Applicant complies with access management standards through the County's access management site review process. Applicant's site plan, 2024 TIA and its March 5, 2025 supplement, and related analyses demonstrate that compliance with the County's access management standards is feasible for the proposed uses on the subject property. The proposal is consistent with this policy.

Policy 25. All new developments shall be reviewed to ensure that they have an adequate storm water system. Specific requirements can be found in Marion County's Engineering Standards (or subsequent document).

Applicant submitted an engineer's report prepared by an expert that the Board finds to be credible and persuasive demonstrating the proposal can feasibly establish an adequate and compliance stormwater system that meets the County's engineering standards. Ultimate approval of that system will be given by Marion County Public Works and DEQ (Application Exhibit 36). The proposal is consistent with this policy.

Right-of-Way Policies

20. The proposal is consistent with the County Plan's right-of-way policies.

Policy 2. New transportation facilities of all types should use existing rights-of-way to the extent possible to minimize disruption to existing land use.

The Board finds that the proposed airport land use boundary expansion and accompanying airport related uses is not the type of transportation facility that is proposed to be nor would typically be situated in rights-of-way. The proposal is for an aircraft transportation facility that will only utilize existing rights-of-way for access and egress onto the subject property. The Board finds based upon the credible and persuasive evidence in the record to include the 2024 TIA and its March 5, 2025 supplement, that access to the parcel will not result in significant disruption to existing land use in the area. The Board finds that the proposal is consistent with this policy.

Marion County Economic Development Goals

21. The proposal is consistent with Marion County Economic Development Goals. Marion County's major economic goals are:

a. Provision of increased employment opportunities for all residents of the County;

The findings concerning Goal 9 above are herein incorporated. The proposed airport expansion and airport uses will provide increased employment opportunities in

several respects. The construction related to building the airport uses will require the employment of skilled workers during the period of development. The services provided at the airport uses will provide a range of employment opportunities for white collar, skilled and unskilled workers. Some opportunities may be transplant positions from services offered elsewhere, but services related to expanded operations and services related to the eVTOL and other electric-powered aircraft services will require the creation of new employment opportunities as will any expansion provided to companies such as Columbia Helicopters or LifeFlight that are seeking potential locations for expansion. Also, as the ODAV 2014 economic analysis in the record demonstrates, aviation-based activity creates economic opportunities in the area immediately around the activity as well as the greater region. Application Exhibit 46. ODAV's 2021 economic analysis for the Airport showed similar economic benefits (Application Exhibit 47 page 1 of 19). The Board finds that the proposed airport uses to be developed in the expanded airport property will increase employment opportunities in the County. The proposal is consistent with this policy.

b. Maintenance of a strong agricultural economy;

As noted above, the proposal does not remove any land that is presently in agricultural use. Accordingly, the Board finds that continuing to use the subject property for nonfarm uses has no effect on the maintenance of the agricultural economy. The Board also notes that the subject property has not been in agricultural use for well over 50 years. Furthermore, the subject property is significantly smaller than the state-mandated 80-acre minimum parcel size for farm use, and as explained in the expert credible testimony of Jason Montecucco, the subject property is not suitable for commercial agricultural use that would add much to the agricultural economy. The Board also notes that the proposal has met the conditional use criteria, that includes the farm impacts test, from ORS 215.296 that is implemented by in MCC 17.136.060(A) and will not undermine the maintenance of a strong agricultural economy for that reason as well. Neighboring agricultural operations may now, and in the future are likely to, utilize electric takeoff and landing vehicles in their operations. The proximate location of the proposed vertical takeoff and landing aircraft facility where such aircraft can be hangered/stored for lease to farmers, will enable neighboring agricultural operations easy access to such aircraft that they are otherwise unable to afford to own or lack storage capacity or maintenance expertise. The proposed facility could serve as a leasing hub for aircraft such as large agricultural drones. The Board finds that these facets of the proposal establish that the proposal can contribute to the maintenance of the agricultural economy and will not undermine it. The proposal is consistent with this policy.

d. Diversification of the economic base of communities, and expansion of seasonal employment opportunities to year-round status wherever possible;

The proposal would allow for development of a site for the next-generation of eVTOLs and electric-powered fixed-wing aircraft. This diversification of aerial vehicles will create a diversification of job opportunities at the Aurora Airport as well as for the County as a whole. The Aurora Airport is well-known to be a significant source of tax, wage and direct and indirect tourist and other spending revenue for Marion County and the

immediately surrounding communities. However, the Airport does not currently have the capability to serve electric aircraft. The proposal enables the airport to diversify to include electric aircraft facilities served by the proposed hydrogen electricity source that otherwise does not exist at the airport. The job opportunities provided by the proposal include year-round opportunities for aviation related jobs. The proposal is consistent with this policy.

f. Development of a transportation system for the safe and efficient movement of persons and goods for present needs;

The County acknowledged plan, per the terms of the 1976 Aurora Airport Master Plan, establishes the need for growth in helicopter operations. The applicant submitted letters from potential users of the proposed facilities for traditional rotorcraft operations for the safe and efficient movement of persons and goods. Application Exhibit 26, and Application Exhibit 27. Further the proposal will support the present need for an eVTOL site which is not currently available in Oregon or at the Aurora Airport.

The Board finds that there is an unmet need for facilities for electric aircraft, in particular eVTOL aircraft, which are expected to in the near future provide for the safe and efficient movement of people and goods. *See*, e.g., Exhibit 7 (Draft Master Plan Update); Applicant's Post Hearing Submittal Exhibit 6, Exhibit 52 (Aurora State Airport constrained Operations Runway Justification Study); Exhibit 53 (TransportUp, "Oregon will use up to 126 Jump eVTOL aircraft for emergency response"); Exhibit 54 (Flying Magazine, "More than 100 Electric Aircraft for First Responders May be Headed to Oregon"); Exhibit 51 (FAA, "Advanced Air Mobility (AAM) Implementation Plan, July 2023); Exhibit 56 (Deloitte, "Advanced Air Mobility: Can the United States afford to lose the race?"); Exhibit 57 (Aviation International News, "Textron eAviation Shows Off FAA-Approved Velis, Works on Nexus eVTOL"); *and see* Exhibit 63.

There are currently no facilities at the Aurora State Airport or other airports that can provide power to or maintain eVTOLs and electric-powered fixed-wing aircraft, technologies that will be rolling out over the next several years (Application Exhibit 51, FAA, AAM-I28 Implementation Plan). The evidence indicates that eVTOLs will be hitting the market by 2025, and there is a hard need for facilities and pilot studies by 2028), and see Letters from ODAV Sugahara (stating he supports the proposal recognizes it enables Oregon to not fall behind on the emerging electric aircraft program). See, Applicant April 10, 2025 Exhibit 4, Utah Aviation Director letter at Applicant Post Hearing Submittal, Exhibit 10, Chehalis-Centralia Airport Director letter at Applicant Post Hearing Submittal Exhibit 11.

The planning and development of public facilities to address the growing demand for the proposed airport uses has not been met and is largely being left to the private sector to address. (Exhibit 58 ODAV, Aurora State Airport Assessment Report, December 2018, p. 42-43) The proposed airport uses within an expanded airport boundary is consistent with this approach of allowing the private sector to address pressing needs and addresses a need identified by existing commercial rotorcraft operations and particularly with respect to the recent rapid development in eVTOL technology.

The proposal is consistent with this policy.

g. Coordination of planning and development of public facilities;

No public facilities are proposed on the property. However, the proposal is for a public facility in the sense that it is for the expansion of a public use airport. The Aurora Airport master plan indicates that the subject property is appropriate for airport related uses in private ownership. The proposal is for an airport related use in private ownership. The record demonstrates that public airport facilities are not being developed to sufficiently meet the growing demand for airport uses and more specifically eVTOL uses. The proposed expansion of the airport boundary, and establishment of airport uses, would allow the private sector to meet some of the demand for electric aircraft. Through the land use planning process, interested parties at the state and local level can be and have been involved in the planning and development of this property that is designated on the County's acknowledged Comprehensive Plan as an appropriate site for airport related uses in private ownership. The proposal is consistent with this policy.

Energy Policies

22. The proposal is consistent with the county Plan Energy Policies.

Policy 1. Future development should progress in the most energy efficient manner possible.
d. Development should progress in an orderly manner. It is more energy efficient to develop adjacent vacant lands rather than to allow continued "leap frog" development patterns.

The proposal is to expand the boundary of the Aurora Airport to provide a new electric aircraft use. As this policy specifies, it is more energy efficient to develop the subject vacant adjacent land to the existing airport rather than to "leapfrog" development of such use elsewhere.

The County's acknowledged Comprehensive Plan includes the Aurora Airport 1976 Master Plan that identifies the subject property as suitable for airport related uses under private ownership. As this policy recognizes, development of the subject property to include it in the airport boundary and to develop the proposed airport uses is a more energy efficient approach to developing this vacant land versus any proposal to develop similar airport uses on some other vacant rural land located away from existing development. The "orderly manner" component of the policy is satisfied by the fact that the subject property has been identified in the relevant acknowledged airport master plan, as suitable to support aviation-based activities. The proposal is consistent with this policy.

Urban Growth Policies

23. The Board finds that the Urban Growth Policies are not relevant to this proposal

and do not provide approval criteria for the reasons provided in the paragraphs immediately below. As a precaution, the Board also adopts precautionary alternative findings for the Urban Growth Policies and concludes the proposal is consistent with the applicable Comprehensive Plan Urban Growth Policies.

Opponents have argued that the proposal must be consistent with the County's Urban Growth Policies. The Board finds that the Urban Growth Policies do not apply to the proposal, in large part, due to the fact that this application is an expansion of a public use airport, OAR 660-012-0065(3)(n) provides that expansions of public use airport that do not permit service to a larger class of airplanes are consistent with Goal 14, which these findings conclude, and the 1976 Master Plan and ALP incorporated into the Marion County Comprehensive Plan show the subject property to be "acceptable for airport related development under private ownership." Consequently, the proposal is consistent with the Goal 14 urbanization principles that the Urban Growth Policies are intended to promote.

Furthermore, the Board interprets the Urban Growth Policies to apply to development within urban growth boundaries. The introduction section to the Urban Growth Policies provides:

> *In defining urbanizable land areas with urban growth boundaries, it is necessary to provide implementation measures to effect their purpose. Urban growth policies can provide guidance in making the land use decisions that will direct the future of the urbanizable land areas. The mutual agreement of the cities and the County to these policies is vital to the effective coordination and cooperation necessary to implement each urban growth program. The following are urban growth policies that should guide the conversion of the urbanizable areas adjacent to each city to urban uses:*

The Board interprets the plain wording of the introduction statement to mean that the Urban Growth Policies are intended to apply to the development of uses within and expansion of urban growth boundaries and to govern the relationships between the County and cities for such expansions, not for expansions of public use airports deemed consistent with Goal 14. The express wording of the phrases "urbanizable land areas with urban growth boundaries," "direct the future of the urbanizable land area," "mutual agreement of the cities and the County," and "conversion of the urbanizable areas adjacent to each city to urban uses" supports this interpretation. The policies themselves reflect this intention. Because the application does not propose development within, or an expansion of, an urban growth boundary the policies are not relevant to the proposal and do not impose approval criteria.

However, because opponents have raised issues concerning the Urban Growth Policies, the Board adopts the following precautionary findings in the event a reviewing body may determine the Board's interpretation, that the Comprehensive Plan's Urban Growth Policies are not relevant to this proposal and do not provide approval criteria, is not plausible.

The Board adopts the following alternative findings for the Urban Growth Policies and concludes the proposal is consistent with the applicable Comprehensive Plan Urban Growth Policies.

Policy 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 proposal is consistent with Policy 1.

The subject property is not located within the urbanizable area of any city, consequently no city standards apply to the proposal. The Board finds that caselaw has held that airport uses constitute urban uses. The Board also finds that the 1976 Master Plan and ALP that is part of the acknowledged Comprehensive Plan have envisioned airport related development under private ownership for the subject property as part of future airport operations. The 1976 Acknowledged Airport Master Plan's site plan identified the subject property as in the "Airport Development" zone. The Board finds that this Airport Master Planning process is analogous to a city (the airport) and a UGB (areas identified for future growth) and that expansion of the airport to allow airport uses defined by OAR 660-013-0100 as airport uses, as requested here, is consistent with LCDC Goals and Policy 1.

Opponents argue that under this Policy, the City of Aurora has said that any expansion must be preceded by annexation. The Board finds that annexation of the Airport by the City of Aurora is not required by Policy 1. The Airport is not within the City of Aurora's urban growth boundary. Nothing in the policy or any other applicable regulations requires that the County recognize the City's long-term desire to expand its urban growth boundary to include the Aurora State Airport and/or the subject property. The Board finds that likewise, nothing in Policy 1 or other regulation provides that the County must wait to adopt an airport boundary map that includes the subject property until such time as the property is annexed to the City.

Policy 2. The provision of urban services and facilities should be in an orderly economic basis according to a phased growth plan.

The Board finds that the proposal is consistent with Policy 2.

The Board finds first that the proposal does not require any urban services or facilities and that none are proposed. Therefore, this is another reason this policy does not apply. Furthermore, the Board finds that the subject property will be served with on-site water and on-site septic services and the County sheriff will provide police services and finds that fire services will be provided by the same fire services provider that now serves the airport and surrounding area. To the extent that those are considered "urban services or facilities" the Board finds that they can be provided to the subject property for the proposed use in an orderly economic basis. The Board finds that the evidence in the

record demonstrates that water and septic services are feasible and can be provided on-site. The Board also finds that evidence in the record also demonstrates that electrical services, road improvements, police and firefighting services are already provided at the site and can be improved or facilitated in an orderly economic manner. This also includes evidence that supports the preliminary approval for the subject property to access other sewer facilities located within the airport or on other properties in airport related uses adjacent to the airport, should those properties receive the required land use approvals necessary to extend such services to the subject property. Evidence in the record demonstrates that the Aurora State Airport's firefighting water service is adequate to serve the proposed uses and can be extended to the site in an orderly economic basis, consistent with the Airport's vision for expanding the airport and airport related uses on specifically identified property, which includes the subject property.

Policy 3. Development of the urban area should proceed from its center outward.

The proposal is consistent with Policy 3.

As discussed in the introduction findings above, the proposed uses and expansion of the Aurora State Airport boundary map in the Comprehensive Plan can be seen as analogous to the growth of a city and development of its urban growth boundary. Here, the subject property is surrounded on two side by the airport boundary, and on a third side by airport related uses (the HTS property) that are not technically within the airport boundary, but are identified as suitable for airport related uses under the acknowledged existing 1976 Airport Master Plan. Expanding the comprehensive plan's airport boundary map to include the subject property is an in-fill expansion of the Aurora State Airport that proceeds from its center outward as required by Policy 3.

Opponents have argued that the proposal lies "within a large block of agricultural land outside any UGB or City." The Board disagrees with that statement. The subject property is an isolated block of agricultural land surrounded on three sides with urban, airport related uses and separated by other agricultural land in the area by Airport Road, a rural major collector road, carrying significant traffic. While the property is outside any UGB or City, it is surrounded by airport uses that are very similar to the uses proposed and is on land that has always been intended to become part of the aviation related uses in the acknowledged Aurora State Airport Master Plan and ALP. The Board finds that the proposal reflects the planned growth of airport uses in such a way that is analogous to the urban uses reflected by Policy 3 and is therefore consistent with the policy.

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

The proposal is consistent with Policy 4.

The Board of Commissioners first finds that the proposal does not involve "extending" any "new services" to the site. The Board interprets the term "extending" to refer to enlarging the service area of existing services to include locations that were previously

unserviced. The Board finds that this does not describe the subject property. All services are already provided to the site – police, fire, electricity, already exist and are existing services that are not being extended at all. The Board further interprets this policy to favor the expansion of services to adjacent properties over extending services to un-serviced areas in a manner that promotes leap-frog development instead of incremental growth. As discussed above, evidence in the record demonstrates that all services will either be provided on site, are existing services provided to the site (for example police, fire and electricity) or are existing as part of the adjacent airport operations that can be expanded to the subject property if such services obtain land use permission to be extended. No services will be required to be extended from remote urban areas in a leap-frog manner to the proposed development. Consequently, the proposal is consistent with Policy 4.

Opponents argue the proposal requires extending new firefighting and sanitary sewer services. The Board disagrees. Evidence in the record demonstrates that fire and police services are existing and already serve the subject property and they are adequate for the proposed use. Evidence in the record also supports the conclusion that there are several feasible on-site sanitary sewer solutions for the proposed use. That there are also possible off-site solutions that involve expanding sewer systems on adjacent properties that operate as part of or in conjunction with airport operations does not mean that on-site solutions are not feasible. Also, the Board rejects any suggestion that Policy 4 requires an alternative site analysis or comparison with other locations.

Policy 5. Divisions of urbanizable land shall consider the maximum utility of the land resource and enable the logical and efficient extension of services to such parcels.

Policy 5 is not relevant to the proposal. The applications do not propose dividing the subject property.

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 proposal is consistent with Policy 6.

The Board finds that Policy 6 expressly applies a "general" policy which is not mandatory but rather aspirational. While it is the case that cities are "generally" the most logical provides of urban services, the policy recognizes that there are other areas that have what can be seen as urban services. The airport is one such area. The proposal requests expansion of the Comprehensive Plan's airport boundary map. Any expansion of existing airport-located services within the expanded airport boundary map is consistent with Policy 6. This decision authorizes, for the subject property, the extension of such services should the property owners where those services are located obtain the necessary

land use approvals to extend those services. As discussed in these findings, this decision does not authorize expansion of those services. The Board also finds, consistent with Policy 6, that no new urban services are required to be extended beyond an urban growth boundary to the subject property for the proposed uses.

Policy 7. Urban densities shall be established only within recognized urban growth boundaries unless an exception to Goal 14 (Urbanization) is obtained.

The Board finds that Policy 7 is not relevant to the proposal.

As discussed in the introduction, rural public use airports are a unique use in that specific urban uses on rural land are permitted and state and local land use regulations govern how they may be expanded. This legal framework operates outside the traditional cities – UGB framework where urban uses are intended to be located, as well as the land use framework that allows urban uses on rural land only if an exception to Goal 14 is obtained, which is reflected in Policy 7. Here, the applicant has demonstrated that it complies with the requirements for expanding a public use airport such that OAR 660-012-0065(3)(n) applies. That rule provides that such expansions of public use airports are consistent with Goal 14, therefore no exception to Goal 14 is required to allow the proposed airport uses and expansion of the airport boundary.

Policy 8. The majority of the projected population increases in Marion County should be directed to the urban areas.

Policy 8 is not relevant to the proposal. The proposal does not include any proposed residential development, which is how population projections are measured.

Policy 9. Sufficient developable land shall be made available to provide choices in the marketplace.

The proposal is consistent with Policy 9.

The application proposes to make available additional developable land to meet the need for aviation uses as demonstrated by the application materials, which ODAV has confirmed includes the economic and forecast information required by OAR 660-013-0040(9). The proposal will provide choices in the greater local and regional area for locating aviation uses consistent with this policy.

Policy 10. The annexation of rural lands into the legal boundary of any city shall be limited to the area contained within the mutually adopted urban growth boundary. Exceptions to this prohibition may be allowed as follows: [list follows].

Policy 10 is not relevant to the proposal. The applications do not propose annexing rural lands into the legal boundary of any city.

Policy 11. Any city proposing to annex rural lands located outside of an urban growth boundary into a city limits shall carry the burden of proving compliance with the applicable goals and policies of the Marion County Comprehensive Plan, the city's comprehensive plan, the urban growth boundary and policy agreement or urban growth boundary coordination agreement and State statute and administrative rules.

Policy 11 is not relevant to the proposal. A city is not proposing to annex land under the proposal.

Policy 12. An updated intergovernmental agreement between the County and a city that is consistent with the Urban Growth Policies may be required when a city goes through periodic review or updates its comprehensive plan where County concurrence is necessary.

Proposal 12 is not relevant to the proposal. The proposal is unrelated to a city going through periodic review or a city comprehensive plan update that requires County concurrence.

24. The Board finds that the applicant has demonstrated that the proposal is consistent with all applicable policies of the Marion County Comprehensive Plan.

Airport Planning Rule (OAR 660-013-0010 through OAR 660-013-0160)

25. The airport planning rule set forth under OAR Chapter 660 division 13 provides several planning requirements for the County with respect to the planning and development of airports. While the County has completed the initial requirements for the Aurora State Airport, and consistent with ORS 836.640 and 642, the rule provides requirements for expansion of airport boundaries such as the proposal here. The Court of Appeals in *Schaefer v. Marion County*, 318 Or App 617 (2022) explained the requirements for expanding an airport land use boundary under the airport planning rule and the proposal is consistent with the court's directives. The findings below address the requirements of the Airport Planning Rule.

26. *OAR 660-013-0010 Purpose and Policy*

(1) This division implements ORS 836.600 through 836.630 and Statewide Planning Goal 12 (Transportation). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules are intended to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses.

(2) Ensuring the vitality and continued operation of Oregon's system of airports is linked to the vitality of the local economy where the airports are located. This division recognizes the interdependence between transportation systems and the communities on which they depend.

The Board finds that the proposal is consistent with the stated purpose and policy of the airport planning rule. Airport vitality depends in large part upon airports remaining current and responsive to aeronautical innovation. The evidence in the record demonstrates that the proposed airport expansion will address present and near-future airport needs not only for more traditional rotorcraft facilities but also for electric aircraft facilities that will enable the Aurora Airport to maintain its vitality in the state's airport ecosystem. *See* ODAV Sugahara Letter, Applicant's April 10, 2025 Exhibit 4, Maas Utah Director Letter, Applicant's Post Hearing Submittal Exhibit 10, Chehalis-Centralia Airport Director Letter, Applicant's Post Hearing Submittal Exhibit 10.

Applicant has submitted evidence that the Board finds to be credible and persuasive demonstrating that aviation-related employment is a significant benefit to the County, provides above-average wage jobs and contributes significantly to the County's tax base. (Application Exhibit 46) Mr. O'Malley's March 5, 2025 letter explains that the proposal is "expected to generate approximately $341,840 in annual tax revenue (in 2025 dollars)" and explains that investments in "eVTOL infrastructure, including vertiports, could create tens of thousands of new jobs over the next decade." The Board finds Mr. O'Malley's testimony to be credible and persuasive and agrees with it. The Board finds that many jobs are expected to result from the proposed airport expansion and proposed airport uses.

The Board finds that credible and persuasive evidence in the record supports the Board's conclusion that the proposed airport rotorcraft uses can be operated in a safe manner in conjunction with the Aurora State Airport runway through the use of flight paths for rotorcraft taking off and landing from the subject property that do not interfere with airport operations, similar to the existing Columbia Helicopters, HTS and LifeFlight operations. Further, the proposed fixed-wing aircraft access to the airport from the proposed development on the subject property is similar to the other safe TTF operations at the airport. Further, the Board finds that the credible and persuasive evidence in the record demonstrates that the proposal is consistent with adopted County land use plans and state level aviation planning. In addition to the Aurora State Airport AMP and ALP discussed above, the Oregon Aviation Plan v 6.0 identifies the Aurora State Airport as one of the busiest airports in Oregon. Application Exhibit 22 (page 19) (Oregon Aviation Plan v. 6.0 (excerpt - Introduction)). The proposal is consistent with the Oregon Aviation Plan's forecast for continued growth, particularly helicopter growth for the airport and anticipated introduction of new aviation technologies. Application Exhibit 22 (page 15) (discussing changes in the aviation industry and introduction of new technologies).

The Board again notes because it is relevant to this policy that the existing acknowledged County Comprehensive Plan includes the 1976 Airport Master Plan ALP that designates the subject property as suitable for airport-related uses on private property. The County expects the when the subject property is developed as proposed, that it will deliver exactly the electrical charging infrastructure and specific facilities for electric aircraft that the County and state aviation interests need – but lack – in necessary airport infrastructure.

The Board finds the evidence persuasive and credible that the proposed airport rotorcraft uses can be operated in a safe manner in conjunction with the Aurora State Airport runway using flight paths for rotorcraft taking off and landing from the subject property that do not interfere with any airport operations, similar to the existing Columbia Helicopters and HTS operations.

The Board finds that the proposed fixed-wing aircraft access to the airport is similar to the other safe through the fence operations at the airport. The evidence in the record demonstrates that the proposal is consistent with adopted County land use plans and state level aviation planning. In addition to the Aurora State Airport AMP and ALP discussed above, the Oregon Aviation Plan v 6.0 identifies the Aurora State Airport as one of the busiest airports in Oregon. The proposal is consistent with the Oregon Aviation Plan's forecast for continued growth, particularly helicopter growth for the airport and anticipated introduction of new aviation technologies (Application Exhibit 22).

The Board finds that the proposal is consistent with this purpose and policy statement.

27. *OAR 660-013-0020 Definitions (in relevant part)*

* * *

(1) "Airport" means the strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.

(2) "Aircraft" means helicopters and fixed-wing aircraft, but not hot air balloons or ultralights.

(3) "Airport Uses" means those uses described in OAR 660-013-0100.

(4) "Non-Towered Airport" means an airport without an existing or approved control tower on June 5, 1995.

The above definition for "aircraft" makes no reference to the power source of the aircraft, which means it includes piston-powered and electric powered rotorcraft and fixed wing fixed-wing aircraft such as the eVTOLS and electric-powered fixed-wing aircraft the proposal seeks to attract to the subject property. As the Court of Appeals explained, the current airport boundary includes the public and privately owned land shown on the 1976 ALP as the "ultimate airport property," which is the ODAV-owned property and the developed TTF area properties (*Schaefer*, 318 Or App at 620-21) & (Application Exhibit 5, 1976 Airport Layout Plan - insert "Ultimate Airport Property"). The subject property is situated where the ALP designates property as suitable for airport related uses under private ownership. *Id.* The subject property is also where the 1976 "Aurora State Airport Land Use Plan says is designated for "Airport Development". Application Exhibit 6, p 50. Because this Aurora State Airport Land Use Plan is an acknowledged part of the County Comprehensive Plan, it is relevant to demonstrating that the subject property is intended to

develop with "Airport Development". The proposal seeks to expand the airport boundary consistently with the 1976 Airport Master Plan, as well as the requirements in ORS 836.640 and 642 to include the subject property in the airport land use boundary and to allow for the proposed airport related uses so that rotorcraft can land and depart from the subject property and fixed wing aircraft will have access the Airport's runway. As discussed above, all of the proposed uses fall into those described in OAR 660-013-0100 as airport uses. Last, the *Schaefer* court concluded that the Aurora State Airport is a "non-towered airport" as that term is used by the rule which refers to a snapshot in time before the tower was established and despite the Aurora Airport currently having an ATC (*Schaefer,* 318 Or App at 625 n 8).

The proposal is consistent with these definitions.

28. *OAR 660-013-0030 Preparation and Coordination of Aviation Plans*

* * *

*(2) A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. * * *. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.*

Consistent with OAR 660-013-0030(2), Marion County has already adopted comprehensive plan and land use requirements for the Aurora Airport and the airspace at issue consistent with the airport planning rule and ORS 836.600 through 836.630. Those standards from, in part, the AO approval criteria for this application. The County has also adopted the 1976 Aurora Airport Master Plan as a part of the County's own comprehensive plan which governs compatible uses of the subject property visa vi the airport. Neither need to be adjusted to accommodate the proposal. The proposal is consistent with this provision.

29. *OAR 660-013-0040 Aviation Facility Planning Requirements*

A local government shall adopt comprehensive plan and land use regulation requirements for each state or local aviation facility subject to the requirements of ORS 836.610(1). Planning requirements for airports identified in ORS 836.610(1) shall include:

(1) A map, adopted by the local government, showing the location of the airport boundary. The airport boundary shall include the following areas, but does not necessarily include all land within the airport ownership:

(a) Existing and planned runways, taxiways, aircraft storage (excluding aircraft storage accessory to residential airpark type development), maintenance, sales, and repair facilities;

(b) Areas needed for existing and planned airport operations; and

(c) Areas at non-towered airports needed for existing and planned airport uses that:

(A) Require a location on or adjacent to the airport property;

(B) Are compatible with existing and planned land uses surrounding the airport; and

(C) Are otherwise consistent with provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(d) "Compatible," as used in this rule, is not intended as an absolute term meaning no interference or adverse impacts of any type with surrounding land uses.

(2) A map or description of the location of existing and planned runways, taxiways, aprons, tiedown areas, and navigational aids;

(3) A map or description of the general location of existing and planned buildings and facilities;

(4) A projection of aeronautical facility and service needs;

(5) Provisions for airport uses not currently located at the airport or expansion of existing airport uses:

(a) Based on the projected needs for such uses over the planning period;

(b) Based on economic and use forecasts supported by market data;

(c) When such uses can be supported by adequate types and levels of public facilities and services and transportation facilities or systems authorized by applicable statewide planning goals;

(d) When such uses can be sited in a manner that does not create a hazard for aircraft operations; and

(e) When the uses can be sited in a manner that is:

(A) Compatible with existing and planned land uses surrounding the airport; and

(B) Consistent with applicable provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.

(6) When compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600.

(7) A description of the types and levels of public facilities and services necessary to support development located at or planned for the airport including transportation facilities and services. Provision of public facilities and services and transportation facilities or systems shall be consistent with applicable state and local planning requirements.

(8) Maps delineating the location of safety zones, compatibility zones, and existing noise impact boundaries that are identified pursuant to OAR 340, division 35.

(9) Local government shall request the airport sponsor to provide the economic and use forecast information required by this rule. The economic and use forecast information submitted by the sponsor shall be subject to local government review, modification and approval as part of the planning process outlined in this rule. Where the sponsor declines to provide such information, the local government may limit the airport boundary to areas currently devoted to airport uses described in OAR 660-013-0100.

Because this proposal is for an expansion of the airport boundary to allow airport uses, many of the materials required by this standard already exist to a large extent, such as the existing and planned airport facilities within the present airport boundary and will be referred to in the following responses. Per (9) of the above rule, the airport sponsor, ODAV, confirmed that the economic and use forecast information used was the most current economic and use forecast information as required by the rule, which is to be found in the draft 2024-25 Aurora Airport Master Plan, which draft is in the record. *See* Applicant's Post Hearing, Hearing Officer Submittal Exhibit 5 (Oregon State Airports Manager Tony Beach stating "the economic and forecast information in the recent UAO draft master plan is the most up to date.)

The Oregon Court of Appeals in *Schaefer v. Marion County* held that "an expansion of a public use airport occurs when, pursuant to OAR chapter 660, division 13, a local government adopts a map showing an airport boundary that includes a larger area than the boundary shown on the previously adopted map of the airport." 318 Or App at 619-20.

The airport boundary map cited in the quote is the map identified under OAR 660-013-0040(1).

The Board finds that the evidence in the record includes maps showing both the present airport boundary, consistent with the Court of Appeals description of the Aurora State Airport boundary, as well as the proposed expanded airport boundary to include the subject property. (Proposed Airport Boundary Map, updated version presented at the March 6, 2025 hearing). The map shows the areas that are proposed to be used for all of the facilities, structures and uses identified at OAR 660-013-0040(1)(a) through (c). Other maps, discussed below, identify the existing and planned facilities and structures.

The Board in this decision herein adopts the submitted Exhibit 1A airport boundary map submitted for the March 6, 2025 hearing and incorporate it into the Marion County Comprehensive Plan as part of the Transportation Plan to supplement the other adopted Aurora State Airport documents that are already a part of the County's Comprehensive Plan.

The Board further finds that the record includes the proposal site plan that shows the proposed development on the vacant subject property, to include the planned rotorcraft takeoff and landing area, on-site taxiways, the connection to the adjacent taxiway to the Aurora State Airport's runway, aprons, tiedown areas, navigational aids, and planned buildings and facilities to include power stations for eVTOLs and electric-powered fixed-wing aircraft. *See* Exhibit 1 submitted for the March 6, 2025 proceeding. The Board finds that this site plan, together with Exhibits 1B, 2, and 2A, fulfills the requirements of OAR 660-013-0040(2) and (3).

As with the airport boundary map, the Board herein adopts and incorporates these plans at Exhibit 1 as updated at the March 6, 2025 hearing, into the Comprehensive Plan. These plans, along with the expanded airport boundary map, will supplement the existing Aurora State Airport Master Plan and ALP already incorporated into the Comprehensive Plan, to give a full planning picture of the development of the Airport.

OAR 660-013-0040(4) requires a projection of aeronautical facility and service needs. Consistent with OAR 660-013-0040(9), as explained above, ODAV has advised that the information to be used for that projection is that which is contained in the current version of the current master plan update which is in the record at Application Exhibits 7-10 and also Applicant's Post Hearing Submittal Exhibit 6, and Unmarked Applicant Exhibit submitted 4.10.25 containing the most recent ODAV ALP, and see Applicant's Post Hearing Submittal Exhibit 5 (Oregon State Airports Manager Tony Beach stating "the economic and forecast information in the recent UAO [Aurora Airport] draft master plan is the most up to date." The Board rejects opponent's claim that the necessary information has not been provided by ODAV.

The Oregon Department of Aviation Director provided a letter in support of the proposal to include advising that it helps the state to meet a state aviation need. Applicant also supplemented the information from ODAV with additional market-based evidence regarding aeronautical facility and service needs that will arise within the next 5 years and continue to grow throughout the planning period for the Aurora State Airport that ends in 2041.

The ODAV supplied materials anticipate a growth in helicopter (rotorcraft) based aircraft and operations at the airport in the period between 2021 and 2041. (Hearings Officer Exhibit 7) The present draft ODAV airport planning at the airport focuses on the ODAV-owned property. The preliminary alternatives study of the landside needs at the Airport, prepared by ODAV, explains that, "Aurora State Airport is located on a constrained site and as such, it may not be possible to fully address every facility requirement." (Hearings Officer Exhibit 9). None of the three landside alternatives that ODAV considered by ODAV show any meaningful amount of additional helicopter facilities.

To supplement ODAV's analysis, Applicant submitted letters from Columbia Helicopter and Life Flight that express interest in expanding their operations to the subject property to serve their demand for more facilities to accommodate rotorcraft operations (Application Exhibits 26, 27).

Neither the ODAV economic and use forecast information nor the Draft AMP estimate the facility needs that will arise from emerging aeronautical technologies such as electric-powered fixed-wing aircraft and electric helicopter/eVTOL aircraft. FAA Advisory Circular (AC) 150/5070-6B Change 2 Airport Master Plans (1/27/2015) mandates that airport planners consider emerging trends and accommodate future demand for evolving technologies in the aviation industry (Application Exhibit 55). The materials submitted by the Applicant, as well as ODAV Director's letter, demonstrate that electric-powered aircraft are a reality and that new eVTOL aircraft will be increasingly entering the market between 2025 and 2028, and are anticipated to become mainstream by 2030, with extensive growth thereafter (Application Exhibits 51, 53 and 63). Experts believe that AAM represents the next inflection point in the aerospace industry, potentially bringing air transportation to the individual commuter level (Exhibit 56, Deloitte - Advanced Air Mobility – Can the United States afford to lose the race?).

The Board finds that credible and persuasive evidence in the record demonstrates that the aeronautical and service needs at the Aurora State Airport continue to grow and evolve, and that there is a particular need for increased rotorcraft facilities and facilities to provide power to and maintain and repair the burgeoning electric aircraft market, both fixed-wing aircraft and electric helicopter/eVTOLs. Furthermore, to maximize meeting identified existing and near-future needs, the application is seeking approval for full development of the site with the proposed airport uses. The proposal is consistent with OAR 660-013-0040(4).

Within the proposed expanded airport boundary, Applicant proposes providing airport uses and facilities either not currently located at the airport or projected as needed that cannot be met within the existing airport boundary within the planning period (OAR 660-013-0040(5)). The proposed airport uses and facilities concentrate on providing facilities for present and near-future rotorcraft needs and eVTOL and electric airplane needs, which will grow in the coming years. To address these needs, the proposal includes charging stations for eVTOLs and electric fixed-wing aircraft as well as on-site capacity to

address peak demand periods for electricity, a landing pad for eVTOLs and other rotorcraft, tiedown areas and hangar areas for all types of aircraft and operations and maintenance facilities for aircraft on the subject property (OAR 660-013-0040(5)(a) and (b)).

The Board finds that the credible and persuasive evidence establishes that the proposed uses can be supported by adequate types and levels of public facilities and services, to include transportation facilities, consistent with applicable statewide planning goals (Application Exhibits 36, 37, 39, 42, 43) OAR 660-013-0040(5)(c).

The Board finds that the evidence in the record and the analysis and findings provided under the conditional use standards demonstrate that proposed rotorcraft or fixed-wing aircraft operations on the subject property will not create a hazard for existing aircraft operations at the Airport. The ODAV and FAA review and approval of proposed operations from the subject property will confirm that this air traffic safety requirement is met before any operations take place (OAR 660-013-0040(5)(d)).

The Board finds that the findings for the conditional use standards above as well as the additional findings of compliance with comprehensive plan, Statewide Planning Goals and other applicable land use regulations demonstrate that the proposal is compatible with existing and planned uses surrounding the airport expansion and is consistent with other applicable land use regulations (OAR 660-013-0040(5)(e)).

The analysis provided under the conditional use standards above demonstrates that there are no unaddressed compatibility issues. Compatibility concerns that were raised during the proceedings, like noise, and inciting terrorist activity have been adequately and thoroughly addressed in these findings.

The proposal can and will operate within the 65 Ldn noise contour under which the Snyders built their home and the Board finds that the Snyder home will be well within appropriate noise levels for the proposal being outside of even the subject property's the 55 dBL noise contour. The Board further rejects as lacking credibility the opponents' claim that the proposal will incite terrorists or otherwise be unsafe. The Board finds that the proposal is merely the addition of airport related uses of the type that the County plan has envisioned for the subject property since 1976 from the adoption and DLCD's acknowledgement of the Aurora Airport 1976 Airport Master Plan and in ORS 836.640-642 for this very airport. The Board finds that there are no other conditions required than those that are already imposed in this decision that are necessary to minimize or eliminate any incompatibility because the Board finds that there are no impacts or incompatibilities to further minimize and there are none to eliminate.

The application materials identify and describe the types and levels of public facilities and services needed for the proposed airport expansion and airport uses as required by subsection (7). (Exhibits 40, 41, 45 and 46) These application materials demonstrate that such facilities and services are feasible and such systems are consistent with applicable state and local planning requirements.

The Board finds that the record includes a properly prepared imaginary surfaces diagram delineating the location of safety zones and compatibility zones for the rotorcraft takeoff and landing pad located on the subject property, pursuant to OAR chapter 340, division 35, as required by subsection (8). Application Exhibit 1; *see also* Application Exhibit 61 (Exhibits for OAR Chapter 660 division 13 Airport Zone Standards (diagrams showing overlay zones)). A condition of approval requires Applicant to submit to the County a clean copy of that diagram. Applicant has also prepared and submitted a noise impact boundaries map consistent with the DEQ rule as part of the submitted Noise Study (Application Exhibit 35). As conditioned below, the Applicant is required to provide the County a DEQ approved Noise Impact Boundary Diagram, and if required by the DEQ, an approved Airport Noise Abatement Program.

As noted above, consistent with subsection (9), the Board finds that the applicant has requested and received from ODAV, as the Aurora State Airport sponsor, economic and use forecast information as required by the Airport Planning Rule and as Applicant's Post Hearting Submittal Exhibit 5 demonstrates, that information is contained in the draft master plan update that is in the record (contained in the current version of the current master plan update which is in the record at Application Exhibits 7-10 and also Applicant's Post Hearing Submittal Exhibit 6, and Unmarked Applicant Exhibit submitted 4.10.25 containing the most recent ODAV ALP), and well as the ODAV Director's Letter in the record at Applicant's April 10, 2025 Exhibit 4.

The proposal is consistent with this standard.

30. *OAR 660-013-0050 Implementation of Local Airport Planning*

A local government with planning responsibility for one or more airports or areas within safety zones or compatibility zones described in this division or subject to requirements identified in ORS 836.608 shall adopt land use regulations to carry out the requirements of this division, or applicable requirements of ORS 836.608, consistent with the applicable elements of the adopted state ASP and applicable statewide planning requirements.

The Board finds that Marion County has adopted land use regulations to carry out the identified state and administrative rule requirements that are consistent with the adopted state ASP and applicable statewide planning requirements. The County has adopted into its acknowledged Comprehensive Plan the 1976 Aurora Airport Master Plan which identifies the subject property for airport-related uses under private ownership on its ALP and identifies the subject property on the Aurora State Airport Land Use Plan as "Airport Development." (Exhibit 6, p 40 and 50). The County has already complied with this standard.

31. *OAR 660-013-0070 Local Government Safety Zones for Imaginary Surfaces*

(1) A local government shall adopt an Airport Safety Overlay Zone to promote aviation safety by prohibiting structures, trees, and other objects of natural growth from penetrating airport imaginary surfaces.

(a) The overlay zone for public use airports shall be based on Exhibit 1 incorporated herein by reference.

(b) The overlay zone for airports described in ORS 836.608(2) shall be based on Exhibit 2 incorporated herein by reference.

(c) The overlay zone for heliports shall be based on Exhibit 3 incorporated herein by reference.

(2) For areas in the safety overlay zone, but outside the approach and transition surface, where the terrain is at higher elevations than the airport runway surface such that existing structures and planned development exceed the height requirements of this rule, a local government may authorize structures up to 35 feet in height. A local government may adopt other height exceptions or approve a height variance when supported by the airport sponsor, the Oregon Department of Aviation, and the FAA.

Marion County has adopted the AO Airport Overlay zone consistent with OAR 660-013-0070 and applied it to the existing Aurora State Airport area. The evidence in the record and the findings above demonstrate that the proposal complies with those existing standards because any areas that would require the application of the AO Airport Overlay zone as a result of the proposed rotorcraft uses within the expanded airport boundary already have the AO Airport Overlay zone applied to them. The analysis demonstrating this in the findings for the AO Airport Overlay Zone standards above is herein incorporated. Applicant submitted a map for the proposed rotorcraft uses within the expanded airport boundary that complies with OAR 660-013-0070(1)(c) (Exhibit 2). No new properties will be required to have the AO Airport Overlay zone applied as a result of this application being approved. The proposal is consistent with this requirement. The surrounding terrain is relatively flat and does not present any context under which subsection (2) might apply.

32. *OAR 660-013-0080. Local Government Land Use Compatibility Requirements for Public Use Airports*

(1) A local government shall adopt airport compatibility requirements for each public use airport identified in ORS 836.610(1). The requirements shall:

(a) Prohibit new residential development and public assembly uses within the Runway Protection Zone (RPZ) identified in Exhibit 4;

(b) Limit the establishment of uses identified in Exhibit 5 within a noise impact boundary that has been identified pursuant to OAR 340, division 35 consistent with the levels identified in Exhibit 5;

(c) Prohibit the siting of new industrial uses and the expansion of existing industrial uses where either, as a part of regular operations, would cause emissions of smoke, dust, or steam that would obscure visibility within airport approach corridors;

(d) Limit outdoor lighting for new industrial, commercial, or recreational uses or the expansion of such uses to prevent light from projecting directly onto an existing runway or taxiway or into existing airport approach corridors except where necessary for safe and convenient air travel;

(e) Coordinate the review of all radio, radiotelephone, and television transmission facilities and electrical transmission lines with the Oregon Department of Aviation;

(f) Regulate water impoundments consistent with the requirements of ORS 836.623(2) through (6); and

(g) Prohibit the establishment of new landfills near airports, consistent with Department of Environmental Quality (DEQ) rules.

(2) A local government may adopt more stringent regulations than the minimum requirements in section (1)(a) through (e) and (g) based on the requirements of ORS 836.623(1).

Marion County has complied with the requirements of OAR 660-013-0080 through the adoption of MCC Chapter 17.177 Airport Overlay Zone, which addresses each of these requirements. Given that the subject property is adjacent to and will be incorporated into the Aurora State Airport Boundary, the AO overlay zone does not need to be applied to any new land within the County. Implementation of MCC Chapter 17.177 to applications proposing development in close proximity to the proposed rotorcraft take-off and landing pad within the expanded airport boundary will be based, in part, on the various relevant maps and diagrams submitted as part of this application proposal and approved by the County. As noted above, conditions of approval require the Applicant to submit a clean copy of the submitted imaginary surfaces diagram and, following DEQ approval, a copy of the Noise Impact Boundary Diagram and, if required, approved Noise Abatement Program. The proposal complies with this requirement.

33. *OAR 660-013-0100 Airport Uses at Non-Towered Airports*

Local government shall adopt land use regulations for areas within the airport boundary of non-towered airports identified in ORS 836.610(1) that authorize the following uses and activities:

(1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not

customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

(2) Emergency Medical Flight Services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. "Emergency Medical Flight Services" does not include hospitals, medical offices, medical labs, medical equipment sales, and similar uses.

(3) Law Enforcement and Firefighting Activities, including aircraft and ground based activities, facilities and accessory structures necessary to support federal, state or local law enforcement and land management agencies engaged in law enforcement or firefighting activities. These activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.

(4) Flight Instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. "Flight Instruction" does not include schools for flight attendants, ticket agents, or similar personnel.

(5) Aircraft Service, Maintenance and Training, including activities, facilities, and accessory structures provided to teach aircraft service and maintenance skills, maintain, service and repair aircraft and aircraft components, but not including activities, structures, and facilities for the manufacturing of aircraft for sale to the public or the manufacturing of aircraft related products for sale to the public. "Aircraft Service, Maintenance and Training" includes the construction of aircraft and aircraft components for personal use. The assembly of aircraft and aircraft components is allowed as part of servicing, maintaining, or repairing aircraft and aircraft components.

(6) Aircraft Rental, including activities, facilities, and accessory structures that support the provision of aircraft for rent or lease to the public.

(7) Aircraft Sales and the sale of aeronautic equipment and supplies, including activities, facilities, and accessory structures for the storage, display, demonstration and sale of aircraft and aeronautic equipment and supplies to the public.

(8) Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor. Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where

evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

(9) Crop Dusting Activities, including activities, facilities and structures accessory to crop dusting operations. These include, but are not limited to: aerial application of chemicals, seed, fertilizer, pesticide, defoliant and other activities and chemicals used in a commercial agricultural, forestry or rangeland management setting.

(10) Agricultural and Forestry Activities, including activities, facilities and accessory structures that qualify as a "farm use" as defined in ORS 215.203 or "farming practice" as defined in ORS 30.930.

(11) Air passenger and air freight services and facilities at public use airports at levels consistent with the classification and needs identified in the state ASP.

The proposed airport expansion is for a "non-towered airport" as defined by OAR 660-013-0020(4). *See also*, *Schaefer v. Marion County*, 318 Or App at 625 n 8 (concluding, "For purposes of the rule, the Aurora State Airport is a non-towered airport.").

The Board finds that the proposed uses within the proposed expanded airport boundary consist **only** of uses expressly allowed under OAR 660-013-100 as detailed above under the subheading "Proposed Airport Uses Within the Airport Boundary." These include: customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities and activities incidental to the normal operation of the airport related uses on the property (subsection (1)); emergency medical flight services as described in subsection (2); firefighting activities and law enforcement activities as described in subsection (3); flight instruction and training (subsection (4)); aircraft service maintenance and training (subsection (5)); (6) aircraft rental (subsection (subsection (6)), aircraft sales, sales of aeronautical equipment and supplies (subsection (7)), forestry and agricultural related activities, to include crop dusting as prescribed in subsections (9) and (10). Each of the uses described above fall into one or more of the above categories of permitted airport uses.

The proposal does not seek approval for, and this decision does not approve, any residential, commercial, industrial, manufacturing or uses other than described above.

The proposal complies with this standard.

34. *OAR 660-013-0110 Other Uses Within the Airport Boundary*

Notwithstanding the provisions of OAR 660-013-0100, a local government may authorize commercial, industrial, manufacturing and other uses in addition to those listed in OAR 660-013-0100 within the airport boundary where such uses are consistent with applicable

provisions of the acknowledged comprehensive plan, statewide planning goals and LCDC administrative rules and where the uses do not create a safety hazard or otherwise limit approved airport uses.

Applicant does not request local government authorization of commercial, industrial, manufacturing or other uses not identified as permitted under OAR 660-013-0100 as an airport use. Any future request for uses that are not airport uses described in OAR 660-013-0100 will require a land use application requesting those uses and approval by the county. The proposal is consistent with this standard.

35. *OAR 660-013-0140 Safe Harbors*

A "safe harbor" is a course of action that satisfies certain requirements of this division. Local governments may follow safe harbor requirements rather than addressing certain requirements in these rules. The following are considered to be "safe harbors":

The proposal does not seek any safe harbors. The proposal is consistent with this standard.

36. *OAR 660-013-0155 Planning Requirements for Small Airports*

(1) Airports described in ORS 836.608(2) shall be subject to the planning and zoning requirements described in ORS 836.608(2) through (6) and (8).

(2) The provisions of OAR 660-013-0100 shall be used in conjunction with ORS 836.608 to determine appropriate types of uses authorized within airport boundaries for airports described in 836.608(2).

(3) The provisions of OAR 660-013-0070(1)(b) shall be used to protect approach corridors at airports described in ORS 836.608(2).

(4) Airport boundaries for airports described in ORS 836.608(2) shall be adopted by local government pursuant to the requirements in ORS 836.608(2).

The Board finds that the Aurora State Airport is not an airport described in ORS 836.608(2); it is a public airport described in ORS 836.610(1). By its express terms, this standard does not pertain to the application.

37. *OAR 660-013-0160 Applicability*

This division applies as follows:

(1) Local government plans and land use regulations shall be updated to conform to this division at periodic review, except for provisions of chapter 859, OR Laws 1997 that became effective on passage. Prior to the adoption of the list of airports required by ORS 836.610(3), a local government shall be required to include a periodic review work task to

comply with this division. However, the periodic review work task shall not begin prior to the Oregon Department of Aviation's adoption of the list of airports required by ORS 836.610(3). For airports affecting more than one local government, applicable requirements of this division shall be included in a coordinated work program developed for all affected local governments concurrent with the timing of periodic review for the jurisdiction with the most land area devoted to airport uses.

(2) Amendments to plan and land use regulations may be accomplished through plan amendment requirements of ORS 197.610 to 197.625 in advance of periodic review where such amendments include coordination with and adoption by all local governments with responsibility for areas of the airport subject to the requirements of this division.

(3) Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.

(4) Uses authorized by this division shall comply with all applicable requirements of other laws.

(5) Notwithstanding the provisions of OAR 660-013-0140 amendments to acknowledged comprehensive plans and land use regulations, including map amendments and zone changes, require full compliance with the provisions of this division, except where the requirements of the new regulation or designation are the same as the requirements they replace.

The planning and periodic review requirements of subsections (1) and (2) do not pertain to this application. By addressing the requirements of OAR Chapter 660 division 13, the County is deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR Chapter 660 division 12 related to airport planning as stated by subsection (3).

Subsection (4) requires that uses authorized by OAR Chapter 660 division 13 comply with all applicable requirements of other laws. The approval standards included in these findings represent the applicable land use standards for the proposed airport expansion and airport uses. As discussed in these findings, the Board finds the the proposed airport uses will be required to submit additional applications that pertain to aviation with ODAV and the FAA, and environmental quality with the DEQ, and to receive approvals from those agencies before the proposed uses within the expanded airport boundary are permitted to operate.

The above findings demonstrate that the proposal complies with the provisions of OAR Chapter 660 division 13 as required by subsection (5).

38. Miscellaneous

Opponents presented a summary sheet with their many objections to the proposal. The Board intended to, and believes it has, addressed each of those various objections in the above findings. As a precaution, the Board makes the abbreviated additional findings in an effort to be as thorough as it can be.

Opponent Objection Categories:

R1: No Larger Class of Airplane (OAR 660-012-0065(3)(n))
R2: Expansion/Alteration of a Public Use Airport; TTF operations
R3: No Goal 3, 11, or 14 exceptions required
R4: Transportation Planning Rule (TPR)
R5: Farm Impacts (ORS 215.296)
R6: Noise
R7: Water, Wastewater, Stormwater
R8: Signatures/Scope
R9: Effective-date/Exercise-period
R10: Goal 14 Urbanization
R11: Safety/Regulation
R12: Traffic
R13: Use Forecast (OAR 660-013-0040(9))
R14: Airport Uses
R15: Airport Overlay/Imaginary Surfaces
R16: Goal 6
R17: Aviation Gas

Brief Response To Each Of The Above Categories:

R1 — No Larger Class of Airplane (OAR 660-012-0065(3)(n))

No Larger Class of Airplane (OAR 660-012-0065(3)(n)) — The application does not authorize the Aurora State Airport to serve a larger class of airplane. The Board finds that no airport design standards are increased; the on-site taxi lane is physically constrained to ~82 feet, limiting wingspans to approximately 75 feet (B-II). A condition of approval expressly prohibits service to a larger class. The Court of Appeals' definition confirms the rule looks to approach speeds, MTOW, wingspan, and tail height — none are increased here. See Section VI.2, ¶¶ under OAR 660-012-0065(3)(n).

R2 — Expansion/Alteration of a Public Use Airport; TTF operations

Expansion/Alteration of a Public Use Airport; TTF operations — The Aurora State Airport is a public use airport. The subject parcel will operate as a lawful through-the-fence (TTF) facility under ORS 836.640–.642 and within the expanded airport boundary. In addition to the many reasons articulated above about why the proposal is the expansion of a public use airport, the Board also finds that ownership of the subject parcel does not determine public-use airport status – like the rest of the public

and privately owned areas at the existing Aurora Airport, the aviation uses of the subject property will also be open to the flying public and controlled by the airport sponsor, ODAV. ODAV's TTF framework and sponsor control demonstrates this. See Executive Summary (TTF), Findings V.6–7; Additional Findings, OAR 660-013.

R3 — No Goal 3, 11, or 14 exceptions required

No Goal 3, 11, or 14 exceptions are required — OAR 660-012-0065(3)(n) expressly provides that expansions or alterations of public use airports that do not permit service to a larger class of airplane are consistent with Goals 3, 4, 11, and 14. The proposal meets ORS 215.296 (farm-impacts test). See Sections VI.2, 'Accordingly…', Goal 3, Goal 11, and Goal 14.

R4 — Transportation Planning Rule (TPR)

The Transportation Planning Rule (TPR) is not triggered and Goal 12 satisfied. OAR 660-013-0160(3) deems compliance with Division 13 to satisfy Goal 12 and the TPR for airport planning. The Board finds above that the proposal complies with OAR 660 Div 13. The Board also finds as a precaution that the 2024 DKS TIA and its supplement confirm the proposal does not cause a significant effect to facilities. See Goal 12 findings and 2024 TIA citations.

R5 — Farm Impacts (ORS 215.296)

Farm Impacts (ORS 215.296 and implementing County MCC provisions) — The Board finds the farm impacts test is satisfied. The Board finds that the credible record evidence (Montecucco letter; Dr. Davis) demonstrates no significant increase in cost of, or change to, accepted farm practices. Moreover, the Board finds that aviation uses have coexisting with area farming for decades. Drone operations are already within controlled airspace and require ATC authorization today; the proposal does not change that. Transportation effects to slow-moving equipment are de minimis and do not constitute a change that requires a significant change to accepted farming practices and does not significantly increase the costs of accepted farming practices (≈5-second added time around half the airport). See V.11; Conditional Use Criterion 7 analysis.

R6 — Noise

Noise — DEQ compliance and contours. The project must obtain DEQ approval under OAR 340-035-0045 and operate within approved Noise Impact Boundaries. eVTOL/electric aircraft are substantially quieter than conventional rotorcraft; applicant's contours show the 55 Ldn footprint remains within existing airport contours. See V.20 and Conditional Use ¶ 4 (Noise).

R7 — Water, Wastewater, Stormwater

Water, Wastewater, Stormwater — The Board finds that establishing these systems on the subject property is feasible and regulated. On-site water is adequate with treatment for arsenic; wastewater can be served via WPCF-compliant on-site system or (if separately

approved) connection to existing airport systems; stormwater detention is engineered to release at pre-development rates and flow in existing ditches well upstream of the Pudding River. DEQ/NPDES permits are required. The Board finds that compliance with all federal and state standards that apply is feasible. See Goal 6; V.2; Conditions.

R8 — Signatures/Scope

Signatures/Scope — The Board finds that only the subject property owner must sign the application and has done so. MCC 17.119.020 and .025 require signatures from owners of 'the property that is the subject of the application.' They do not require signatures from owners of speculative, future utility segments on other parcels. No zone change is proposed. See VI.3 (signature discussion).

R9 — Effective-date/Exercise-period

Effective-date/Exercise-period authorized in this decision is wholly lawful and reasonable, given the circumstances and history. The Board interprets MCC 17.119.180–.190 to allow specifying a later effective date as is being authorized here. Given parallel ODAV/DEQ processes and likely appeals, setting the exercise period to begin on the last-in-time final order prevents lapse by technicality and preserves meaningful review. See Additional Findings ¶ 8.

R10 — Goal 14 Urbanization

Goal 14 Urbanization — The proposal is deemed to be consistent with Goal 14 under OAR 660-012-0065(3)(n). Thus the proposed airport land use boundary and alterations to allow airport related uses on the subject property are deemed consistent with Goal 14. The 1976 Aurora Airport Master Plan (acknowledged) has long designated this site for airport development under private ownership. See Goal 14 findings.

R11 — Safety/Regulation of eVTOLs

Safety/Regulation — FAA/ODAV oversight governs these aircraft. eVTOLs/powered-lift aircraft are certificated, not ultralights; operations must comply with FAA rules and ATC coordination within 5 miles/2,700 ft AGL. Existing mixed helicopter/fixed-wing operations at Aurora function safely. Assertions of 'unregulated' aircraft or terrorism risk are speculative. See Dr. Davis letter; ODAV/industry letters; Conditional Use ¶ 7.

R12 — Traffic

Traffic — The Board finds that adequate mitigation of traffic impacts from the proposal are provided. The DKS 2004 TIA and its supplement is credible and persuasive evidence that demonstrates this and demonstrates the proposal adds no significant adverse effects to study intersections and the Board finds that the 2004 TIA recommended mitigation is adequate. County Engineering conditions require frontage improvements and a proportional fee toward Ehlen/Airport Rd signal/turn lanes. These are conditions of approval for this decision. See Engineering Conditions A–B; TIA (Ex. 39).

R13 — Use Forecast (OAR 660-013-0040(9))

Use Forecast (OAR 660-013-0040(9)) — The Board finds that the credible and persuasive evidence in the record is that the airport sponsor provided the required materials. ODAV, as airport sponsor, confirmed the current master plan update materials that the applicant utilized contains the most up-to-date economic/forecast information for Division 13 compliance, which the Board adopts. See Executive Summary and OAR 660-013-0040 findings.

R14 — Airport Uses

Airport Uses — Within OAR 660-013-0100, all approved uses are airport uses that 'shall be authorized' within the boundary are allowed and the Board expressly finds that no uses are proposed or approved form the discretionary 'may authorize' list (OAR 660-013-0110). A condition limits uses accordingly. See VI.2 concluding paragraphs; Conditions ('Uses limited to OAR 660-013-0100').

R15 — Airport Overlay/Imaginary Surfaces

Airport Overlay/Imaginary Surfaces — The Board finds that the proposal is compliant with these surfaces. All structures must avoid penetrating Part 77 surfaces; lighting must be shielded to avoid glare; FAA/ODAV Form 7460-1 (Part 77) notice and determinations are required before permits. Rotorcraft surfaces are smaller than airport surfaces and fall within the existing AO zone. See AO Zone findings and ODAV comments.

R16 — Goal 6

Goal 6 —The Board finds that there is the reasonable expectation of compliance and that compliance is feasible. The Board understands that federal law governs aircraft emissions because only the FAA regulates the same and all emissions will be as FAA allows. The Board also finds that electric propulsion vehicles have few if any emissions and the proposal is designed to attract and serve electric aircraft. Feasible engineered stormwater and WPCF-compliant wastewater systems have been provided in the record each of those will avoid significant adverse effects; the Board finds that arsenic treatment is feasible to ensure potable water quality. See Goal 6 findings and Exhibits 36–37, 42–43.

R17 – Aviation gas

The Board finds that compliance with the DEQ, ODAV, EPA and FAA permitting and licensing requirements imposed by Conditions of Approval 2, 10, 11-18 and 25 will operate to mitigate the potential adverse impacts on the community as a whole and, in particular, the water quality standards for the Pudding River and the Pudding River watershed, that may result from the additional aviation gas (avgas) use under the proposal such that it is consistent with Goal 6 and applicable administrative rules.

Also, fixed wing aircraft that will use the subject property will take off and land from the existing Aurora State Airport runway, which is operating under a DEQ 1200z NPDES (National Pollutant Discharge Elimination System) permit and existing Federal

regulations. The Aurora State Airport is one of the state's busiest public use airports and the additional number of fixed-wing aircraft flights that will be based out of the subject property will be comparatively small. While opponents raised concerns about potential lead contamination from aviation gas, they provided no evidence that demonstrated their assertions are reasonable or founded on evidence. Neither Applicant's stormwater expert nor ODAV, the Aurora State Airport's operator, nor other state agency indicated that any evidence shows a current dangerously high presence of lead from avgas in the area or that the use as proposed would threaten to violate water quality standards for the Pudding River or the Pudding River watershed should the proposal be approved. There is no evidence to conclude that flights that operate from the existing Aurora State Airport runways or from the subject property directly would cause such a threat, either individually or cumulatively. The Board notes that a neighbor, Ms. Snyder discussed an incident regarding fluids allegedly dropped on her field from existing Aurora Airport operations. As explained above, HTS testimony that the Board finds credible is that any fluid that has been seen as dripping from HTS helicopters is river water from practice missions over the Willamette River and not aviation gas.

To the extent that opponents' concerns derive from the presence of avgas storage or avgas in stormwater runoff on the subject property itself, such operations are required by the conditions of approval to obtain the necessary DEQ 1200z stormwater runoff permits. As discussed in the stormwater findings above, the proposed stormwater system is designed such that a 10-year storm event will be discharged at no greater than the existing 5-year runoff rate. The proposal will also have to comply with the airport facility requirements established by ODAV and the FAA. These requirements include the proper storage of avgas, fueling of aircraft, and emergency spill response protocols on the subject property within the expanded airport boundary area. Nothing in the record demonstrates that these permits and operating regulations are inadequate with respect to potential environmental impacts from avgas.

To the extent opponents' concerns derive from a potential for particulate discharges from the rotorcraft operating from the subject property, or aircraft that idle enroute to the KUAO runway, all operations will comply with federal and state air pollution regulations intended to reduce such emissions to safe levels. Under the Clean Air Act, the Environmental Protection Agency (EPA) establishes aircraft-engine emissions standards, and the FAA implements and enforces those standards through its aircraft and engine certification processes and related compliance requirements.

Moreover, as the use of eVTOLS and eCTOLs increase, the amount of particulate discharge due to operations will be increasingly reduced because they do not use leaded aviation gas. Furthermore, as discussed under Goal 6 above, federal regulations prohibit the application of state and local standards to regulate emissions from rotorcraft and other aircraft engines that are not identical to corresponding federal standards. As noted above, compliance with those regulations will ensure that there is not a significant impact to air quality or to ground and water quality in the surrounding area, to include the Pudding River and Pudding River watershed, are not violated. The proposal is consistent with Goal 6.

VII. Decision

It is hereby determined that the applicant has met the burden of proving the applicable standards and criteria for approval of a conditional use to expand an existing airport to allow a vertical takeoff and landing facility for aircrafts and a comprehensive plan amendment to amend the airport plan on a 16.54-acre parcel in an EFU (Exclusive Farm Use) zone located at 22515 Airport Rd. NE, Aurora. Therefore, the hearings officer recommends the Marion County Board of Commissioners **GRANTS** the conditional use and comprehensive plan amendment, subject to the conditions set forth below. The Board finds that the conditions are necessary for public health, safety and welfare.

Exhibit B

Conditions of Approval

1. Applicant shall obtain all required building and septic permits.

2. Applicant shall submit evidence of compliance with the requirements of all required agencies to planning staff.

3. Prior to building permit issuance, design rural type frontage improvements along the Airport Road subject property frontage that are anticipated to include a new access, removing prior existing accesses, vegetation clearing, 5-foot gravel road shoulder, proper foreslope and drainage ditch relocation, and obtain a Major Construction Permit for same. Prior to issuance of a Building Department Certificate of Occupancy, acquire final inspection approval of the public roadway related improvements.

4. Prior to building permit issuance, contribute a proportional share in the amount of $24,000 as presented in the February 2024 TIS Update toward the cost of planning, designing, and constructing signalization and turn lane improvements at the intersection of Ehlen Road and Airport Road as identified in the County RSTP and in the City of Aurora TSP, as a traffic mitigation measure.

5. Prior to building permit approval, provide a ½ street improvement on the subject property's Airport Rd frontage as recommended by the 2024 TIA.

6. The MCC 117.119.180 effective date for the start of the MCC 117.119.190 2-year period for exercising a conditional use right shall be the latter of: (1) the date of the final order or decision by the County, LUBA, the Court of Appeals or the Oregon Supreme Court, beyond which there can be no further appeals and this land use decision becomes final; (2) the date the ODAV site approval decision becomes final following any administrative and judicial appeals, if any; or (3) the date the DEQ noise plan decision becomes final following any administrative or judicial appeals. If this local decision and the ODAV site approval decision and the DEQ decision are not appealed, the effective date for the start of the MCC 117.119.190 2-year period for exercising the conditional use right begins on the latest of the three approval dates.

7. The uses allowed on the subject property are limited to airport uses identified under ORS 836.616(2) and OAR 660-013-0100 as uses that shall be authorized within airport boundaries and as shown on the submitted site plan Exhibit 1B and described in the application materials, as supplemented at the March 6, 2025 Hearings Officer Hearing. Uses not listed under the statute or rule, or expansion of

the approved uses or development must be approved through a separate land use application.

8. Applicant will supply to the County clean copies of the airport boundary map (Exhibit 1A) and other maps required by OAR 660-013-0040 to be incorporated into the Marion County Comprehensive Plan.

9. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, applicant shall provide to the County consistent with the requirements set forth under OAR 340-035-0045, a DEQ approved Noise Impact Boundary Diagram and, if required by DEQ, an approved Airport Noise Abatement Program for the uses authorized within the expanded airport boundary. All development and operations on the subject property must conform to the DEQ Noise Impact approval.

10. Prior to the issuance of any building permit for stormwater or wastewater facilities on the subject property, Applicant will provide a copy of the DEQ approvals for the requested system.

11. Applicant must submit a facility site plan for the proposed airport uses as required by OAR 738-014-0050 for Through the Fence Operations and receive approval from the Oregon Department of Aviation of the proposed site plan prior to applying for a building permit to develop the approved airport uses.

12. Applicant must submit to the County a written contract with ODAV, the Aurora State Airport sponsor, that meets the requirements of OAR 738-014-0050(3) before airport operations on the subject property begin.

13. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the applicant must submit an application for approval of the airport site to ODAV, as described in Oregon Revised Statutes (ORS) 836.090.

14. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the application fee must be paid to ODAV, as described in ORS 836.085.

15. The proposed development must adhere to the approval criteria for the establishment of an airport as described in ORS 836.095 and OAR 738-020 (Minimum Standards for Airports).

16. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, in accordance with FAR Part 77.9 and OAR 738-070-0060, the proposed development is required to undergo aeronautical evaluations by the FAA and ODAV. The aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an

obstruction to aviation safety. Applicant should receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.

17. The height of any new structures, trees of planted vegetation shall not penetrate FAR Part 77 Imaginary Surfaces, as determined by the FAA and ODAV for the Aurora State Airport. Applicant shall submit to the County a clean copy of the imaginary surfaces diagram for the approved rotorcraft operations on the subject property, prepared consistent with OAR 660 division 13 Exhibit #3.

18. The proposed development shall only provide service to classes of airplane classes that are authorized by the FAA and ODAV to have service to the Aurora Airport.

19. All aircraft that use the subject property from the subject property shall be to support commercial operations and recreational ultralight aircraft are prohibited.

20. Applications for building permits shall comply with MCCC 17.170.040(A) and (B).

21. Any proposed external lights shall be designed so as to not interfere with aircraft or airport operations.

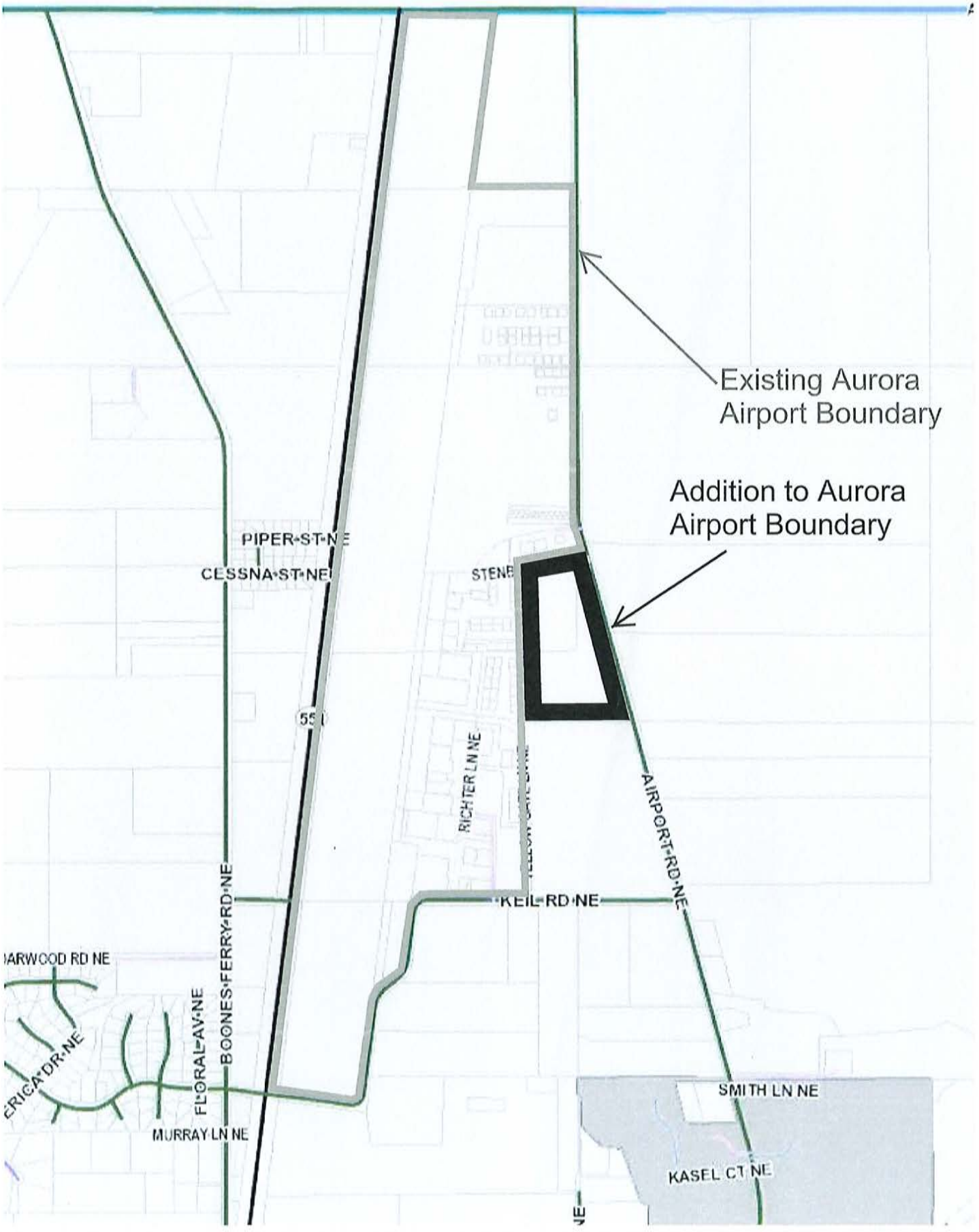
22. Any proposed external lights shall be designed so as to not interfere with any adjacent uses.

23. Prior to any airport operations on the subject property, Applicant shall apply for and receive required ODAV or FAA licenses or approvals for such operations.

24. The property shall be limited to providing service to airplanes in the category of BII or less.

25. Prior to obtaining building permits the applicant shall receive all necessary septic approvals from Marion County Septic and/or Oregon DEQ. Any connection to offsite wastewater systems would require land use approval on the other parcels. The subject parcel will not require additional land use approval for such connection once all other required approvals from other departments have been received.

Exhibit C


Existing Aurora Airport Boundary
Addition to Aurora Airport Boundary
PIPER ST NE
CESSNA ST NE
STENE
551
RICHTER LN NE
AIRPORT RD NE
KEIL RD NE
BOONES FERRY RD NE
FLORAL AV NE
MURRAY LN NE
SMITH LN NE
KASEL CT NE