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# The Application

- To expand the Aurora Airport land use boundary to include the subject property per OAR 660-012-065(3)(n).
  - Subject to conditions, including obtaining ODAV approval, amend the Aurora Airport's land use boundary to include the subject property to allow for airport uses that are authorized under ORS 836.616(2) and OAR 660-013-0100.
  - Include new airport boundary map in the Marion County Plan
  - CUP to allow airport uses on the subject property once within the airport boundary.

# Consistent with the County's Acknowledged Plan That Adopts the 1976 KUAO Master Plan\* (\*Application Exh 6)

“The map of the Aurora State Airport that has been adopted by Marion County is the 1976 Master Plan ALP, which is part of the Marion County Comprehensive Plan.” *Schaefer v. Oregon Aviation Bd.*, 312 Or. App. 316, 335, n 17, *op adh to as mod on recon*, 313 Or. App. 725 (2021).”

“The 1976 Aurora State Airport Master Plan, including its airport layout plan, which is a map of the airport, is part of the Marion County Comprehensive Plan.” *Schaefer v. Marion County*, 318 Or App 617 (2022).



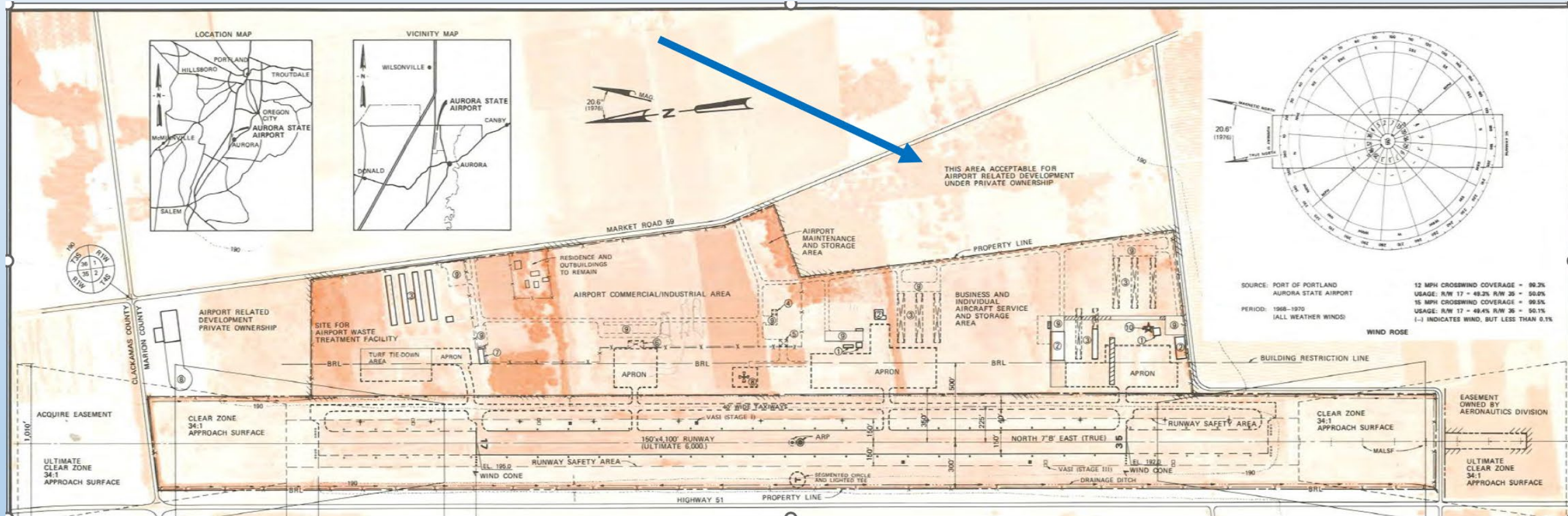
# The 1976 Acknowledged Airport Plan

## AIRPORT PLANS

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# Airport Layout Plan



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# Terminal Area Plan

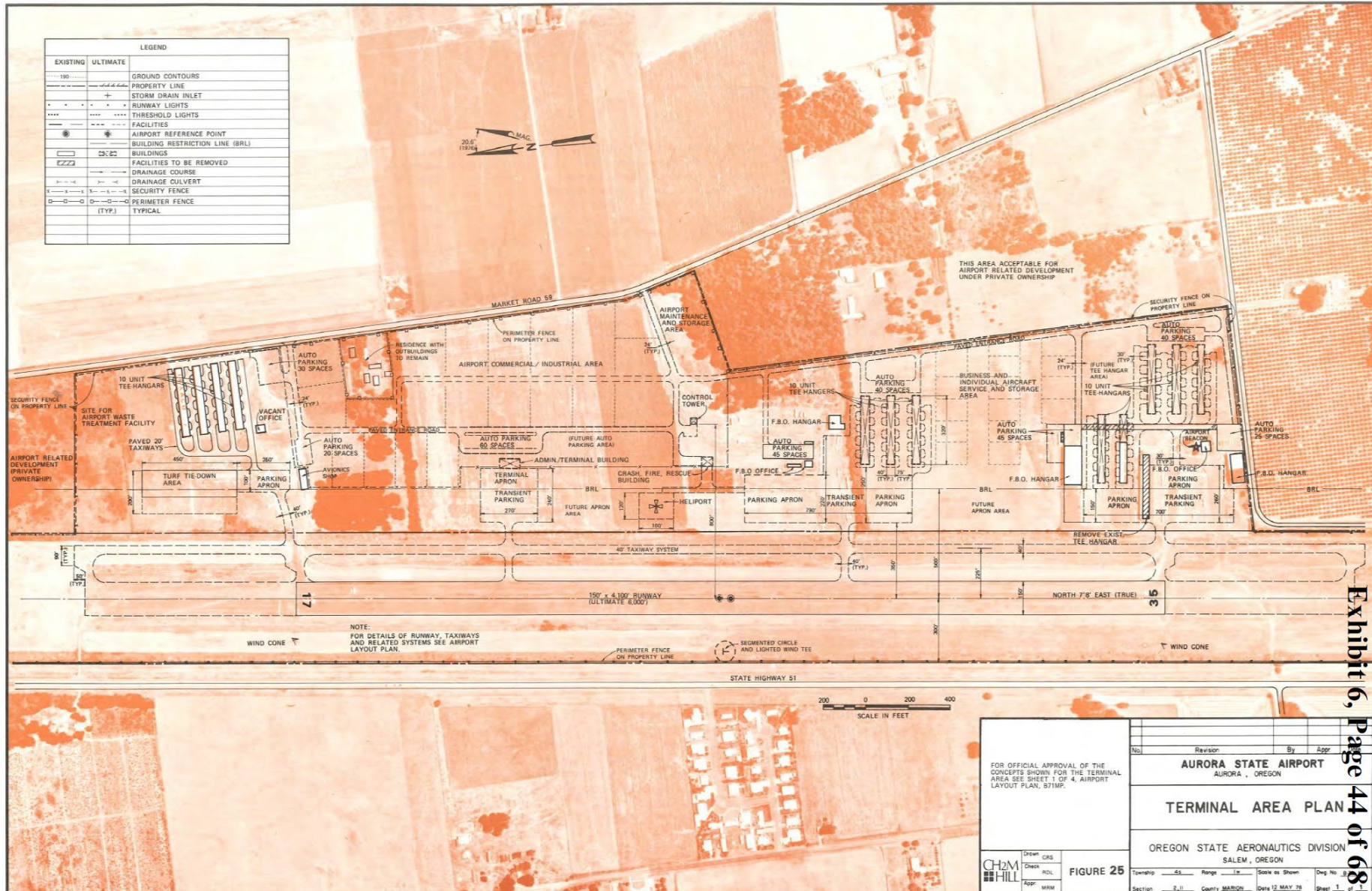
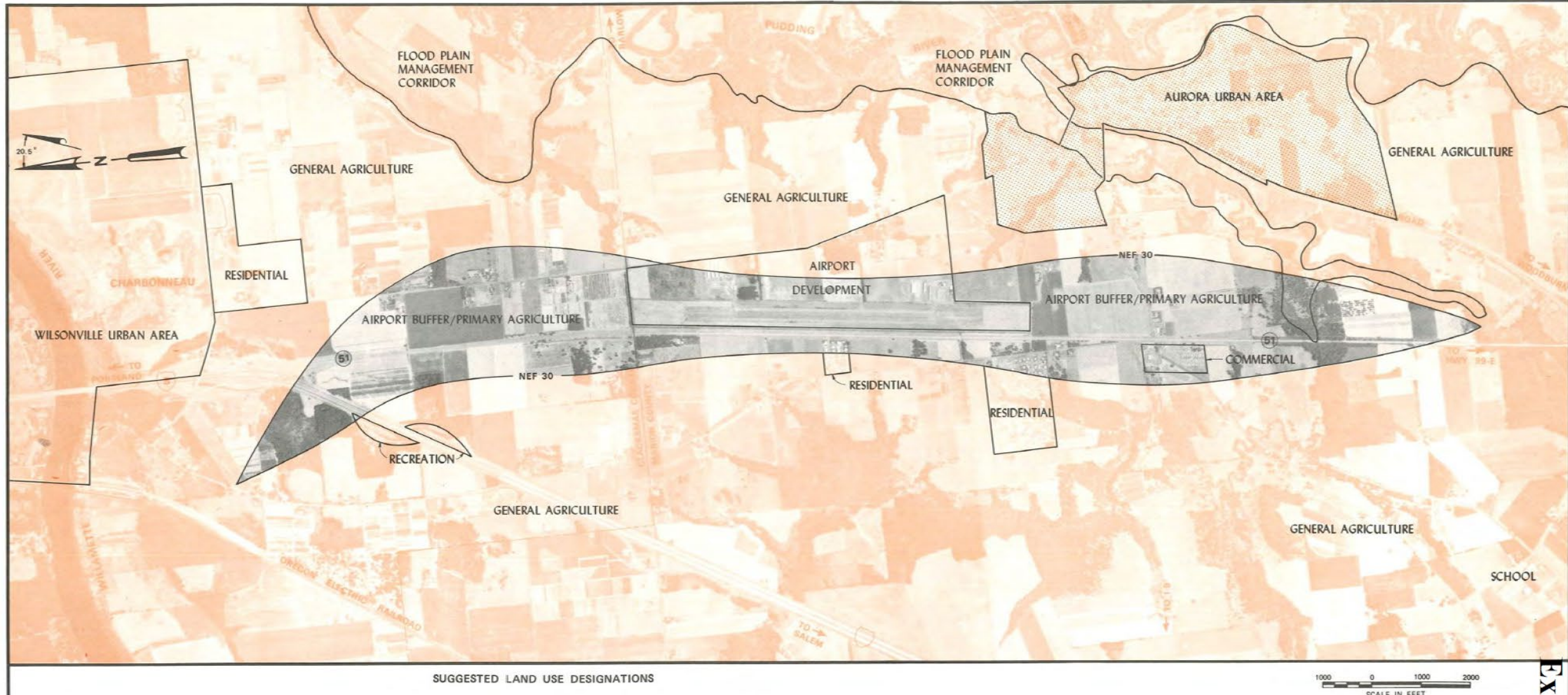
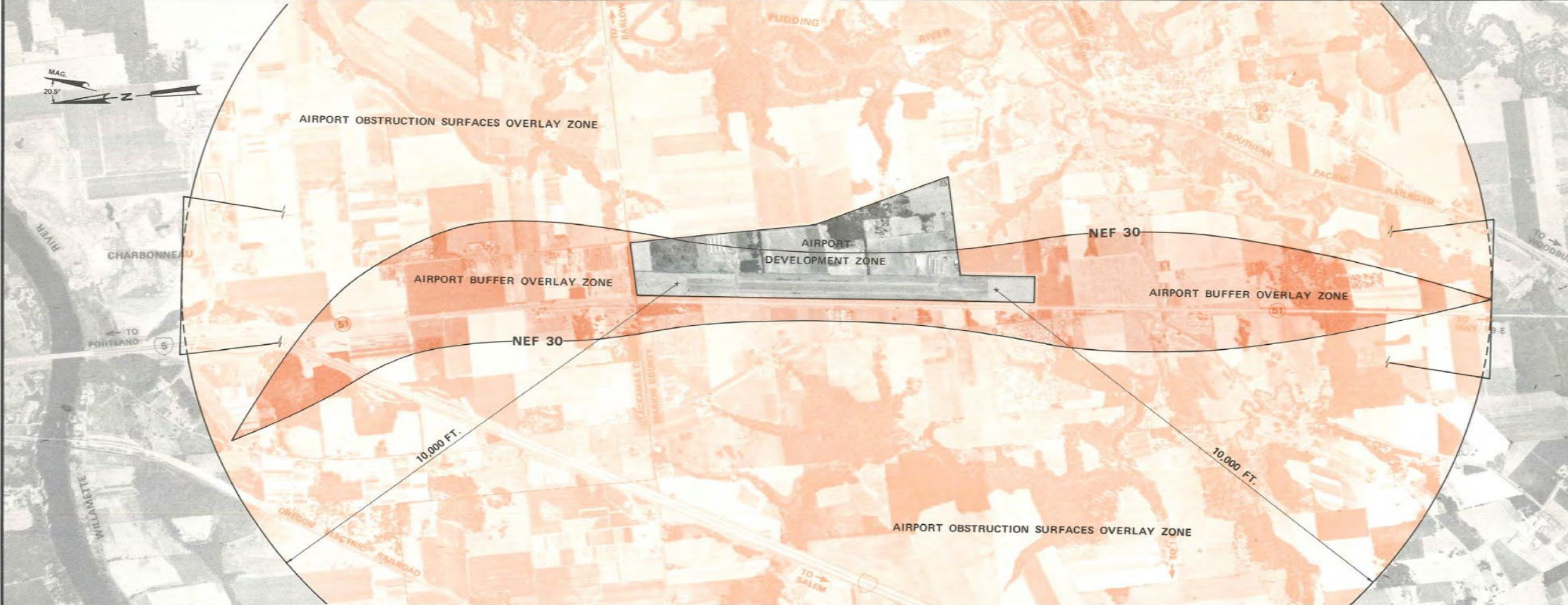


Exhibit 6, Page 44 of 68



# Subject property is acknowledged as in the “Airport Development” Zone (Exhibit 6, p 50)





**RECOMMENDED ZONING DESIGNATIONS**

**AIRPORT DEVELOPMENT ZONE:**

PERMITTED USES TO INCLUDE OPERATION OF AN 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 USE IN THIS ZONE.

**AIRPORT BUFFER OVERLAY ZONE:**

AN OVERLAY SURROUNDING AN EXISTING OR POTENTIAL AIRPORT IMPACT AREA. TO BE SUPERIMPOSED OVER AND USED IN CONJUNCTION WITH EXISTING ZONING. IT IS DEFINED BY THE EXISTING OR FORECAST NEF 30 NOISE CONTOUR, WHICHEVER ENCOMPASSES THE LARGEST AREA. THE PURPOSE IS TO PROVIDE FOR USES THAT PRECLUDE CONCENTRATIONS OF PEOPLE. FOR THE AURORA STATE AIRPORT BUFFER ZONE EXCLUSIVE FARM USE (EFU), WITH LIMITED COMMERCIAL AREA, IS RECOMMENDED. THE PERMITTED USES IN THE OVERLAY ZONE OVERRIDE CONFLICTING USES IN THE ZONES BENEATH THE OVERLAY.

**AIRPORT OBSTRUCTION SURFACES OVERLAY ZONE**

AN ADDITIONAL OVERLAY SUPERIMPOSED OVER AND SURROUNDING THE PLANNED AIRPORT DEVELOPMENT AND DIMENSIONED ACCORDING TO FEDERAL AVIATION REGULATION PART 77, OBJECTS AFFECTING NAVIGABLE AIRSPACE. THE OBSTRUCTION SURFACES ARE SHOWN ON FIGURE 24, ULTIMATE AIRPORT IMAGINARY SURFACES. THE CONICAL SURFACE HAS BEEN EXCLUDED FROM THE OVERLAY SO THAT NO AREA FARTHER THAN 10,000 FEET FROM THE PRIMARY AIRPORT SURFACE IS AFFECTED.

**AURORA STATE AIRPORT  
RECOMMENDED ZONING PLAN**

**FIGURE 29**





# The Designation of the Subject Property as “Airport Development”

## SUGGESTED LAND USE DESIGNATIONS

### AIRPORT DEVELOPMENT:

AND BUSINESS SERVICE

INCLUDES THE ACTUAL FACILITIES OF THE AIRPORT SUCH AS, THE RUNWAY, TAXIWAYS, PARKING APRONS, HANGARS, ADMINISTRATION AND OPERATION BUILDINGS, CLEAR ZONES, ETC. AVIATION RELATED INDUSTRIAL AND COMMERCIAL BUSINESSES ALSO ALLOWED IN APPROPRIATE AREAS.

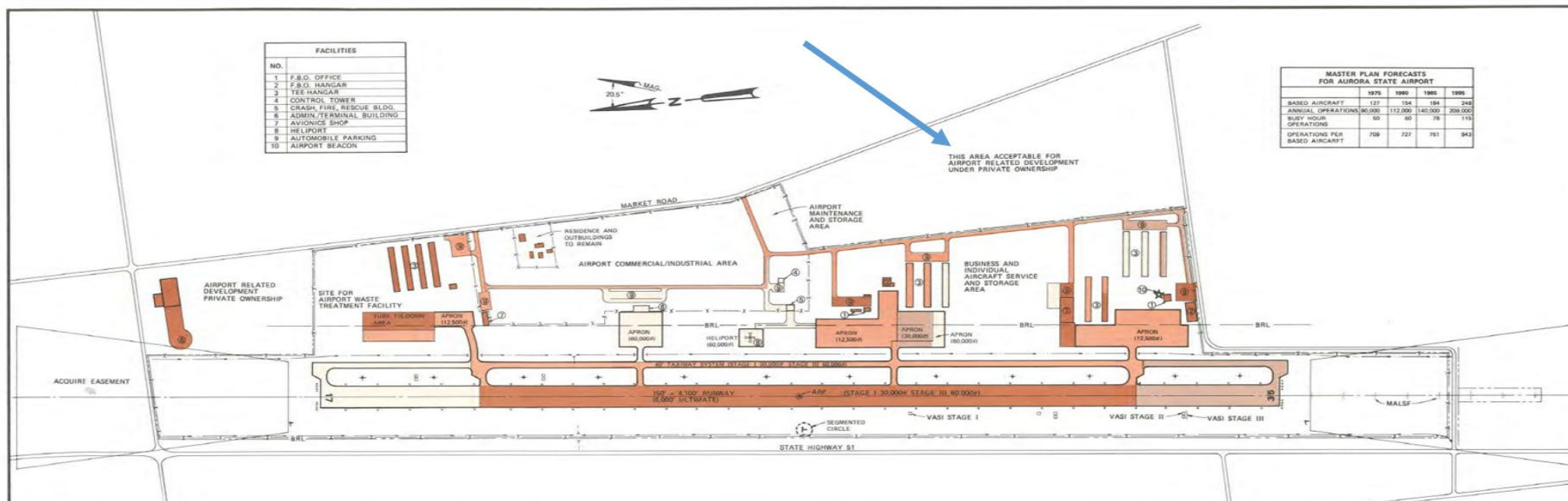
EAS, INCLUDING PROPER OPEN

Airport Development designation is consistent with EFU zoning applied to property before being developed with airport uses



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# 1976 Acknowledged Airport Master Plan “Development Staging” Plan



FACILITIES	
NO.	
1	F.B.O. OFFICE
2	F.B.O. HANGAR
3	TEE HANGAR
4	CONTROL TOWER
5	CRASH FIRE, RESCUE BLDG
6	ADMIN. TERMINAL BUILDING
7	AVIONICS SHOP
8	HELIPORT
9	AUTOMOBILE PARKING
10	AIRPORT BEACON

MASTER PLAN FORECASTS FOR AURORA STATE AIRPORT				
	1975	1980	1985	1990
BASED AIRCRAFT	127	154	184	248
ANNUAL OPERATIONS (60,000H)	112,000	140,000	209,000	
BUSY HOUR OPERATIONS	60	80	78	115
OPERATIONS PER BASED AIRCRAFT	708	727	761	842

“This Area Acceptable for Airport Related Development in Private Ownership”

TABLE 10  
DEVELOPMENT SCHEDULE

STAGE I - 1975-1980		STAGE II - 1980-1985		STAGE III - 1985-1995	
PROJECT DESCRIPTION	QUANTITY	PROJECT DESCRIPTION	QUANTITY	PROJECT DESCRIPTION	QUANTITY
ACQUIRE LAND FOR AIRPORT DEVELOPMENT	118 ACRES	EXTEND, PAVE AND MARK RUNWAY (30,000H)	900 L.F.	EXTEND, PAVE AND MARK RUNWAY (60,000H)	1,000 L.F.
ACQUIRE AIR EASEMENTS	18 ACRES	EXTEND MEDIUM INTENSITY RUNWAY LIGHTS	900 L.F.	STRENGTHEN AND MARK RUNWAY (TO 60,000H)	5,000 L.F.
REMOVE OBSTRUCTIONS	1.5 ACRES	EXTEND, PAVE AND MARK TAXIWAY SYSTEM (30,000H)	1,000 L.F.	EXTEND MEDIUM INTENSITY RUNWAY LIGHTS	1,000 L.F.
PAVE AND MARK PARALLEL TAXIWAY SYSTEM (30,000H)	5,100 L.F.	PAVE AND MARK HOLDING APRON (30,000H)	5,000 S.F.	EXTEND, PAVE AND MARK TAXIWAY SYSTEM (60,000H)	1,200 L.F.
PAVE AND MARK HOLDING APRONS (30,000H)	10,000 S.F.	REPOSITION VASI SYSTEM	1 END	STRENGTHEN AND MARK TAXIWAY SYSTEM (TO 60,000H)	8,100 L.F.
PAVE AND MARK PARKING APRONS (12,500H)	305,000 S.F.	INSTALL MEDIUM INTENSITY EXIT TAXIWAY LIGHTS	700 L.F.	PAVE AND MARK HOLDING APRON (60,000H)	5,000 S.F.
CONSTRUCT TURF PARKING AREA	10 AIRCRAFT	INSTALL LIGHTED WIND CONES	2 EACH	INSTALL MEDIUM INTENSITY TAXIWAY LIGHTS	8,500 L.F.
INSTALL ROTATING BEACON AND TOWER	1 EACH	PAVE AND MARK PARKING APRON (30,000H)	56,000 S.F.	PAVE AND MARK PARKING APRONS (60,000H)	98,000 S.F.
INSTALL LIGHTED WIND TEE AND SEGMENTED CIRCLE	1 EACH	INSTALL MALSF APPROACH LIGHT SYSTEM	1 END	EXPAND VASI SYSTEM	2 ENDS
STRENGTHEN RUNWAY (TO 30,000H)	4,100 L.F.	INSTALL PARKING APRON LIGHTING	800 L.F.	INSTALL MICROWAVE LANDING SYSTEM (OR EQUIVALENT)	1 END
INSTALL NON-PRECISION RUNWAY MARKING	4,100 L.F.	PAVE AND MARK AIRPORT ROADWAYS	3,200 L.F.	INSTALL PARKING APRON LIGHTING	1,200 L.F.
INSTALL MEDIUM INTENSITY RUNWAY LIGHTS	4,100 L.F.	PAVE AND MARK AIRPORT ROADWAYS	30 AUTOS	CONSTRUCT CRASH, FIRE, RESCUE STATION	2,500 S.F.
INSTALL VASI SYSTEM	2 ENDS	EXTEND FENCING	3,400 L.F.	CONSTRUCT CONTROL TOWER (BY FAA)	1 EACH
INSTALL NON-DIRECTIONAL BEACON	1 EACH	CONSTRUCT TEE-HANGARS (PRIVATE DEVELOPMENT)	10 AIRCRAFT	PAVE AND MARK HELIPORT	19,000 S.F.
INSTALL TAXIWAY REFLECTORS	5,100 L.F.			PAVE AND MARK AIRPORT ROADWAYS	500 L.F.
PAVE AND MARK AIRPORT ROADWAYS	3,600 L.F.			PAVE AND MARK AUTOMOBILE PARKING FACILITIES	90 AUTOS
PAVE AND MARK AUTOMOBILE PARKING FACILITIES	80 AUTOS			CONSTRUCT TERMINAL/ADMINISTRATION BUILDING	5,000 S.F.
CONSTRUCT FENCING	8,000 L.F.			EXTEND FENCING	2,500 L.F.
CONSTRUCT TEE-HANGARS (PRIVATE DEVELOPMENT)	34 AIRCRAFT			CONSTRUCT TEE-HANGARS (PRIVATE DEVELOPMENT)	90 AIRCRAFT

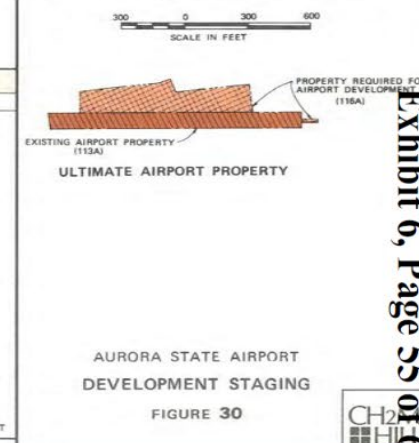


Exhibit 6, Page 55 of 6



# EFU zoning is acknowledged in the 1976 MP as a type of holding zone for the subject property

The airport Master Plan has been submitted to Marion County and Clackamas County for guidance in adopting new zoning in agreement with the airport. Figure 29, recommends a zoning plan and three new zones. The first zone is an Airport Development Zone, described on Figure 29. This zone is presently mostly PA, Public Amusement, for the airport and RA, Residential Agricultural, which is proposed for change to F-20, Farm-20 acres or EFU, Exclusive Farm Use.





(Some letter sent (with variations as to dates, etc., and omitting last paragraph, page 2,) to Clackamas County and Mayors of Wilsonville and Aurora.)

## STATE OF OREGON AERONAUTICS DIVISION

3040 25th STREET S.E. • SALEM, OREGON • 97310 • Phone 378-48

ROBERT W. STRAUB  
GOVERNOR

PAUL E. BURKET  
Aeronautics Administrator

May 20, 1976

Marion County Board of Commissioners  
Marion County Courthouse  
Salem, OR 97301

Gentlemen:

Aurora State Airport Master Plan,  
Coordination with Local Governments

In continuation of our coordination with local governments on this project, this letter is to inform you that the Aurora State Airport Master Plan will be published shortly. Elected officials and their planning staffs of the jurisdictions involved, as well as local citizens, have received information from the Airport Master Plan including discussion of impacts on areas surrounding the airport. The plan presents recommendations as to how local governments may use the Airport Master Plan to their advantage in local planning.

We believe there is adequate assurance that all important issues have been addressed and that all interested parties have had opportunity to provide comments.

Final planning coordination according to LCDC requirements has been accomplished with all concerned units of local government. According to procedures advised by LCDC, the Oregon Division of Aeronautics, airport owner, has presented the revised final draft Airport Master Plan to all affected local governments. The Plan has been explained, questions answered, and comments have been invited. Offers were made for the study team to attend work sessions with local government staffs.

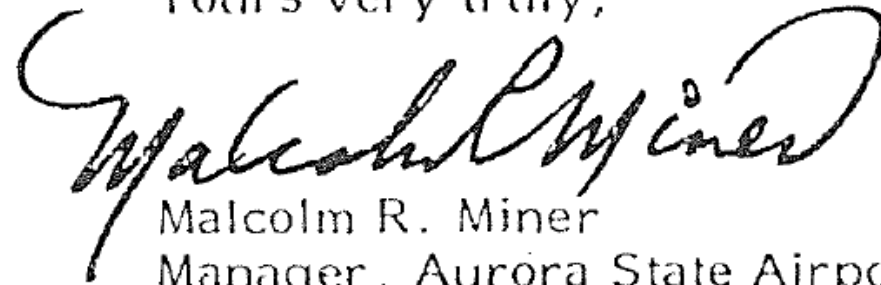
It is the hope of the Division of Aeronautics to see the Aurora State Airport Master Plan recognized and taken under advisement by surrounding jurisdictions as they develop their comprehensive plans. We recommend that you adopt the Aurora State Airport Master Plan as an element in your comprehensive plan, at least on an interim basis. We also anticipate that your local government will keep the Airport Master Plan recommendations under advisement and maintain close coordination with the Division of Aeronautics in any action affecting this important public airport.

We trust that Marion County will take prompt action to adopt airport zoning recommendations contained in the Plan. This will assist greatly in reducing the confusion regarding current development plans and will permit land owners to properly plan development of their property in conformance with public interests. Proper zoning will assure protection of the airport through continued compatible land use. (Please refer to CH<sub>2</sub>M-Hill's letter of 20 April 1976 to Randy Curtis, Planning Director, regarding Zone Change Case No. 76-8, copy attached.)

The zoning and land use recommendations in the Aurora State Airport master plan are provided to assist Marion and Clackamas counties to maintain compatible land use in the vicinity of this busy, growing public airport. While these recommendations may not be the only solutions, they were developed through analysis by the study team and through the citizen involvement process and are the preferred solutions. They are also based upon precedence established at other public airports and are recommended by the Federal Aviation Administration as being highly successful, tested solutions.

Thank you for this opportunity to submit these comments. Please feel free to contact Roy Raasina at the Oregon Aeronautics Division or me if you have any questions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Malcolm R. Miner". The signature is fluid and cursive, with a large initial "M" and "R".

Malcolm R. Miner  
Manager, Aurora State Airport  
Master Plan Project

# FINDINGS FOR 1976 Acknowledged Airport Master Plan (Ex 6, p 65)

## FINDINGS

Basically, analysis of the adequacy of the Aurora Site and the evaluation of the alternative sites resulted in a determination that the present Aurora State Airport should continue to fulfill the present airport function. First, the Aurora State Airport has no serious or insurmountable problems. It is well engineered and meets operational criteria. Expansion to meet forecast needs appears feasible.

Airport use is in accordance with compatible land use and the existing airport has minimum environmental impacts. Also, the site has been an airport continuously for 32 years. It has been accepted by the City of Aurora in their Draft Land Use Plan as well as by the Marion County Comprehensive Plan. In a public meeting 18 November 1975, a discussion of this matter indicated unanimous concurrence of those attending to retain the present airport rather than to relocate.



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# STATE REGULATORY FRAMEWORK: ORS 215.283(3)

- “\*\*\* 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.”
- **NOTE:** ORS 215.296 Farm Impacts Test applies and is met – no evidence of proposal “forces” any “significant change” to AFP or significantly increase costs of any AFP

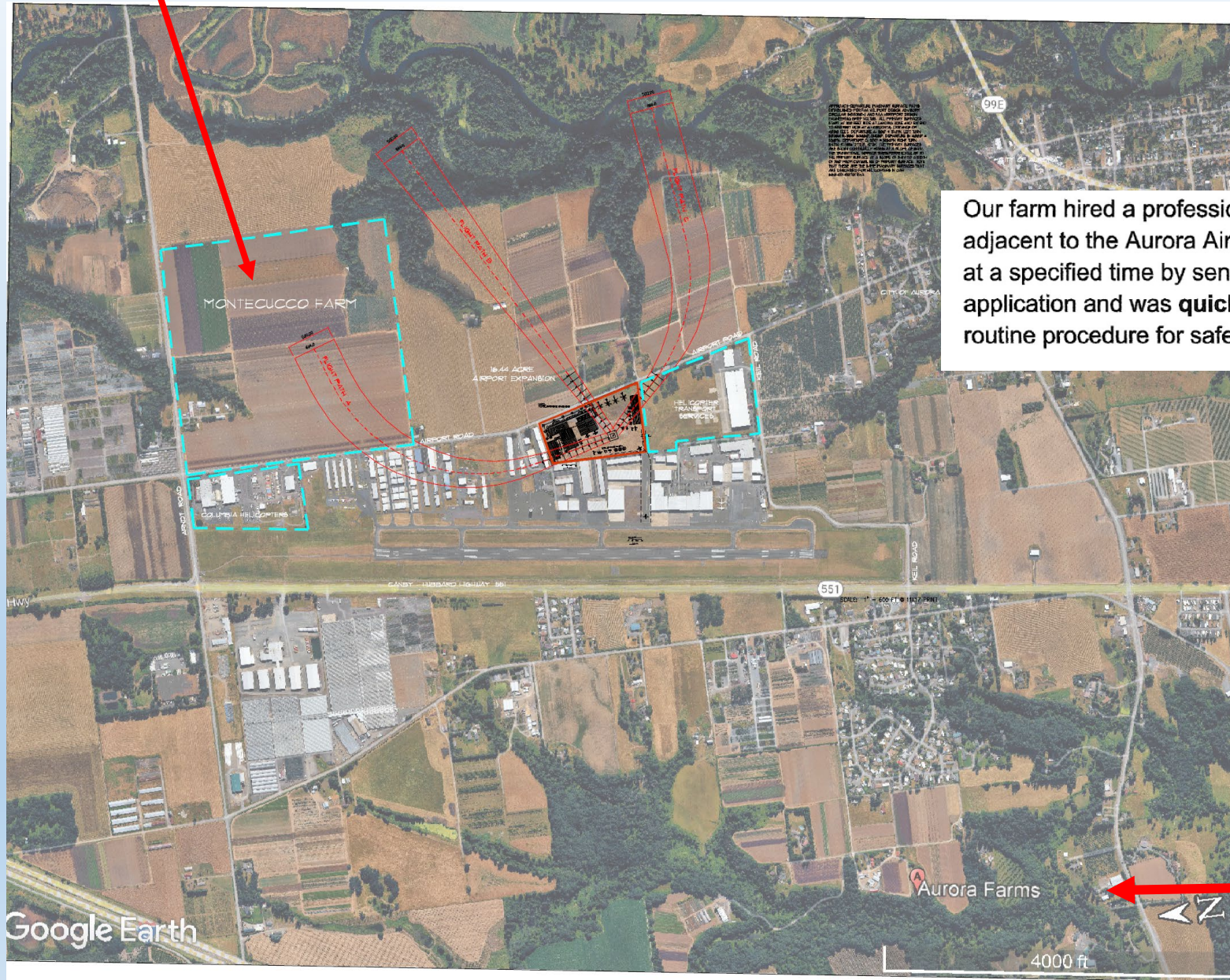


# Farm Impacts Test ORS 215.296

Montecucco Farms (across airport road from Columbia Heli (March 6 Hrg Exh 5)

Our farm hired a professional drone operator this year to make applications to the fields that are adjacent to the Aurora Airport. Our drone operator requested clearance to operate their drone at a specified time by sending an application to the FAA. By my understanding it was a simple application and was **quickly** approved. Drone operator explained to me that the application is a routine procedure for safety reasons to operate a drone in close proximity to an airport.

Aurora Farms  
13490 Cedarwood Rd NE, Aurora, OR 97002



# Farm Impacts Test – “slow moving farm equipment”

- Montecucco Farms (across Airport Road from Columbia Helicopters) March 6 Hrg Exh 5:

I am Jason Montecucco, part owner of Montecucco Farms LLC. Montecucco Farms grows fresh market vegetables on approximately 150 acres of land (out of a total of 1,000) on the east side of Airport road. The field we farm starts at the corner of Arndt road and Airport road and goes for around 2,600 feet south on the east side of Airport road across from Columbia Helicopters and the Aurora Airport.

We have farmed along Airport road since 2018. We have access to our field on Airport road for our harvesting equipment, trucks, tractors and implements and have never had any issues with traffic on Airport road. In my opinion Airport road does not seem to have much traffic compared to other roads we farm adjacent to in Oregon. No activity at the airport has ever hindered our ability to farm.

# “Slow Moving Farm Equipment”

- Applicant’s TIA (p 32): a 5 second delay at most. As the staff report p 7, correctly explains:

The 2024 TIA submitted by the applicant shows that the proposal will not result in traffic impacts that significantly change or increase the cost of farming practices in the area. The TIA indicates a 5-second delay for farm equipment driving halfway around the entire Aurora Airport as a result of increased trips related to the proposal. This delay is not significant enough to change farm practices, or increase the cost of farm practices, in the area.

# Regulatory Framework: OAR 660-012-0065(3)(n)

- OAR 660-012-0065(3)(n):

“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 airplanes”.

# OAR 660-012-0065(3)(n) Valid Exercise of LCDC's Authority

- ORS 215.283(3)(a) requires the “[a]doption of an exception to the goal related to agricultural lands and to any other applicable goals with which the facility or improvement *does not comply*.”
- OAR 660-012-0065(3)(n) deems expansion of KUAO boundary consistent with the Goals. Therefore, wholly consistent with ORS 215.283(3)(a), no exception required. Does not trump ORS 215.283(3), rather completely consistent with it.
- OAR 660-012-0065(3) listed uses are deemed “consistent with Goals 3, 4, 11 and 14” not contrary to identified Goals. It applies the Goals, no differently than rules stating a particular use permitted on EFU land authorized by Goal 3. *See, e.g., OAR 660-033-0120 (Table of Uses Authorized on Agricultural Lands)*.
- The Legislature choose not to establish the Goals, instead granting LCDC broad legislative authority to adopt and amend the goals. *1000 Friends of Oregon v. Land Conservation and Dev. Comm’n*, 292 Or 735, 744, 642 P2d 1158 (1982).
- Goals: LCDC’s creatures. Up to LCDC to decide how they apply. *1000 Friends of Or v. LCDC*, 301 Or 447, 452-53 (1986).



# Regulatory Framework

## No Goal Exception is Required

### ORS 836.215(3)

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

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

“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 airplanes”.

# Regulatory Framework: TPR Does Not Apply

- OAR 661-0013-0160(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.”

# Precautionary Findings of TPR Compliance Anyway

- Substantial evidence supports TIA conclusion that proposal has no “significant effect” on a transportation facility.

**TABLE 6: TRIP GENERATION SUMMARY FOR PROPOSED DEVELOPMENT**

LAND USE (ITE CODE)	TRIP GEN RATE <sup>A</sup>	UNITS	AM PEAK HOUR			PM PEAK HOUR			DAILY TRIPS
			IN	OUT	TOTAL	IN	OUT	TOTAL	
<b>WAREHOUSE (150)</b>	0.17 (0.18)	85.4 KSF	11	3	14	4	11	15	146
<b>GENERAL OFFICE (710)</b>	1.52 (1.44)	15.7 KSF	21	3	24	4	19	23	170
		<b>TOTAL</b>	<b>32</b>	<b>6</b>	<b>38</b>	<b>8</b>	<b>30</b>	<b>38</b>	<b>316</b>

**Note:**

A. XX (YY) = AM peak rate (PM peak rate) in trips per 1,000 square feet of gross floor area

B. KSF = 1,000 square feet





# Oppositional Claim: Reasonable Worst Case TPR Analysis Must be Based upon 83,916 Sq. ft of Offices

- Wrong. There is no universe in which the EFU zone would ever allow 83,916 sq. ft. of offices.
- Remember this is not a zone change – merely a CUP to expand the KUAO land use boundary to establish airport related uses allowed by ORS 836.616 and OAR 660-013-0100.
- No airport use allowed under ORS 836.616 and OAR 660-013-0100 results in 83,916 sq. ft. of offices on this 16.54 acres of land adjacent to a busy airport.

# County Plan Compliance Highlights

- Fully Consistent with 1976 Acknowledged Airport Plan.
- Agricultural Plan provisions – informed and limited by the specific 1976 Plan for the airport including the subject property.
- If ag provisions in plan are inconsistent with acknowledged airport master plan, which controls?
- The 1976 MP controls: State law allows proposal as an authorized use of EFU zoned land and the 1976 is an acknowledged Airport Plan shows that was anticipated to occur on the subject property and the EFU zoning was until airport related dev occurred.



# County Plan Ag Policies

- First clause of Agricultural Lands Policy 3 is not a mandatory approval standard because it uses aspirational language. Use of aspirational language such as “encourage,” “discourage,” “promote,” or statements to the effect that certain things are “desirable” will generally not be found to be mandatory approval standards. *Friends of Hood River v. City of Hood River*, 67 Or LUBA 179 (2013), *aff’d in part, rev’d in part on other grounds*, 263 Or App 80 (2014); *Neuschwander v. City of Ashland*, 20 Or LUBA 144 (1990); *Citizens for Responsible Growth v. City of Seaside*, 23 Or LUBA 100 (1992), *aff’d w/o op.* 114 Or App 233 (1993).
- Second clause of Agricultural Lands Policy 3 not mandatory standard - fully implemented by the farm impacts test in MCC 17.136.060(A)(1). An otherwise applicable plan policy is implemented by the zoning code where land use regulations fully implement the plan policy and it as a potential source of approval criteria. In that case, demonstrating compliance with county land use regulations establishes consistency/compliance with the plan. *Save Our Skyline v. City of Bend*, 48 Or LUBA 211-12; *Murphy v. City of Ashland*, 19 Or LUBA 182, 199 (1990); *Miller v. City of Ashland*, 17 Or LUBA 147, 169 (1988); *Durig v. Washington County*, 35 Or LUBA 196, 202 (1998).



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- If Agricultural Lands Policy 3 were to be applied as a standard, it allows the county to balance its stated objective against other policies.
- The term “discourage” is not synonymous with “prohibit.”
- It makes far more sense to allow expansions or alterations of existing airport facilities onto the subject property than it does to build a new airport in another location. And happens to be consistent with the TTF statute to do so (ORS 836.640-642) and OAR 660-012-0065(3)(n).
- This is especially true since the parcel is substandard in size for farming, is surrounded on three sides by development, and consists of somewhat poorly drained soils that have been compacted by previous development.



# Subject property not quality ag land

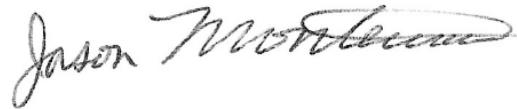
- Property has not been farmed for more than 50 years.
- Poorest of the soils in the area.
- Reason traditional drainfield does not work is the property does not drain well.

“The parcel is so small the investment to drill an irrigation well would be too large for a very minimal return making it completely uneconomical to pursue farming it.”

The land TLM holdings would like to develop into a Vertiport, in my opinion, 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 to make the field larger by adding it to neighboring land to farm.

I trust common sense will prevail, hopefully soon, and the property can be developed into what the landowner envisions will add value to the local economy, rather than have an empty patch of dirt doing nothing for anybody, while time marches forward and opportunities for progress are squandered.

Sincerely,



Jason Montecucco  
503-263-6066



# Oppositional Claims Make Basic Errors

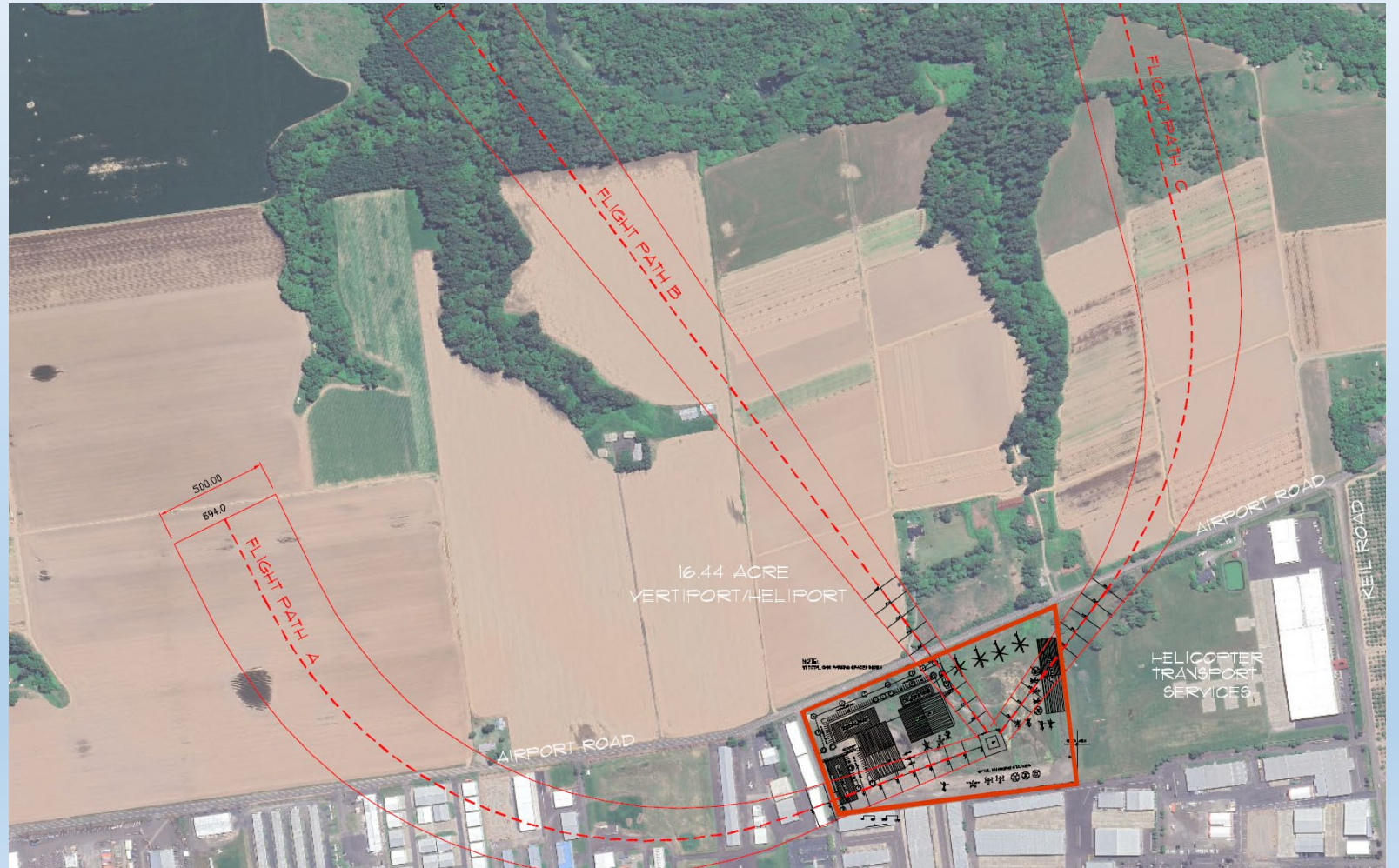
- Opponent Claim: The proposal seeks or needs an exception.
- Correction: Wrong. No exception is sought or required.
- Opponent claim: Only state can expand airport boundary.
- Correction: Wrong. There is no such limit in OAR 660-012-0065(3)(n) or the TTF statute ORS 836.640/642. Opponent inserts what is omitted, violating ORS 174.010.
- LUBA - “The court concluded that ‘[r]equests for comprehensive plan amendments and zone changes, like the ones at issue here, *sought by private parties* without corresponding expansion of the airport boundary through the airport planning process are not expansions of public use airports within the meaning of OAR 660-012-0065(3)(n).”  
*Schaefer*, 318 Or App at 620. *Schaefer v. Marion County*, 2022 WL 3567227, at \*2.”

# Oppositional Claims Make Basic Errors

- Opponent Claim: Application is for a stand-alone new airport.
- Correction: Wrong. The application seeks to expand the KUAO existing airport boundary, not make a new airport.
- The subject property will become a part of KUAO as a TTF operation just as Wilson Construction, Life Flight, and others.

# Oppositional Claims: Basic Errors

- Opponent Claim: Application does not specify flight routes beyond the subject property.
- Correction: Wrong. Application Exh 2A shows “flight paths” (*i.e.* routes).



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# Oppositional Claims Make Basic Errors

- Opponent Claim: “heliports” are CUPs in various commercial and industrial zones, so Hearings Officer should make negative inference that a heliport is not allowed in the EFU zone.
- Correction: Wrong. State law allows proposal per ORS 215.283(3) / LCDC implemented per OAR 660-012-0065(3)(n) / MCO implemented per MC 17.136.050(J)(4). Thus, legislature *and* LCDC made the decision for the county. Where the Legislature &/or LCDC define the uses allowed in the EFU zone, the county cannot further limit uses allowed by right in a statute or rule. *Compare Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995); *Lane County v. LCDC*, 325 Or 569, 942 P2d 278 (1997).
- Legislature also enacted ORS 836.625(1), which states that the limitations on non-farm uses in EFU zones described in ORS 215.283 do not apply to airport uses within airport boundaries. Therefore, whatever Marion County has allowed in the various commercial and industrial zones does not create a negative inference about uses allowed within airport boundaries, a subject regulated by state law.
- Negative inference also does not apply on facts – as it did not apply in facts of case cited by opponent. In *Western Land & Cattle, Inc. v. Umatilla County (Flying J, Inc)*, 230 Or App 202 (2009) LUBA declined to apply negative inference: “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. \*\*\*”



# Negative inference cannot be justified as makes zoning code inconsistent with acknowledged Airport 1976 Plan

- Acknowledged plan expressly identifies the subject property as suitable for airport related uses under private ownership.
- Zoning code cannot be interpreted in a manner that is contrary to the County's acknowledged plan. *Baker v. Milwaukie*.

# Oppositional Claims Make Basic Errors

- Oppositional Claim: There is no “approvable sewage disposal” and proposal “exceeds the carrying capacity of the land.”
- Correction: Wrong. Only evidence in the record is that an approvable sewage disposal system can be established on the subject property, precisely respecting and not exceeding the “carrying capacity of the land.”

# Oppositional Claims Make Basic Errors

- Oppositional Claim: “LUBA has already rules that through the fence development of the subject property is prohibited.”
- Correction: Wrong. LUBA has not said that no TTF can be approved on the property. Opponent does not cite any basis for the assertion.

# Oppositional Claims Make Basic Errors

- Oppositional Claim: Proposal will increase intensity of exception land.
- Correction: Wrong. The subject property is not exception land. The subject property and the airport have been designated in the county plan under the 1976 Master Plan as the site for a growing busy airport. Whatever argument opponent hopes to make, is anyone's guess.
- But opponent does not demonstrate the proposal cannot be approved.

# Oppositional Claims Make Basic Errors

- Opponent Claims: Farmers will not be able to use drones, farmers will have to get ATC permission they do not now need, and the site will cause terrorist attacks.
- Correction: Wrong. Under federal law, the airspace 4 miles from KUAO is restricted and ATC approval is required for any drone flight now. Under state law, the controlled airspace area is 5-miles. If the farmer opponent is now using drones without prior ATC authorization, they are violating federal law.

## EXPERT – Pilot, Remote Pilot, PHD Aeronautical Engineer

The net result is that there is no date or time when it is possible to simply launch a drone from a farm in this controlled airspace that is within a 4-mile radius of the Aurora State Airport, and expect not to have federal control over the flight – through authorization from Air Traffic Control Tower and under federal responsibilities imposed on all aircraft pilots including drone pilots, of monitoring the assigned CTAF. Therefore, the introduction of new rotorcraft pads, will have no influence on whether the farm must obtain federal permission to operate a drone in this controlled airspace. The farm is required to be obtaining that permission now. Operating a drone in controlled airspace and not adhering to controlled airspace rules is a federal crime.

### **Assertion 3: Claim that the approval of the proposed facility will preclude the use of drones on the farm.**

This is mistaken. Drones operate in the National Airspace System which is controlled by the federal government and not private landowners. No landowner's use of drones is made more or less viable when other aircraft in controlled airspace are also operating within the national airspace system. 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. With or without the proposal the farmer is required to operate their drones in compliance with federal law which governs the controlled airspace within which they farm.

#### 6. Assertion 5: Misclassification of eVTOLs as Ultralights

Related to the above is the claim that eVTOLs are classified as **ultralights**. This is categorically **incorrect**.

- **Ultralights** fall under **Part 103** and are limited to single-occupant, non-commercial, unregulated operations with weight and fuel restrictions.
- **Commercial eVTOLs**, on the other hand, will be subject to **FAA Type Certification (TC) under Part 21**, operational certification under **Part 135 (for commercial transport)**, and pilot licensing requirements.

Any assertion equating commercial eVTOL operations with ultralights ignores the existing regulatory framework and the extensive FAA oversight that will govern their use.



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**Assertion 7: Airspace Congestion and Flight Safety Concerns**

As explained above, Aurora Airport operates under FAA-regulated **Class D** airspace with controlled access and ATC oversight or Class E airspace which is also controlled and has ATC oversight. Any new aircraft operations, including eVTOLs, must comply with established traffic control procedures.

Additionally, FAA's **NextGen** air traffic modernization efforts are an in-progress program designed to improve airspace efficiency for all aircraft, reducing congestion and enhancing situational awareness through technologies such as **ADS-B (Automatic Dependent Surveillance-Broadcast)**. eVTOL aircraft operating in controlled airspace will be required to follow FAA's NextGen rules further mitigating risks associated with increased traffic volume.



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# Requested Additional Condition

- Add an express condition of approval that the only eVTOLs that will be allowed are those operated commercially. No one ever intended “ultralights” to operate at the site.

# Conclusion

- The proposal meets all applicable standards
- LCDC did not violate its authority adopting OAR 660-012-0065(3)(n)
- The proposal will not inspire terrorist attacks
- Farm uses will not be significantly adversely impacted
- The proposal has only minor traffic impacts
- The proposal is completely 100% consistent with the acknowledged Marion County Comprehensive Plan's acknowledged 1976 Aurora State Airport Master Plan.
- Staff got it right, the proposal should be approved.
- Thank you. Questions?

