



Marion County
OREGON

ZONE CHANGE/COMPREHENSIVE PLAN CHANGE APPLICATION

RECEIVED

DEC 19 2023

Marion County

Do not double-side or spiral bind any documents being submitted

Fee: Please check the appropriate box:

☐ Zone Change - \$2500+\$40/acre

☒ Comprehensive Plan Change - \$3755+\$60/acre

☐ Zone Change/Comprehensive Plan Change - \$4510+\$70/acre

☐ Mineral Aggregate Site - \$630/acre

\$30/acre - 0-100 acres

\$90/acre - 101-200 acres

\$120/acre - 201-399 acres

\$180/acre - 400+ acres

PROPERTY OWNER(S): TLM Holdings, LLC	ADDRESS, CITY, STATE, AND ZIP: 14379 Keil Road NE, #11 Aurora, OR 97002
PROPERTY OWNER(S) (if more than one):	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Wendie Kellington Kellington Law Group, PC	ADDRESS, CITY, STATE, ZIP [REDACTED] [REDACTED] [REDACTED]
DAYTIME PHONE (if staff has questions about this application): [REDACTED]	E-MAIL: [REDACTED]
ADDRESS OF SUBJECT PROPERTY: 22515 Airport Road NE, Aurora, OR 97002	SIZE OF SUBJECT PROPERTY: 16.54 acres +/-
The property owners request to change the zone from (current) _____ to (proposed) _____ and/or change the Comprehensive Plan designation from _____ to _____.	
Provide detailed information on the attached "Applicant Statement" page. Comprehensive Plan Text Amendment to Add a Reasons Exception	
Will a railroad highway crossing provide the only access to the subject property? () Yes (X) No	
If yes, which railroad:	

FOR OFFICE USE ONLY:			
Township <u>4S</u>	Range <u>2W</u>	Section <u>02D</u>	Application elements submitted:
Tax lot number(s) <u>800 + 900</u>	☒ Title transfer instrument		
Zone: <u>EFU</u>	Comp Plan: <u>Primary Ag</u>	☒ 2 Site plans showing existing/proposed zoning	
Zone map number: <u>3</u>	☐ Urban ☒ Rural	☒ Applicant statement	
☐ TPA/header		☐ GeoHazard Peer Review (if applicable)	
Case Number: <u>CP/CU 23-002</u>	☒ Filing fee		
Signs given (min. agg. only):	Application accepted by: <u>AB</u> Set up by: <u>AB</u>		
Date determined complete:	Date: <u>12/19/2023</u>		



Marion County
OREGON

CONDITIONAL USE APPLICATION

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Fee: Please check the appropriate box:

- | | |
|--|--|
| ☐ Conditional Use - \$1450 | ☐ Amend Conditions/Permit - \$600 |
| ☐ Conditional Use Hardship - \$450 | ☐ Aggregate Site (non Goal 5) - \$3000+\$80/acre |
| ☐ Conditional Use Hardship Change of Occupant - \$120 | ☐ Agri-Tourism Single Event - \$375 |
| ☐ Non-Farm Dwelling \$1930 | ☐ Agri-Tourism Max 6 Events - \$640 |
| ☐ UT Zone Replacement Dwelling - \$450 | ☐ Agri-Tourism Max. 18 Events/Longer Duration-\$640 |
| ☐ Conditional Use Home Occupation - \$770 | |

**Marion County
Planning**

PROPERTY OWNER(S): TLM Holdings, LLC	ADDRESS, CITY, STATE, AND ZIP: 14379 Keil Road NE #11, Aurora, OR 97002
PROPERTY OWNER(S) (if more than one):	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Wendie Kellington, Kellington Law Group, PC	ADDRESS, CITY, STATE, ZIP [REDACTED] 5
DAYTIME PHONE (if staff has questions about this application): [REDACTED]	E-MAIL (if any): [REDACTED]
ADDRESS OF SUBJECT PROPERTY: 2215 Airport Road NE, Aurora, OR 97002	SIZE OF SUBJECT PROPERTY: 16.54 acres +/-
THE PROPERTY OWNERS OF THE SUBJECT PROPERTY REQUEST TO (summarize here; explain in detail on the "Applicant's Statement"): <u>Develop a vertiport for vertical takeoff and landing vehicles (helicopters and eVTOLS) on the subject property. MCC 17.136.050(J)(4) authorizes as a conditional use on EFU land transportation facilities not otherwise allowed on EFU land pursuant to certain requirements. Applicant requests approval for rotorcraft-based operations, storage and maintenance uses and development such as landing pads, tie down areas, hangar space, repair areas, offices and operational areas, fueling and electrical charging areas, etc.</u>	

FOR OFFICE USE ONLY:

Township <u>4S</u>	Range <u>2W</u>	Section <u>02D</u>	Application elements submitted:
Tax lot number(s) <u>800 + 900</u>	☒ Title transfer instrument		
Zone: <u>EFU</u>	☒ Site plan		
Zone map number: <u>3</u>	☒ Applicant statement		
☐ TPA/header	☒ Filing Fee		
Case Number: <u>CP66 23-002</u>	☐ GeoHazard Peer Review (if applicable)		
☐ Urban ☒ Rural	☐ Physician's Certificate (if applicable)		
Signs given:	☐ Home Occupation Supplemental (if applicable)		
	☐ Agri-Tourism Supplemental (if applicable)		
Date determined complete:	Application accepted by: <u>AB</u>		
	Date: <u>12/19/2023</u>		

Applicant Statement (required)

It is up to the applicant to fully explain your proposal and how it conforms to Marion County land use regulations. This is your opportunity to provide detailed information on the “who, what, where, when and why” that is specific to your proposal.

There are specific criteria and regulations for each zone; these are available from the Planning Division. We strongly encourage you to obtain a copy of this information, review it, and then prepare your “applicant’s statement”.

These are a few items you should consider including (where applicable):

- Describe the property as it exists now and after implementation of the proposal: topography, existing structures and their use, new or alteration of structures, etc.
- Describe surrounding properties: type of land use, scale of development, etc. and any impact your proposed use might have on these properties such as dust, noise, fumes or odors, traffic, etc. And, if so, what measures will you take to mitigate these impacts?

Summary: MCC 17.136.050(J)(4) authorizes as a conditional use on EFU land transportation facilities not otherwise allowed on EFU pursuant to OAR Chapter 660, division 12, which provides exceptions standards for the proposed use. The proposal is for a vertiport, a transportation facility for vertical takeoff and landing vehicles (helicopters and eVTOLS). Although it is a conditional use, it requires the taking of an exception under the standards provided at OAR 660-012-0070. This application is submitted because that exception must be incorporated into the Marion County Comprehensive Plan.

For the full Applicant's Statement, please see the application narrative and attached exhibits.

THE APPLICANT(S) SHALL CERTIFY THAT:

- A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.
- B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.
- C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.
- D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

PRINTED NAME AND SIGNATURE of each owner of the subject property.

TLM Holdings, LLC

Print Name

Signature

Print Name

Signature

Print Name

Signature

Print Name

Signature

DATED this Dec 18, 2023 day of December, 2023

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DEC 22 2023

Marion County
Planning

I. APPLICATION INFORMATION

Applicant/Owner:

TLM Holdings, LLC

[REDACTED] # [REDACTED]
[REDACTED], [REDACTED]

Applicant's Representative:

Wendie Kellington

Kellington Law Group, P.C.

[REDACTED]
[REDACTED], [REDACTED]

Subject Property Address:

22515 Airport Road NE

Aurora, OR 97002

Legal Description:

TRS Map 04 1W 02D

TL 800/900

Present Zoning:

EFU

Proposal:

Transportation Facility on EFU Land

Application Requirements:

Conditional Use Permit

Exception to Statewide Planning Goals 3, 11 and 14

Comprehensive Plan Amendment for Exception

Compliance with AO zone requirements

II. INTRODUCTION

Summary of Proposal and Applications

TLM Holdings, LLC ("Applicant") is proposing a "transportation facility or improvement" to enable a specific rotorcraft-based¹ transportation facility for the

¹ Rotorcraft or rotary-wing aircraft are heavier-than-air aircraft with rotary wings or rotor blades that generate lift by rotating around a vertical mast. The term includes vehicles where one or more rotors provide lift throughout the entire flight and include vertical-lift vehicles such as helicopters and electric vertical take-off and landing ("eVTOL") vehicles.

movement of people and goods to and from the subject property. Such transportation facilities are commonly identified as heliports or vertiports.² The application materials and this application narrative refer to the proposal as the North Marion County Vertiport (“NMCV”). The purpose of this proposal is to put the subject property to productive use in a manner that is consistent with the adjacent airport and airport-related uses and appropriate for inclusion in the Aurora State Airport boundary at such time the County amends its Aurora Airport planning map to include the subject property, in the manner envisioned in every Aurora State Airport Master Plan and update the state has adopted. That said, if the application is approved, the proposed use will not be part of the Aurora State Airport and the Applicant is not requesting, and does not need to request that the County’s Aurora State Airport Planning Map be approved at this time for the use to be approved. But the use of the subject property will be consistent with such action when and if it occurs and no new exception will be required if the County amends its planning map.

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 if an applicant obtains an exception to Goal 3 or any other applicable goals using the standards set forth under OAR chapter 660, division 12. Consequently, Applicant is submitting a conditional use application narrative and evidence that includes addressing the exceptions standards set forth under OAR 660-012-0070. Because the subject property is within the Airport Overlay (AO) zone, the MCC Chapter 17.177 AO standards are also addressed as part of the conditional use application. Finally, because the application requires an exception to be taken and exceptions are required to be adopted into the County’s comprehensive plan, the Applicant is also submitting an application to amend the text of the Marion County Comprehensive Plan (“MCCP”) to incorporate the exception. Note, the application does not request a change to the comprehensive plan designation map or the zoning map for the subject property – there is no request for a plan designation change or zone change. The

² As defined in HB 2834 (2023), “Vertiport’ mean an area of land or structure used, or intended to be used, for vertical takeoff and landing aircraft.” That definition incorporates the use of the transportation facility by eVTOLS and other rotorcraft, not just helicopters to which heliports are oriented.

³ 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.”

proposed use is an allowed condition use under the subject property's current EFU zoning.

The Proposed Transportation Facility

As noted above TLM Holdings, LLC ("Applicant") is proposing to develop a vertiport on the subject property. The proposed transportation facility will address the needs of adjacent and nearby rotorcraft operations and will accommodate the growth of rotorcraft use generally and electric vertical takeoff and landing rotorcraft vehicles (eVTOLS) specifically. The proposal is to develop landing pads for vertical takeoffs and landings, rotorcraft tiedown areas, charging stations,⁴ fueling facilities, hangars, operations areas that include sleeping bunks, meal preparation and rest areas for shift-work pilots, maintenance and repair facilities and small offices to manage the facility and each major operator based at the facility. 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 normal facilities and services such as water, stormwater, and wastewater facilities.

The proposed transportation facility will move people and goods for remote firefighting and utility facility repair operations (serving, for example, the needs of Columbia Helicopters), and emergency medical evacuation (Medevac) flights (serving, for example, Life Flight Network) as well as serving itinerant operations. If approved, the proposed transportation facility will be one of the first transportation facilities in the state capable of serving eVTOLs, making Marion County a leader in providing transportation facilities for renewable energy-based vehicles. A site plan of the proposed North Marion County Vertiport transportation facility is provided at Exhibit 1.

As discussed further in response to the approval criteria, the need for rotorcraft-oriented transportation facilities within Marion County and the greater region is anticipated in the County's TSP. The steady growth in rotorcraft use over the years has shown the planning documents were correct in their assessment of future transportation needs. Supply has not kept up with the growing demand as demonstrated by the present need for additional rotorcraft facilities expressed in written testimony submitted by Columbia Helicopters and Life Flight Network. See, Exhibits 3 and 4. The subject property is well positioned to provide a transportation facility that can support these existing operations and their anticipated growth. Exhibit 5. Furthermore, advances in avionics, to include the increasing development

⁴ Charging stations are necessary for electric rotorcraft and for surface vehicles that provide transportation to the proposed rotorcraft facility. 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.

of all-electric (battery powered) rotorcraft in response to climate change, environmental emissions, and noise pollution concerns, have been met with inadequate numbers of transportation facilities to meet the needs of the technology. This proposal seeks to also address that unmet demand.

To give an idea of the types of operations that could be based at the transportation facility by these companies, Columbia Helicopters' reputation is built on operating tandem rotor (dual rotor) heavy-lift helicopters for aerial firefighting, resource industry support, infrastructure development and maintenance, and disaster and relief support, often operating in remote locations under austere conditions. See, Exhibit 51 (Columbia Helicopters Brochure). Columbia Helicopters also specializes in third-party maintenance, repair and overhaul services for the U.S. Government and private companies. Life Flight Network is a nonprofit air and ground critical care transport service that serves the Pacific Northwest and Intermountain West with a fleet of helicopter and fixed wing aircraft. See, Exhibit 52 (Life Flight website materials). Supported through its members, Life Flight is the largest non-profit air ambulance service in the United States. Each of these existing businesses have expressed interest in use of the proposed transportation facility. Exhibits 3, 4.

Proposed Uses

The Applicant is not requesting County authorization for the entire range of transportation facilities or improvements that make up an "airport" that can serve rotorcraft and fixed wing aircraft. That range is broad. As the Court of Appeals observed in *Schaefer v. Marion County*, 323 Or App 390, 392, 408-09 __ P3d __ (2022), an airport such as the Aurora State Airport is a transportation facility or improvement. Here, the Applicant requests only authorization of the discrete transportation facilities, improvements and uses that are described in this application:

- Use of the transportation facility by all types of vertical takeoff and landing 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 forest and stream restoration efforts; aerial construction, infrastructure, repair and heavy lift operations; aerial transport of persons and 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; supply chain management and logistics services; rotorcraft maintenance, overhaul and repair services; itinerant and facility-based personal rotorcraft use; accessory uses such as fueling of rotorcraft, storage of maintenance parts, and uses related to the development proposed below.

- Landing pads for helicopters and eVTOL craft to land and take off from. While on the landing pad, people and goods are loaded onto or removed from the vehicle.
- Tiedown areas where a rotorcraft can be temporarily “parked” ready for next use.
- Hangar space where rotorcraft can be temporarily parked in a covered, protected location ready for next use.
- Maintenance and repair facilities for rotorcraft (traditional helicopters or electric rotorcraft).
- Refueling and energy facilities to provide both aviation fuel for turbine or piston engine rotorcraft and electrical recharging stations for all-electric rotorcraft, and to include peaking/resilience systems for peak power load draws or disaster response such as large battery storage systems, on-site hydrogen production, storage and standby generator.
- Electric charging stations for electric cars that transport people and goods to the facility.
- Small offices to manage traffic and operations using the transportation facility.
- Operations areas, sleeping bunks and break areas for shift-work rotorcraft pilots and for emergency operations.
- Rotorcraft flight training.
- Related accessory structures and uses.
- If the County in a subsequent process amends its planning map to show the subject property within the airport boundary that such be allowable without a new exception.
- Related services to include, development of on-site water, wastewater and stormwater facilities, with authorization to connect to the HDSE wastewater system should it receive approval to serve additional parcels or to utilize the Columbia Helicopter drain field if additional land use approval is obtained, as well as the extension of electrical, gas, internet and other telecommunications services necessary for the proposed use to the subject property.

As discussed below, the Marion County Code (MCC) and state statute allow, as a conditional use, transportation facilities on EFU-zoned land approved pursuant to a specific type of goal exception set forth in OAR Chapter 660, division 12. Consequently, the Applicant is not requesting a change to the underlying EFU plan designation and zoning for the subject property, for example to the P (public) designation and zoning, which would allow for a broader range of airport-related uses. Rather, the proposal seeks development of a specific transportation facility/improvement, authorized through, and limited by, the OAR 660-0012-0070 exceptions process specific to transportation facilities or improvements approved by the exception. As noted above, the transportation facility/improvement will serve present needs that were identified and anticipated by the County's transportation planning.

As the County is aware, in 2019 Applicant submitted land use applications that would have changed the subject property's plan designation and zoning to P and would have allowed a broader range of permitted uses on the subject property, such as manufacturing and industrial activity oriented towards airport uses. LUBA affirmed much of the County's approval of that application, but the Court of Appeals remanded it. The Court of Appeals suggested that had the application been brought seeking approval of a transportation facility or improvement under OAR 660-012-070, the result might have been different. *Schaefer v. Marion County*, 323 Or App at 407-08. This proposal is for a vertiport which is a transportation facility that both County and state law allows on EFU land.

Summary of Application Standards

These application materials demonstrate that the proposal complies with all applicable approval criteria that apply to the proposed vertiport. To summarize the application requirements, MCC 17.136.050(J)(4)⁵ authorizes as a conditional use on land zoned EFU,

“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

⁵ MCC 17.136.050(J)(4) implements ORS 215.283(3), which provides in relevant part:

“(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[.]”

improvement does not comply, and subject to OAR Chapter 660, Division 12.”

The proposed transportation facility for the specified rotorcraft uses is an “other transportation facilities and improvements not otherwise allowed” by MCC 17.136.050(J)(4) and is a conditional use in the EFU zone, which requires a demonstration of compliance with the County’s conditional use standards.⁶ MCC 17.136.050(J)(4) invokes the exceptions standards set forth by OAR chapter 660, division 12 (the “Goal 12 Rule”) under OAR 660-012-0070. Consequently, the proposed transportation facility or improvement requires an exception to Goals 3, 11 and, as a precaution, Goal 14⁷ under specific OAR 660-012-0070 standards. The conditional use application also requires a demonstration of compliance with the MCC Chapter 17.177 Airport Overlay (AO) zone standards given the property’s location within that overlay zone. Last, because the application involves an exception to the planning goals, the application must request a plan amendment to add the exception to the Marion County Comprehensive Plan. The plan amendment requires demonstrating consistency with the Statewide Planning Goals and relevant MCCP policies. The criteria imposed by the above standards are addressed in the Applicant’s Proposed Findings section below.

The Applicant Also Requests Alternative Findings

The Applicant also requests that the County adopt alternative findings approving the proposal. To summarize, the primary findings do not rely on the existence of the Aurora State Airport (“KUAO” or “Airport”) as justification for the exception. The requested alternative findings incorporate and build upon the primary findings and do rely on the presence of KUAO to demonstrate that the exception standards are met. LUBA has held that a county may adopt alternative findings when approving an exception to the statewide planning goals. *Oregon Coast Alliance v. Tillamook County*, __ Or LUBA __ (LUBA No. 2021-101/-104, September 30, 2022) (Slip op. 22-24).

To elaborate, as framed in the proposed findings below, the primary findings do not rely upon the presence of the Aurora State Airport as justification for the need

⁶ Note that because the proposed vertiport/heliport is a permitted conditional use on EFU land pursuant to Goal 3 and ORS 215.283(3) and MCC 17.136.050(J)(4), the Applicants may not be able to take an exception other than as prescribed by the Goal, statute, and implementing regulations. *Dep’t of Land Conservation & Dev. v. Yamhill County*, 183 Or App 556, 562, 53 Ped 462 (2002) (if a use is already permitted under certain circumstances, an applicant must meet those circumstances, the exceptions process does not provide an alternative avenue for approval of a permitted use).

⁷ In *Murray v. Marion County*, 23 Or LUBA 268, 283-84 (1992), LUBA determined that given the area served and level of service provided, uses at the Aurora State Airport constitute urban public facility uses and expansion of the airport onto EFU land would require a Goal 14 exception. Similarly, the Court of Appeals has suggested the same. *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 331-35 and fn 16 (2021). It appears that any facility providing air movement of goods and services to and from rural and urban areas is likely considered an “urban” use.

for or location of the proposed uses.⁸ The primary findings reflect OAR 660-012-0060(5), which states that the presence of a transportation facility (the Aurora State Airport in this instance) shall not be a basis for an exception on rural lands for specific uses.⁹ The primary findings will, of course, consider potential impacts from the proposed use on the airport as is required by the exception standards for all surrounding properties. The primary findings will be independent of and not rely upon KUAO to justify the proposed exception, in the event OAR 660-012-0060(5) applies to an exception for a transportation facility or improvement.¹⁰

Note that Applicant's reliance on the presence of Columbia Helicopters as an example of the need for the facility in the primary findings is entirely consistent with this approach. Columbia Helicopters' property as well as the adjacent Helicopter Transport Services (HTS) properties and facilities are privately owned and are fully independent from Aurora State Airport operations and facilities.¹¹ Neither lies

⁸ The presence of the Aurora State Airport as a basis for an exception is distinct from local, state and regional aviation needs identified in aviation related documents. OAR 660-012-0060(5) states that one cannot rely on the presence of a transportation facility as a basis for an exception to a statewide planning goal. It is unclear whether this applies to transportation facilities themselves – hence the alternative findings discussed above to support this application. The only other case to approve a transportation facility under OAR 660-012-0070 was the Siskiyou Summit rest area, in which ODOT relied upon proximity to I-5 as one of the location criteria. *Foland v. Jackson County*, 61 Or LUBA 264, 290 (2010). Regardless, the rule does not state that applications cannot rely on data or analysis of local, regional, and state aviation growth or needs identified in airport planning documents. This application considers local, regional and state rotorcraft needs in the required analysis regardless of the source of that need, to include from KUAO.

⁹ OAR 660-012-0060(5) 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 under this division or OAR 660-004-0022 and 660-004-0028.”

¹⁰ It is more likely than not that OAR 660-012-0060(5) does not apply to exceptions for transportation facilities. By its express terms, it applies only for exceptions “to allow residential, commercial, institutional, or industrial development on rural lands,” not to transportation facilities. As noted above, LUBA's opinion in *Foland v. Jackson County*, 61 Or LUBA 264 (2010), which concerned the replacement for the Siskiyou Summit rest stop for northbound I-5 travelers, is instructive on this point. In *Foland*, LUBA ultimately affirmed ODOT's exception taken under OAR 660-012-0070 that relied upon the presence of I-5 (a transportation facility) to supply the need for the I-5 rest stop (which LUBA held was a transportation facility). *Id.*; 70 Or LUBA 247 (2014). Similarly, the Court of Appeals “questioned” whether the prohibition upon relying upon a transportation facility to support an exception applied to exceptions for transportation facilities at all in *Schaefer v. Marion County*, 323 Or App at 408. The policy underpinnings of OAR 660-012-060(5) are not served by applying it to transportation facilities.

¹¹ As the Aurora State Airport Draft Airport Master Plan (2022) (Exhibit 27) explains:

“The focus of the airport Master Plan are the public facilities located on ODAV property and the eleven designated TTF access points on the airport property line. As noted earlier, *the nearby Columbia Helicopters and Helicopter Transport Services (HTS) facilities are privately-owned helipads that are fully independent from Aurora*

TLM Holdings, LLC Application for Transportation Facility

within the airport boundary and neither is a TTF operation. The proposed transportation facility relies in part upon the locationally specific need of Columbia Helicopters' operations for the exception. Likewise, the fact that Life Flight wishes to use the proposed transportation facility is distinct from the presence of the Aurora State Airport, where Life Flight's headquarters and primary airplane-oriented operation is located. Life Flight requires additional space near its headquarters for its rotorcraft operations and to consolidate its operations.

Applicant requests approval of the proposal based upon the analysis provided in these primary findings, which do not rely upon the presence of the Aurora State Airport (a transportation facility) to justify the exception.

The Applicant also requests that the County also adopt alternative findings for the proposal in addition to the primary findings. The alternative findings should build upon the primary findings and further consider the presence of the Aurora State Airport to justify approval of the exception. The basis for adopting alternative findings draws from *Foland v. Jackson County*, *supra*, the proper interpretation and policy underpinnings of OAR 660-012-0060(5) and the Court of Appeals opining, without deciding, that OAR 660-012-0060(5) probably does not apply to applications for a transportation facility. *See, Schaefer v. Marion County*, 323 Or App 390, 408, __ P3d __ (2022), Exhibit 6. As noted, in *Foland*, ODOT relied upon proximity to I-5 (a transportation facility) to justify a proposed transportation facility (a rest stop and welcome station) as a reason for granting an exception for the rest stop and related facilities on EFU zoned land. *Foland v. Jackson County*, 61 Or LUBA 264, 290 (2010), which decision was ultimately affirmed in *Foland v. Jackson County*, 70 Or LUBA 247 (2014). The Applicant requests approval of the alternative findings in addition to the primary findings.

Because the application involves an exception, which must be made part of the County's comprehensive plan by ordinance, the final decision maker must be the Marion County Board of Commissioners. The Applicant respectfully requests that the Board of Commissioners approve the applications to authorize a transportation facility on the subject property.

III. SUBJECT PROPERTY

The subject property is located at 22515 Airport Road NE in Aurora Oregon. The property is a single parcel of land that consists of two tax lots, identified on Marion County Assessor's Map as Tax Lots 800 and 900 on TRS map 04 1W 02D. Attached as Exhibit 7 is a copy of the Assessor's Map and as Exhibit 8 is the legal description for the property. The subject property is 16.54 acres in size. As discussed below, the subject property is designated Primary Agriculture and zoned Exclusive

State Airport operations and facilities. These facilities will not be included in the airport master plan evaluations." At Page 2-37 (emphasis supplied).

TLM Holdings, LLC Application for Transportation Facility

Farm Use (EFU), with an Airport Overlay (AO) Zone. *See*, Exhibit 9 (area plan designations); Exhibit 10 (area zoning); Exhibit 11 (AO zone).

The subject property lies on the west side of Airport Road, approximately 1,365 feet north of the intersection of Keil Road and Airport Road. The Marion County Rural Transportation System Plan ("TSP") classifies Airport Road a major collector. The northern edge of the subject property abuts Stenbock Way NE. The TSP classifies Stenbock Way NE as a private road. The subject property has access from both roads. *See*, Exhibit 1 (Site Plan).

The subject property is roughly level and is presently 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; moreover, hydrogen is available as a source of electricity either to provide power during peak periods or as a replacement to the electrical grid. *See*, Exhibit 12 (PGE / hydrogen feasibility letter); Exhibit 22 (LUBA opinion describing camp facilities). There is running water provided by a well, which is situated within a pumphouse and there are 2 water storage tanks located near the pumphouse. Exhibit 45 (Edge Analytical, water availability).

Due to the subject property's proximity to the Aurora State Airport, the property is within the Horizontal Surface District of the Aurora State Airport. Consequently, the property is subject to the AO zone's use and development restrictions. *See*, Exhibit 11. The Airport also holds a Flight Strip Easement over portions of the subject property, which grants the United States and the State of Oregon ("Grantees") use of the easement area for aircraft use and further provides the Grantees the right to limit, control, and remove obstructions extending into the space above the subject property. *See*, Exhibit 14. The design of the vertiport is such that the southwest corner, which touches upon an airport access way, will remain undeveloped to allow for future through-the-fence (TTF) operations as envisioned by Aurora State Airport master planning at such time as the County amends its Aurora State Airport planning map. *See*, Exhibit 1 (Site Plan); Exhibit 16 (2022 Aurora State Airport Master Plan Existing Conditions Map). Also, the subject property is located within the airport's 55-65 dBA noise contours, meaning aircraft noise impacts the site based upon DEQ standards. *See*, Exhibit 15 (2012 Aurora State Airport Masterplan Update, Noise Contours Map).

IV. SURROUNDING PROPERTIES

In summary, properties to the north, west and south of the subject property are designated Public and Semi-Public, zoned P, and are approved for and are developed with airport-related uses. None of the immediately adjacent properties are within the present Aurora State Airport boundary, although properties to the north

and west are authorized TTF operations and have direct access to the airport. Portions of the Aurora State Airport are located to the north, west and southwest of the subject property. The properties to the east, across Airport Road NE, are designated Primary Agriculture, have EFU zoning and are in hay/grass seed agricultural use.

Bordering the property directly to the north is a 3.71-acre parcel, identified as tax lot 041W02D040000, zoned P, owned by Roger Stenbock, John Chlopek, and Peter La Franchise. This property has six buildings that are each in aviation related use. Five of the buildings house twelve hangars that offer storage options to private aircraft owners and have direct access to the Airport and runway. Consequently, they are identified as aviation related Through-the-Fence ("TTF") operations as shown in the 2022 Aurora State Airport Draft Master Plan Update. *See*, Exhibit 16 (p. 2-30, Figure 2-12 Existing Conditions). Each hangar is individually owned and each possesses a unique tax lot number on the Marion County assessor Map No. 04-1W-02d. The sixth building houses Pacific Coast Avionics Corporation, which sells, installs and services avionic equipment for private aircraft. Farther north are multiple parcels owned by private parties and the Oregon Department of Aviation ("ODA") that are within the airport boundary. The ODA parcel contains the airport's air traffic control tower, taxiways, and aircraft parking. The private parcels are generally in hangar use, but also includes the clubhouse for the Columbia Aviation Association, a private organization devoted to aviation with approximately 175 members.

Even farther north is a 21.42-acre parcel owned by ODA that also lies within the airport boundary. This ODA property has airport hangars, offices, and a tarmac, and is identified as tax lot 041W02D000100. Beyond that are additional aviation related uses identified as TTF operations. *See*, Exhibit 16 (2022 Draft Master Plan Update, p. 2-30, Figure 2-12 Existing Conditions). Last, at the intersection of Airport Road NE and Arndt Road is Columbia Helicopters, a helicopter charter business that provides heavy lift, firefighting, and other transportation and repair services. Columbia Helicopters is not within the airport boundary and has no direct access to taxiways or runways and is therefore not included as a TTF operation. *See*, Exhibit 16. Columbia Helicopters is one of the entities seeking to utilize the proposed transportation facility on the subject property once it is approved. Exhibit 3.

To the west of the subject property is tax lot 041W02D30000 owned by the Southend Corporate Airpark Condominium Owners Association. That property contains large buildings with multiple separately owned hangars. All of the other buildings to the west and southwest of the subject property are also in aviation related TTF operations. The southwest properties are also part of the Southend Corporate Airpark and include a number of hangars, 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, which

is interested in expanding to the proposed transportation facility. Exhibit 4. Farther to the west is the Aurora State Airport runway.

The property adjacent to the south of the subject property is identified as tax lot 041W11A000100. It is 27.47 acres in size and is owned by US Leaseco, Inc. The property is the site of Helicopter Transport Services ("HTS"), which charters heavy lift and fire suppression helicopters and has repair and training facilities on-site. Like Columbia Helicopters, HTS is not within the airport boundary and does not have TTF access to the Aurora State Airport. See, Exhibit 5 (Vicinity Map); Exhibit 16 (Aurora State Airport Existing Conditions Map).

To the east of the subject property, on the other side of Airport Road NE, are parcels zoned EFU. They generally consist of substandard-sized parcels ranging from 78.99 acres to 12.77 acres and are farmed for hay or grass seed. See, Exhibit 10 (Corridor Zoning); Exhibit 35, (Analysis of Corridor Properties, Tax Assessors Maps 04 1W 01 and 04 1W 12B).

The closest urban areas are the City of Aurora, approximately 1/2 mile to the southeast, Charbonneau (part of Wilsonville), approximately 3 miles to the north, and Canby, approximately 3 miles east. To the immediate west of the airport is Hwy. 551 and I-5 is approximately 1 mile farther west. Exhibit 13.

In the greater surrounding area, the County and federal agencies have mapped a number of different hazards and resources, particularly to the east towards the Pudding River. The County and FEMA have identified floodplain areas (Exhibit 17), geohazard locations (Exhibit 18) and wetlands (Exhibit 19). As the analysis below explains, the presence of these hazards affects the ability of several potential alternative sites to reasonably accommodate the proposed use.

V. PRIOR LAND USE ACTIONS FOR THE SUBJECT PROPERTY

The County originally zoned the subject property Residential Agriculture (RA) via Ordinance 149, adopted on December 6, 1967, and Ordinance 176 adopted on July 31, 1968. The County changed the zoning for the subject property from RA to Exclusive Farm Use (EFU) in 1976 via Ordinance 448. The subject property is now designated Primary Agriculture (PA) in the Marion County Comprehensive Plan (MCCP) and zoned EFU in the Marion County Code (MCC) with the Aurora State Airport Overlay Zone. See, Exhibit 9 (Plan Map excerpt) and Exhibit 10 (Zoning Map excerpt).

The subject property was first developed as a Methodist Church Camp and then was re-developed in 1977 and operated by Beyond the Reef Theological Center (a type of retreat center) for the next 40 years +/- . In the 1970's, the subject property received two land use approvals. The first, the 1973 Conditional Use Case 73-37,

approved an application to construct a restroom at the retreat facility. See Exhibit 20. The second, the 1977 Special Exception Case No. 77-37, approved a partition for the subject property. See Exhibit 21; see also Exhibit 22 (LUBA decision describing camp uses and facilities). The improvements associated with the retreat included meeting and office buildings, cabins, two dwellings, a well, multiple septic systems, gas and electric infrastructure and an internal road system.

Recently, in 2019, Applicant applied for a Comprehensive Plan Change, Zone Change, and Conditional Use application to amend the Comprehensive Plan Designation from PA to Public (P) and Semi-Public, to change the zoning from EFU to Public (P) and to authorize airport-related industrial uses on the subject property. That consolidated application was designated Case No. ZC/CP/CU19-002. On October 21, 2020, the Marion County Board of Commissioners adopted Ordinance No. 1424, approving the applications with conditions, and adopting findings that address alternative grounds for approving the applications. Opponents appealed that decision.

On appeal, the Land Use Board of Appeals (“LUBA”) remanded the decision, affirming the decision in parts, but sustaining in part several assignments of error and not addressing challenges to the findings’ alternative reasoning. *Schaefer v. Marion County*, __ Or LUBA __ (LUBA No. 2020-108, Oct. 12, 2021). See Exhibit 22. Opponents appealed that decision to the Oregon Court of Appeals. The court agreed with opponents that LUBA erred in affirming the County’s determination that the proposal constituted an expansion of a public use airport that was consistent with Goals 3, 4, 11 and 14 and the court reversed and remanded the decision. *Schaefer v. Marion County*, 318 Or App 617, 509 P3d 718 (2022). See Exhibit 23. On remand, LUBA considered the County’s alternative reasoning for approval that if a Goal 3 exception were required, an exception was justified based on the presence of the Aurora State Airport. *Schaefer v. Marion County*, __ Or LUBA __ (LUBA No. 2020-108, July 7, 2022). See Exhibit 24. Opponents appealed that decision to the court. The court again agreed with Petitioners, holding that OAR 660-012-0060(5) prohibited the County from basing a Goal 3 exception on the presence of an airport because that airport was a “transportation facility,” and reversed and remanded LUBA’s decision. *Schaefer v. Marion County*, 323 Or App 390, 392, __ P3d __ (2022). See Exhibit 6. On remand again from the Court of Appeals, LUBA sustained the first assignment of error because the County did not identify any reason for the exception that was independent of the airport and OAR 660-012-0060(5) prohibited a Goal 3 exception based on access to the airport and reversed the County’s decision. *Schaefer v. Marion County*, __ Or LUBA __ (LUBA No. 2020-108, March 14, 2023). Exhibit 25.

Holdings from those proceedings guide this application.

VI. APPLICANT'S PROPOSED FINDINGS

The proposed findings below address the approval standards necessary to authorize the proposed transportation facility and associated uses on the subject property.

First, these findings address the MCC chapter 17.136 standards for conditional uses. MCC 17.136.050 identifies uses that may be permitted subject to obtaining a conditional use permit. MCC 17.136.050(J)(4) provides the County may authorize 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.”¹²

Because transportation facilities that have received an exception to Goal 3 and any other relevant goals is allowed in the EFU zone as a conditional use pursuant to MCC 17.136.050(J)(4) and ORS 215.283(3)(a), the proposed findings below address the County's conditional use approval criteria.

Second, because the conditional use requires a reasons exception taken pursuant to OAR chapter 660, division 12, the findings address the reasons exceptions standards set forth under OAR 660-012-0070 Exceptions for Transportation Improvements on Rural Land.

In this instance, the proposal requires an exception to Statewide Planning Goal 3, Goal 11 and likely Goal 14. Note that OAR 660-012-0070(2) expressly states that when an exception is being taken to Goals 3, 4, 11 or 14 to locate a transportation facility on rural land, the exception standards provided in OAR chapter 660, division 4 (for agricultural lands) and division 14 (for urban uses) “shall not apply” and that

¹² This MCC provision implements ORS 215.283(3), which provides in relevant part:

“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;
- (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.”

the OAR 660-012-0070 provisions shall be deemed to fulfill the reasons exception requirements of ORS 197.732(1)(c) and Goal 2.¹³

Third, because of the subject property's location near to the Aurora State Airport, the proposed findings demonstrate consistency with applicable AO zone standards.

Fourth, because the proposal includes an exception, and exceptions must be incorporated into the applicable comprehensive plan, the findings include addressing standards for a comprehensive plan text amendment. This may mean that the findings below must demonstrate that the proposal complies with the remaining Statewide Planning Goals for which an exception is not taken and that the findings should demonstrate that the proposal is consistent with MCCP policies. The applicant is aware of the decision of the Court of Appeals in *Jenkinson v. Lane County*, 329 Or App 372 (2023) in which the court decided in the context of forest template dwelling approval, that the county was prohibited from adding additional standards to those established by the legislature. As a precaution, this application includes analysis and findings regarding standards for a plan amendment and compliance with other goals for which an exception is not taken.

As explained above, the proposed findings also include alternative findings. To reiterate, the primary findings do not rely upon the Aurora State Airport as a basis for the exception to allow the proposed uses. The alternative findings do rely on the presence of the airport and build upon the primary findings to demonstrate that if the airport is considered, in part, as a basis for the exception, the exception criteria are satisfied on that basis as well, which further justifies approving the application.

Finally, it is worth noting what the application is not requesting and so what the findings do not address. First, the Applicant is not requesting a change to the subject property's comprehensive plan designation or zoning. Second, while other applications in the area have requested a LU (Limited Use Overlay) zone be applied to plan designation changes and rezones of properties to limit allowed uses under the new designation and zoning, this application does not request a LU overlay zone be applied.

The application of the LU zone here is not appropriate or warranted. Unlike other proposals, this proposal does not seek to change the underlying plan

¹³ OAR 660-012-0070(2) states:

"When an exception to Goals 3, 4, 11, or 14 is required to locate a transportation improvement on rural lands, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this division. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 14 shall not apply. Exceptions adopted pursuant to this division shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2."

designation and zoning, which would allow a broad range of uses unless limited by an overlay zone. The application here seeks approval only of a type of use that is already allowed as a conditional use under the existing EFU plan designation and zoning. There is no need to limit any other EFU allowed uses. Second, a reasons exception is self-limiting. Only those uses authorized by the exception are permitted. Different types of uses or expansion of the uses authorized by the exception requires a new reasons exception. If MCC 17.136.050(J)(4) had anticipated that the exception process would not have sufficiently limited the uses, it would have expressly required application of the LU overlay zone as part of the conditional use approval. The MCC contains no such phrasing. Further, the LU zone reference about possible applicability to exceptions comes from the MCC 17.176.010 purpose statement, which uses the discretionary term "may" as opposed to the mandatory "shall." It does not require the County to impose the LU overlay zone. Furthermore, the MCC 17.176.010 limited use zone purpose statement contains text about permitting "the maximum number of acceptable uses" and not unnecessarily limiting uses.

Again, the LU Overlay zone wording is more relevant to exceptions that authorize changes to a new, different underlying plan designation and zoning that could potentially introduce a wide range of new uses in an area than to reasons exceptions that authorize only the specifically identified uses as part of a conditional use approval without changing the underlying plan designation or zoning. In any case, purpose statements do not constitute approval standards. MCC 17.176.010 provides no mandatory approval criteria and is irrelevant to the exception required by MCC 17.136.050(J)(4) to allow a transportation facility as a conditional use on EFU land. Consequently, the LU overlay zone is not requested, and the LU zone standards are not addressed below.

A. Conditional Use Standards

MCC Chapter 17.135 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.

Proposed Finding: As discussed above, the proposal requests a transportation facility not otherwise allowed by MCC Chapter 17.135 and for which exceptions to Statewide Planning Goals 3, 11 and 14 are ostensibly required. The application narrative below discusses that the proposal is subject to OAR Chapter 660, Division 12 and that the application and supporting evidence demonstrates the proposal complies with the requirements of OAR 660-012-0070. Consequently, the proposal constitutes an "other transportation facility" allowed as a conditional

use, subject to the required exceptions, and the proposal must be reviewed for compliance with the County's conditional use standards.

MCC 17.119.020 Application: An application for a conditional use may be filed by the following only:

A. The owner of the property that is the subject of the application.

Proposed Finding: The application has been filed by the property owner as allowed under this standard. The proposal complies with this standard.

MCC 17.119.025 Required Signatures

A. Applications shall include the following signatures:

- 1. Signatures of all owners of the subject property;*
- 2. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale or earnest-money agreement;*
- 3. The signatures of the lessee in possession of the property with the written consent of all the owners; or*
- 4. The signatures of the agents of those identified in MCC 17.119.020(A), (B), or (C) when authorized in writing by those with the interests described in MCC 17.119.020(B) or (C), and all the owners of the property;*

Proposed Finding: The application for the conditional use has been signed by the owner of the property per MCC 17.119.030(A). The proposal complies with this standard.

MCC 17.119.060 Conditions

The director, planning commission or hearings officer 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 to the use. Any reduction or change of the requirements of this title must be requested and viewed as such. The director, planning commission or hearings officer shall impose conditions only after it has determined that such conditions are necessary for the public health, safety or general welfare, or to protect persons working or residing in the area, or the protection of property or improvements in the area. The director, planning commission or hearings officer may prescribe such conditions it deems necessary to fulfill the purpose and intent of this title.

Proposed Finding: Conditions of approval that relate to approval criteria and ensure the proposal complies with the mandatory approval criteria are appropriate. Applicant does not oppose appropriate conditions of approval. The proposal complies with this standard.

MCC 17.119.070: Before granting a conditional use, the director, planning commission or hearings officer shall determine:

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

Proposed Finding: While the MCC 17.110.680 expressly grants the planning director the authority to handle “all matters” pertaining to conditional uses and other administrative matters as prescribed by the MCC, the proposal is a consolidated request involving a reasons exception that the MCC requires be decided by the Board of Commissioners following a hearing before the Hearings Officer. 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;

Proposed Finding: MCC 17.136.010 provides the purpose for the EFU zone and provides, in part, “The purpose of the EFU (exclusive farm use) zone is to provide areas for continued practice of commercial agriculture.” The policy statement is lengthy and ends with, “The EFU zone is intended to be a farm zone consistent with OAR 660, Division 033 and ORS 215.283.” The proposed transportation facility is authorized by and is therefore consistent with ORS 215.283(3)(a), implemented in the rural zoning code by MCC 17.136.050(J)(4). Those standards allow other transportation facilities such as the transportation facility proposed here as a conditional use pursuant to an exception. While transportation facilities are not a commercial agricultural use, by citing to the statute and administrative rule, MCC 17.136.010 recognizes that a broad range of non-agricultural uses are allowed on agricultural land that are consisted to be and can operate in harmony with commercial agricultural uses.

The evidence in the record, discussed in the exceptions analysis below regarding compatibility, which is herein incorporated, demonstrates 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) for years. Furthermore, the 2023 TIA prepared by DKS Associates (Exhibit 39), demonstrates that transportation impacts on traveling farm vehicles will be minimal. The 2023 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. Exhibit 39 (TIA).

For the above reasons, the proposed transportation facility will be in harmony with the purpose and intent of the EFU zone. 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.

Proposed Finding: The Applicant recognizes that the County may impose conditions of approval that pertain to the health, safety or welfare as specified in the above standard. The proposal is consistent with this standard.

MCC 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 of 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.

MCC 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 shall 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 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.

Proposed Finding: Applicant requests that the decision maker exercise discretion to specify a longer period for the conditional use approval to be exercised based on a different effective date.

Based on recent opponent appeals involving land use decisions related to the subject property and the Aurora State Airport, Applicant anticipates appeals of the conditional use decision to LUBA and the Court of Appeals. Consequently, Applicant requests that an approval decision clearly state that the MCC 117.119.190 exercise period remain 2 years with the ability to be extended, but that the MCC 117.119.180 effective date for the commencement of the 2-year exercise period be the date of the final order or decision by the County, LUBA, the Oregon Court of Appeals or the Oregon Supreme Court, beyond which there can be no further appeals of the local decision and the local decision becomes final. This would result in a longer period for the conditional use approval to be exercised than is otherwise prescribed by MCC 17.119.180 and MCC 17.119.190 should the decision be appealed. If the local decision is not appealed, the effective date would remain as prescribed by MCC 17.119.180.

The proposal is consistent with the mandatory approval criteria for conditional uses.

B. Exceptions to Statewide Planning Goals 3, 11 and 14

1. Introduction

As discussed above, the proposed transportation facility is authorized under MCC 17.136.050(J)(4), which requires an exception to Statewide Planning Goal 3 and any other applicable goals, subject to the standards set forth in OAR Chapter 660 division 12 as part of the conditional use review of other transportation facilities and improvements not otherwise authorized by the chapter, such as the proposed vertiport. In this instance, Applicant is requesting exceptions to Goals 3, 11 and 14.

The proposal requires an exception to Goal 3 because OAR 660-012-0070 contemplates it and OAR 215.283(3)(a) requires it. The purpose of Goal 3: Agricultural Lands is, "To preserve and maintain agricultural lands." ORS 215.283 and OAR 660-12-0070 recognize that transportation facilities on agricultural lands can be approved so long as exception criteria are met.

The proposal also requires an exception to Goal 11. Goal 11 governs public facilities and services and provides as its purpose:

"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."

Goal 11 provides as one of its planning guidelines that public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.

An exception to Goal 11 is being sought because the level of proposed development on the property is likely considered an urban level of use and requires a Goal 14 exception. Facilities necessary to support urban development and urban levels of use on rural land arguably require an exception to Goal 11. Consequently, the facilities such as holding tank storage and hauling offsite of wastewater proposed here may require a Goal 11 exception. Furthermore, Petitioner is seeking authorization for the sewer services on the subject property to be able to connect to either the existing HDSE Sewer System located on the Aurora State Airport properties if and when the HDSE approval is amended to allow providing sewer service to other properties, or for the subject property's wastewater system to connect to the septic drain fields on the Columbia Helicopters property, for which there is sufficient excess capacity, if appropriate land use approvals are obtained. Such

authorizations are likely to require an amendment to the HDSE Goal 11 exception or authorization to extend a pipeline to the Columbia Helicopter site and approval to use their septic field. *See*, Exhibit 50 (2004 exception for HDSE sewer facility). If those other facilities receive their respective approvals, approval of a Goal 11 exception now to connect with those services will eliminate the need for the Applicant to submit an additional application and obtain an approval later.

The proposal also requests an exception to Goal 14. Goal 14 prohibits urban development on rural land and directs that development to urban areas. The purpose of Goal 14: Urbanization is,

“To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”

An exception to Goal 14 is sought because the proposed transportation facility is likely¹⁴ considered an urban use of rural land.

MCC 17.136.050(J)(4) makes transportation facilities otherwise not allowed by the chapter as well as the exceptions under MCC 17.136.050(J)(4), subject to the provisions of OAR Chapter 660, Division 12. Because OAR 660-012 applies by its terms, the local tie to it is technically unnecessary. Nonetheless, with or without that tie, MCC 17.136.050(J)(4) implements OAR Chapter 660, Division 12 and ORS 215.283(3)(a) and (b), and so must be interpreted consistently with those state laws.

OAR Chapter 660, Division 12 implements the two subsections of ORS 215.283(3), through two separate sets of regulations. OAR 660-012-0065 implements ORS 215.283(3)(b)¹⁵ and provides a list of transportation improvements on rural land that are deemed to be consistent with Goals 3, 4, 11 and 14 and do not require an exception to those Goals. *See*, OAR 660-012-0065(3). Those uses, however, must

¹⁴ We say likely because the proposed vertiport transportation facility is neither easily classified as “urban” nor “rural” in nature.

¹⁵ ORS 215.283(3) authorizes in exclusive farm use zones in nonmarginal lands counties:

“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.”

comply with the farm impacts standards set forth under ORS 215.296. A specific group of those uses must also comply with several other requirements set forth under OAR 660-012-0065(5). The proposed transportation facility is not one of the transportation facilities identified in OAR 660-012-0065(3). Consequently, those standards do not apply to the proposed transportation facility.

OAR 660-012-0070 implements ORS 215.283(3)(a)¹⁶ and provides the regulations for exceptions for transportation improvements on rural land. OAR 660-012-0070(1) provides, "Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands." Because the proposal does not meet the requirements of OAR 660-012-0065, this proposal must be reviewed for compliance the standards set forth under OAR 660-012-0070. Those standards are presented below and are followed by proposed findings that demonstrate the proposal complies with the standard. Note that, as explained below, OAR 660-012-0070 expressly provides that its requirements are exclusive and that other standards that typically apply to reasons exceptions do not apply. This is consistent with the Court of Appeals observation in *Schaefer* that OAR 660-012-0065(5) is likely inapplicable to exceptions under OAR 660-012-0070.

2. Exception Standards

OAR 660-012-0070 provides the standards for exceptions for transportation facilities and improvements on rural land.

OAR 660-012-0070 provides:

(1) Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands.

Proposed Finding:

The proposed use is not one of the uses identified by OAR 660-012-0065(3) as allowed on rural land without an exception to Goal 3 and other applicable goals. Consequently, the proposal requires an exception under OAR 660-012-0070.

In *Foland v. Jackson County*, 61 Or LUBA 264 (2010) and *Foland v. Jackson County*, 70 Or LUBA 247 (2014) (*see*, Exhibit 26), LUBA extensively discussed the requirements of OAR 660-012-0070, as well as the types of evidence and analyses necessary to demonstrate compliance with its requirements. Reference to that opinion and LUBA's opinion ultimately affirming the rest stop, is made throughout these findings because that opinion provides significant guidance about how that administrative rule applies. *Foland* affirmed the approval of a proposed ODOT rest

¹⁶ See, Footnote 11 above for text of ORS 215.283(3)(a).

stop, located just south of Ashland, Oregon and that replaced the closed rest stop previously located at the Siskiyou Summit, to serve the needs of the travelling public heading northbound on I-5. 61 Or LUBA at 267, 290 and see 70 Or LUBA 247 (2014).

LUBA explained that the first step under OAR 660-012-0070 is that an applicant must demonstrate that the proposal constitutes a “transportation facility or improvement.” 61 Or LUBA at 270. In *Foland*, LUBA agreed with ODOT that the term “transportation facilities and improvements” is a broad umbrella term that includes transportation facilities not expressly specified elsewhere in the transportation planning rule (“TPR”). *Id.* at 275. This is unsurprising because OAR 660-012-0005(46) defines the term “transportation facilities” broadly:

“Transportation Facilities’ means any physical facility that moves or assist in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage, and water systems.”

As LUBA correctly concluded, the term “transportation facility” means what it says and includes not only facilities identified by OAR 660-012-0020, but any facility “that moves or assist in the movement of people or goods.” The proposed transportation facility – a vertiport – plainly moves and assists in the movement of both people and goods via rotorcraft, much as an airport does via airplanes. There can be no question that the proposal is for a transportation facility as that term is defined in the TPR.

LUBA’s analysis in *Foland* indicates that each component of the proposal should be evaluated to establish that it meets the definition of “transportation facilities” set out in OAR 660-012-0005. 61 Or LUBA at 278. In *Foland*, LUBA held that, in addition to the rest area parking spaces, outdoor areas and restroom facilities, that a 3,800-square foot welcome center and the services its workers provide highway travelers each constitutes a transportation facility as that term is defined. *Id.* LUBA reached that conclusion even though, “the welcome center might also serve the interests of local and regional commerce and tourism” and the fact that welcome center employees would be traveling to and from the facility to provide services to travelers. *Id.*; see also, *Id.* at 304 (discussing welcome center employees and additional local site access road). The fact that the facility served such other purposes while assisting in the movement of people and goods did not undermine the conclusion the welcome center use satisfied the definition of a “transportation facility.”¹⁷ *Id.* at 278. The analysis below demonstrates that each aspect of the proposal at issue here satisfies the definition of the term “transportation facility”.

¹⁷ The Court of Appeal’s analysis in *Schaefer v. Marion County* is consistent with LUBA’s *Foland* reasoning. As noted above, in *Schaefer*, the court questioned whether OAR 660-012-0060(5) could apply to exceptions for transportation facilities. 323 Or App at 408. The court pointed out that

Landing pads assist in the movement of people and goods by providing a safe, clearly designated area from which rotorcraft may land and take off. While on the landing pad, people and goods are loaded on to or removed from the vehicle.

Tiedown areas are outdoor areas where a rotorcraft can be "parked" while awaiting missions. Tiedown areas have facilities to secure the aircraft to minimize the movement of a parked aircraft due to winds or the wind effects from other aircraft. Tiedown areas assist in the movement of people and goods by providing a safe, clearly designated area for rotorcraft to park while awaiting missions whose purpose is transporting people and goods.

Hangar space is an indoor area where rotorcraft can be parked while awaiting missions to transport people and goods. Hangar spaces afford rotorcraft greater protection from the elements and greater security than outdoor tiedown areas. Like tiedown areas, hangars assist in the movement of people and goods by providing a safe, clearly designated area for the rotorcraft to remain while awaiting missions whose purpose is transporting people and goods.

Rotorcraft maintenance and repair areas are an integral component of any transportation facility that enables rotorcraft to perform their missions, whether they are traditional helicopters or eVTOLs. Like all transportation systems that involve flight, any failure in the vehicle could result in catastrophic consequences. Rotorcraft are complex mechanical systems that are regulated by the Federal Aviation Administration ("FAA") and require the application of strict inspection and maintenance protocols. Rotorcraft cannot be flown until any necessary maintenance and repair work is completed. Repair needs can arise suddenly and unexpectedly. Rotorcraft maintenance and repair is highly specialized, and workers with those skills are in high demand. Rotorcraft generally cannot be transported elsewhere for maintenance and repair because there are few facilities that provide such service and movement of the rotorcraft, itself a complex operation, would result in time delays. Such delays jeopardize missions which are typically time sensitive, for example missions for Life Flight, medevac (including transplant organs), firefighting, and utility infrastructure repairs. On-site maintenance and repair are essential to the capacity of these aircraft to move people and goods.

Pilots who work for Life-Flight provide air ambulance services 24 hours a day, 7 days a week. These pilots work in 24-48 hour shifts and must remain onsite where their rotorcraft are situated in order to be positioned for ready service when called to provide medical transport. Because of the nature of the service, pilots are required to sleep and eat onsite. Other types of emergency response operations, such as those conducted by Columbia Helicopters, place similar demands on the flight crew and

neither the county nor LUBA took the position that the uses proposed in *Schaefer* were a transportation facility and did not explore that question further. *Id.* at 407.

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frequently require facilities to accommodate pilots and operational crew members during down-time and between operations. Such operations areas support the pilots who move the goods and services.

As a means of transportation, all rotorcraft require a fuel source to operate. Without fuel no rotorcraft can fly. Refueling facilities, whether it is aviation fuel for turbine or piston engine helicopters or electrical recharging stations for electric rotorcraft, is an essential transportation facility function that assists in rotorcraft moving people and goods. Further, pilots and other essential personnel must be able to get to and from the transportation facility using terrestrial vehicles. Some of these people will have electric vehicles and so will require onsite places for such electric terrestrial vehicles to charge. Other requested refueling and energy facilities allow for operations during intense energy-draw periods or during emergencies. For example, large battery storage systems and on-site hydrogen production, storage, and generator operations, both considered clean energy sources, facilitate electrical recharging of multiple eVTOLS and passenger automobiles without the spike in energy draw from the electrical grid that could otherwise occur. Such back-up sources of power also build resilience in the facility that will allow the facility to operate even during natural disaster periods when the power grid may otherwise see interruptions. These supplemental and backup systems facilitate the movement of people and goods even during critical periods.

The transportation facility will provide several rotorcraft-based services to off-site locations – each of which involves the movement of people or goods by rotorcraft based at the transportation facility. The services provided by Life Flight provide remote emergency medical attention, the movement of people to medical facilities via rotorcraft, and transport of human organs for transplant. The work provided by Life Flight is obviously time sensitive. Firefighting services, such as those provided by Columbia Helicopters and HTS, involves the movement of firefighters and equipment as well as water or retardant to and from remote rural areas. Likewise, rotorcraft are an essential tool in public facility repair services in remote rural areas, such as repairing and maintaining transmission lines and towers following power failures. These operations involve the movement of people and goods to and from the repair site, as well as assisting in the repairs, often hovering mere feet away from live power lines. Each entity that is based at the vertiport will need office space and operations areas to manage their respective operations as well as the office that manages the vertiport itself so the rotorcraft can conduct operations that move people and goods. That is what the offices here will be. They are not general purpose offices available to just anyone to use. The offices at the vertiport are used for maintenance staff, inspectors, libraries of manuals, FAA required parts which must be secured at all times to ensure their provenance and chain of ownership is maintained, logbooks for aircraft and for each of their parts, offices for pilots, for pilot training, for weather data and flight

planning, drone pilot work stations, if medical aero then offices for flight nurses and staff, training for same, dispatch offices, line person offices.

Flight training obviously assists in the movement of people and goods by providing refresher training to current pilots and training for new pilots to operate the rotorcraft that move people and goods.

Applicant also requests approval for individual personal use of the transportation facility, whether on an itinerant basis or for rotorcraft that is based at the transportation facility. Personal use rotorcraft move people and goods.

Any related accessory structures and uses are related to the primary uses described above and will further facilitate the movement of people and goods. These include any development related to the on-site water, wastewater and stormwater facilities, connections to electrical, gas or telecommunication facilities or the connection to off-site wastewater facilities if those facilities receive approval to serve the subject property. They also include parking areas for the employees who work at the facility. Similar to the employees and related parking in *Foland*, they assist in the movement of people and goods.

Similarly, should the County amend its Aurora State Airport planning map, approval of TTF operations as part of this decision will facilitate coordinated activity with the Aurora State Airport in the movement of goods and people.

Each component of the proposal satisfies the OAR 660-012-0005(46) definition of "transportation facilities." The proposal satisfies the requirements for requesting an exception pursuant to OAR 660-012-0070.

(a) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons that demonstrate that the standards in this rule have been met. A local government denying a proposed exception shall adopt findings of fact and a statement of reasons explaining why the standards in this rule have not been met. However, findings and reasons denying a proposed exception need not be incorporated into the local comprehensive plan.

Proposed Finding: This application narrative, proposed findings and the evidence submitted by the Applicant demonstrate that the standards provided by OAR 660-012-0070 have been met. The County should, consistent with its adopted plan and code, adopt these or its own findings of fact and statement of reasons as part of its comprehensive plan.

(b) The facts and reasons relied upon to approve or deny a proposed exception shall be supported by substantial evidence in the record of the local exceptions proceeding.

Proposed Finding: The Applicant has submitted into the record documents, evidence and testimony prepared by experts, as well as other evidence, testimony and analysis to support the conclusion that the proposal satisfies each of approval criterion. That evidence is that a reasonable decision maker would rely upon in reaching a decision and, therefore, upon appellate review if any, is substantial evidence to support approval of the proposed exception.

(2) When an exception to Goals 3, 4, 11, or 14 is required to locate a transportation improvement on rural lands, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this division. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 14 shall not apply. Exceptions adopted pursuant to this division shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2.

Proposed Finding: The proposal is for a transportation facility located on rural lands for which an exception to Goals 3, 11 and 14 is taken. These findings address each of the OAR 660-012-0070 standards required for a reasons exception to locate a transportation facility on rural land. Consistent with this rule, the findings do not address the generally applicable reasons exception standards provided in OAR chapter 660 division 4, division 11 or division 14.

The Applicant does not request, and the proposal does not require an exception to any of the other Statewide Planning Goals for the County to approve the proposal. The proposal is consistent with this standard.

(3) An exception shall, at a minimum, decide need, mode, function and general location for the proposed facility or improvement:

Proposed Finding: This standard and its various subsections requires an analysis of the need, mode, function and general location for the proposed facility or improvement. While each of those components must be addressed, LUBA's opinion in *Foland* illuminates the significance of the needs analysis, its requirements, and the role it plays in several of the other OAR 660-012-0070 standards either directly or indirectly. Consequently, the bulk of the analysis below discusses the transportation needs after first addressing the mode, function and location. Furthermore, because other standards impose requirements for identifying the transportation needs, those standards are referenced in the discussion under this section.

Mode: The mode for the transportation facility is rotorcraft – aerial vehicles that utilize vertical take-offs and landings. These vehicles include helicopters, both aviation fueled and all-electric as well as the newer eVTOL vehicles, which may feature multiple propellers.

Function: The function of the transportation facility is to provide for the movement of vertical takeoff and landing vehicles. This includes providing facilities for the landing and takeoff of rotorcraft, fueling (aviation and electrical), maintenance, repair and storage of rotorcraft, shift-based pilot sleeping bunks and operational facilities, and a small office to assist in rotorcraft-based operations.

Location: The general location for the proposed transportation facility is discussed in greater detail under subsection (a) below. In summary, the location must be near (within 1 mile) of the existing rotorcraft operations of Columbia Helicopters or the Life Flight headquarters. The 1 mile measurement is drawn from the boundary formed by Arndt Road, Airport Road and Keil Road east of the airport flight path.

Need: OAR 660-012-0070(4) requires a transportation facility exception to "demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 ***." OAR 660-012-0030 provides that "transportation needs" are identified in the goals and objectives of local TSPs.

OAR 660-012-0005 defines the term "transportation needs" and also distinguishes local, regional and state transportation needs. The relevant OAR 660-012-0005 definitions provide:

"(48) "Transportation Needs" means estimates of the movement of people and goods consistent with acknowledged comprehensive plan and the requirements of this division. Needs are typically based on projections of future travel demand resulting from a continuation of current trends as modified by policy objectives, including those expressed in Goal 12 and this division, and attaining the state's goals for greenhouse gas emissions reduction, especially those for avoiding principal reliance on any one mode of transportation.

"(49) "Transportation Needs, Local" means needs for movement of people and goods within communities and portions of counties and the need to provide access to local destinations.

"(50) "Transportation Needs, Regional" means needs for movement of people and goods between and through communities and accessibility to regional destinations within a metropolitan area, county, or associated group of counties.

"(51) "Transportation Needs, State" means needs for movement of people and goods between and through regions of the state and between the state and other states."

The Marion County Rural Transportation System Plan 2005 Update identifies various transportation needs.

RTSP Chapter 4 states that it is the County's objective to:

"Develop a balanced, safe, multi-modal transportation system to accommodate planned growth, facilitate economic development, recognize fiscal reality, and maintain a high standard of livability and safety." RTSP, p. 4-1.

Under RTSP Goal 1: Improve Transportation System Safety are the following:

"Objective 1.1: Improve system safety for and between all modes of transportation."

Objective 1.2: Dedicate adequate resources to ensure that the transportation system is properly maintained and preserved." RTSP, p. 4-1.

RTSP Goal 2 seeks to "provide an accessible, efficient and practical transportation system appropriate to both urban and rural areas throughout the county" and provides the following relevant objectives:

"Objective 2.1: Improve mobility and access options to transportation facilities throughout Marion County for transportation system users."

Objective 2.2: Facilitate goods movement into and out of the area; increase freight (truck, rail, air and water) mobility and inter-modal transfer."

Objective 2.4: Address changing characteristics of trucking, aviation, agriculture and rail industries." RTSP, p. 4-1.

RTSP Goal 3 is to provide sufficient transportation capacity. Its relevant objectives are:

Objective 3.2: Adequately provide for the transportation needs of residents, businesses, customers, and visitors."

Objective 3.4: Encourage and support actions that maximize the value and efficiency of the existing system." RTSP, p. 4-2.

RTSP Goal 6 is to promote alternative modes of transportation and includes the following objectives:

“Objective 6.1: Facilitate provision of opportunities for a variety of transportation options.

Objective 6.3: Facilitate and support improved connections between different modes.

Objective 6.4: Support land use planning strategies that facilitate efficient transportation system use and development.”

RTSP Goal 8 provides the following objectives:

“Objective 8.3: Emphasize facilitation, rather than restriction/regulation, of business.

“Objective 9.1: Accurately reflect the existing and future transportation systems, issues, and needs of Marion County.” RTSP, p. 4-4.

RTSP Chapter 10 provides the transportation policies that guide County decision making.

The RTSP policies regarding air transportation facilities are provided at RTSP section 10.3.4, with the policies for air, rail, water, energy and pipeline transportation provided together. Relevant RTSP Policies include:

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

The 1976 Aurora State Airport Master Plan (1976 AMP), adopted as part of the Marion County Comprehensive Plan, explained that the improvements to the airport facility, even then, are not keeping pace with the increasing air traffic at the airport. Exhibit 44, page 15 of 118. The 1976 AMP forecast “significant increases in general aviation traffic” and that a “heliport is specified for the ultimate airport.” Exhibit 44, pages 16 and 80 of 113. The growth of air traffic at KUAO over the past 45 years has been as predicted in 1976, to include the increase in helicopter use and the need for a rotorcraft based transportation facility.

The 2022 Aurora State Airport Draft Airport Master Plan (2022 Draft AMP) (Exhibit 27) update discusses both the degree and nature of the growth at KUAO and the immediate adjacent properties. The 2022 Draft AMP explains that Aurora State Airport is a “National” Nonprimary General Aviation airport and that such airports tend to not include a heliport. Exhibit 27, page 16 of 83. That classification and

statement is consistent with statements in the report such as “Development of two privately-owned heliports adjacent to the east side of the Airport has also occurred. However, these facilities do not have TTF access agreements, and their operations are fully independent of the Aurora State Airport.” Exhibit 27, page 15 of 83. Later the 2022 Draft AMP expressly identify Columbia Helicopters and Helicopter Transport Services as having heliport facilities situated around the Aurora State Airport, that they are “privately-owned” and that they “are fully independent from Aurora State Airport operations and facilities”. Exhibit 27, p. 48 of 83.

The data and analysis from the 2022 Draft AMP is also telling regarding rotorcraft growth and use around the airport. While explaining that the 2022 Draft AMP is no longer including flights attributed to Columbia Helicopters and HTS in its analysis, thus reflecting a reduction in airport-based aircraft (Exhibit 27, page 21 of 83), the 2022 Draft AMP also explains that the Columbia Helicopter and HTS flights constituted 2% to 3% of ATCT (air traffic control tower) logged operations (Exhibit 27, page 67 of 83) and calculates that helicopters will have had a compound annual growth rate (CAGR) of approximately 2.3% considering the airport’s aircraft operations fleet mix. Exhibit 27, page 81 of 83.

Ultimately, the 2022 Draft AMP summarizes current data that demonstrates: “Turbine aircraft (turboprop, turbojet, helicopter) fleet and hours flown will grow”; “Piston rotorcraft fleet and hours flown will grow” and, “The number of active Rotorcraft Only pilots will grow.” Exhibit 27, p. 63 of 83; *see also*, Table 3-2 FAA Long Range Forecast Assumptions on same page.

The fact that local, regional, and state rotorcraft usage will grow, is further supported by the Oregon Aviation Plan 2018. Exhibit 28. The plan explains that the FAA Aerospace Forecast predicts that, for the 20-year planning period, rotorcraft growth rate is expected to be 2.1 percent. Exhibit 28 (p. 3-43).

This historic growth and expected future growth is further established by the letters entered into the record from Columbia Helicopters and Life Flight. The need for the proposed transportation facility is present and can only be expected to grow. Given the above evidence, there can be little doubt that the use of traditional rotorcraft will grow at an annual rate of at *least* 2% annually and the demand for adequate transportation facilities available to accommodate that growth will rise accordingly.

The next 5 years are also anticipated to mark an increase in the use of electric rotorcrafts generally and by these companies. Electric rotorcraft have differing needs and differing impacts than piston engine rotorcraft. Electric rotorcrafts are quieter and will progressively have greater autonomous capabilities, which should further promote their use. *See, e.g.,* Exhibit 29 (“Helicopters v. eVTOLs: How will going electric improve aerial mobility.”). Furthermore, advances in eVTOL technology

means future uses will not be limited to private businesses such as air taxi services, the public sector is beginning to invest in eVTOL technology. The Oregon Department of Aviation has recently signed a tentative memorandum of understanding ("MOU") with a manufacturer of eVTOL aircraft designed for emergency response use. *See*, Exhibit 53 ("More Than 100 Electric Aircraft for First Responders May be Headed to Oregon"). eVTOLs require specialized charging facilities, similar to electric cars, and are often smaller in size and weight than traditional rotorcraft, making them ideal for meeting local and regional transportation needs.

The proposal's focus on electrification of rotorcraft and request for approval of potential alternative energy sources has not happened in a vacuum. Oregon has moved in recent years towards the electrification of many sectors in an effort to promote the use of cleaner, alternative energy sources. This policy shift has been most significantly seen in the automobile sector, where electric car use has been promoted in a number of ways. In 2021, the Oregon Legislature adopted House Bill 2180, now enacted largely at ORS 455.417, which mandates providing electric vehicle charging stations at prescribed rates for commercial, multifamily residential and mixed-use buildings. Exhibit 54 (HB 2180 (2021)). Oregon has also recently released the Oregon National Electrical Vehicle Infrastructure Plan – FY 2024 Update, which is the state's plan to secure funding through the national EV Infrastructure (NEVI) program to support a rapid scale-up of EV charging infrastructure in the state. Exhibit 55 (NEVI 2024 (excerpts)). Moreover, as noted above, DEQ has adopted an administrative rule requiring that by 2035 all new vehicles be electric. These advances are not limited to just electrical sources but extend to other sources of energy. The Oregon Department of Energy's 2023 Legislative Session Report identifies legislation passed by the Oregon Legislature that promotes solar energy, low carbon fuels, and renewable hydrogen in addition to energy efficiency in residential and government buildings. Exhibit 56. One of the adopted bills, House Bill 2530, seeks to support renewable hydrogen. Exhibit 57. This application requests approval to incorporate an onsite hydrogen production and storage station that could power a hydrogen-powered standby generator. The incorporation of eVTOLS in the proposed transportation facility, as well as electric car charging stations and hydrogen production emergency backup capacity not only promotes RTSP goals, it further advances state policy.

From the above RTSP goals, objectives and policies, the Applicant identifies the following transportation needs that are consistent with OAR 660-012-030:

1. Facilitate economic development and adequately provide for the transportation needs of residents, businesses, customers, and visitors, by providing adequate rotorcraft facilities in Marion County.
2. Provide for changing rotorcraft technologies.

3. Facilitate provision of opportunities for a variety of transportation options to include rotorcraft vehicles.
4. Support land use planning strategies that facilitate efficient transportation system use and development.
5. Facilitate and support improved connections between different modes of transportation.
6. Facilitate goods movement into and out of the area; increase air freight mobility.
7. Address changing characteristics of the aviation industry.
8. Ensure safe operations at rotorcraft-oriented transportation facilities.
9. Maximize efficiency and cost effectiveness of new transportation facilities.
10. Support the effective provision of rotorcraft-based emergency services.
11. Minimize adverse impacts on the quality of life in the rural area from a new transportation facility that addresses rotorcraft needs.

(a) The general location shall be specified as a corridor within which the proposed facility or improvement is to be located, including the outer limits of the proposed location. Specific sites or areas within the corridor may be excluded from the exception to avoid or lessen likely adverse impacts. Where detailed design level information is available, the exception may be specified as a specific alignment;

(b) The size, design and capacity of the proposed facility or improvement shall be described generally, but in sufficient detail to allow a general understanding of the likely impacts of the proposed facility or improvement and to justify the amount of land for the proposed transportation facility. Measures limiting the size, design or capacity may be specified in the description of the proposed use in order to simplify the analysis of the effects of the proposed use;

(c) The adopted exception shall include a process and standards to guide selection of the precise design and location within the corridor and consistent with the general description of the proposed facility or improvement. For example, where a general location or corridor crosses a river, the exception would specify that a bridge crossing would be built but would defer to project development decisions about precise location and design of the bridge within the selected corridor subject to requirements to minimize impacts on riparian vegetation, habitat values, etc.;

Proposed Finding: LUBA in *Foland* explained that, when considering alternative measures and sites under OAR 660-012-0070(4), (5), and (6), the County should apply applicant-identified "thresholds" or required characteristics a proposed location must possess in order to address the identified transportation needs. These thresholds are what guide the selection of the transportation facility design and location within the identified corridor. Furthermore, findings are required to justify each threshold and explain how each threshold relates to an identified transportation

need. If an alternative measure or location does not satisfy a threshold, the County does not need to consider it in determining whether to approve the exception. *Foland*, 61 Or LUBA at 282-84.

Applicant begins by identifying the relevant thresholds and demonstrating how they relate to identified transportation needs. Following the thresholds discussion are findings that address each of the criteria, OAR 660-012-0070(3)(a), (b), and (c) identified above.

The Applicant has identified the following thresholds that the site for the transportation facility must meet:

- The transportation facility must be adjacent to or within one (1) mile of either of the largest two existing helicopter operators in Marion County – Columbia Helicopters or Helicopter Transport Services (measured from the line formed by Arndt Road/Airport Road/Keil Road).
- The parcel size must be between 10 and 20 acres, relatively level and without obstructions or mapped hazards.
- The site must be east of the Aurora State Airport's airplane flight path.
- The site must have an adequate distance buffer from existing and planned noise-sensitive uses such as residential subdivisions.
- The site must be able to upgrade existing electrical service lines to carry heavy electrical loads for charging electric rotorcraft and electric terrestrial vehicles that get pilots and other personnel to and from the facility.

The first threshold concerns proximity to the existing helicopter operators. Multiple TSP goals, objectives and policies identified above emphasize the importance of maximizing efficiencies and the cost effectiveness of transportation facilities. The evidence submitted into the record from Columbia Helicopters and Life Flight identify not only the need for a transportation facility where they can land and operate their helicopters to accommodate their expanding operations, they explain that it is necessary for that facility to be in close proximity to their existing operations. Consolidating the operational footprint as much as possible promotes both economic efficiency in the businesses operations and the efficiency of the transportation facility by ensuring that the transportation facility will be in steady active use by at least one of the two largest helicopter operators in Oregon. Ideally, the site would be adjacent to one or the other operator, but the exceptions process mandates looking beyond only adjacent properties and considering other near-by properties that can *reasonably* accommodate the proposed uses and also promote the efficiencies and the cost effectiveness of the new transportation facility that the transportation needs mandate.

The second threshold concerns the size and characteristics of the transportation facility site. The evidence in the record from the two helicopter

operations interested in utilizing the new transportation facility oriented towards rotorcraft as well as from an aviation expert (see, e.g., Exhibit 30, page 4 of 9 (December 6, 2023 letter from Aron Faegre)) emphasizes the importance of having the facility located on a parcel of between 10 and 20 acres in size. This size threshold helps fulfill two of the identified transportation needs. First, it maximizes efficiency and the cost effectiveness of the new transportation facility by providing sufficient space to locate several different rotorcraft operations, using a variety of rotorcraft, that can share key support aspects of the facility. An adequate-sized facility will allow for Columbia Helicopters, Life Flight and potentially other users to concurrently conduct operations from the transportation facility, as well as to provide space for the installation of the necessary charging infrastructure for all-electric helicopters and terrestrial vehicles. Each electric rotorcraft charging station generally has multiple "pods" that allows the charging station to simultaneously serve multiple electric rotorcraft. The proposal seeks approval to install several such electric rotorcraft charging stations and twelve (12) passenger vehicle charging stations. Facilitating this range of uses requires a site of between 10 and 20 acres in size.

A transportation facility of between 10 and 20 acres in size, level and without obstructions or natural hazards is required because such characteristics promote safe operations at the transportation facility, which is a primary focus of the TSP, is necessary for any aviation-oriented transportation facility, and is required by the FAA. Columbia Helicopters' operations involve some of the largest heavy-lift helicopters on the market. See, Exhibits 3, 51. Those large helicopters require adequate space in which to operate. Furthermore, Columbia Helicopters and the Life Flight Network often operate under emergency conditions where time is of the essence. A large site that provides safe separation between operating rotorcraft affords rotorcraft the ability to operate with a margin of error that cannot be replicated in any other way. Furthermore, the nature of the transportation facility requires a level surface, free of obstructions such as trees to operate safely and in the manner required by the FAA. Similarly, due to the emergency response services provided by the intended users of the transportation facility, the facility must be operational during periods of emergency such as flooding. Consequently, the facility cannot be located in the floodplain or in mapped areas of geologic hazards that will be susceptible to the same hazard events the rotorcraft operations will respond to.

The third threshold is that the site must lie to the east of the flight path of the Aurora State Airport roughly represented by extending the centerline of the airport's runway and tracing an expanding width from the centerline where aircraft might operate. See, Exhibit 31 (2022 Aurora State Airport Draft Master Plan Update, Figure 2-9 (diagram showing approach surfaces)). This threshold is designed to ensure safe and efficient operations at the rotorcraft transportation facility. While evidence in the record demonstrates that Columbia Helicopters and HTS rotorcraft can operate safely even in relatively close proximity to the Aurora State Airport by

following the proper operating protocols, that is largely due to the fact that helicopters can depart and approach the airport without intruding into normal flight paths used by airplanes taking off or landing at the Aurora State Airport. See, e.g., Exhibit 32 (Site Plan for North Marion County Vertiport (showing proposed flight paths from vertiport)). These operations are now already to the east of the KUAO runway. Also, locating the proposed rotorcraft transportation facility to the east of the Aurora State Airport furthers this safety objective. New rotorcraft operations from the proposed facility must not need to cross the KUAO flight path or need to take significantly longer flight paths to access the existing rotorcraft operators HTS and Columbia Helicopters. The former avoids safety conflicts with fixed wing aircraft at KUAO and the latter ensures that the proposed rotorcraft transportation facility can operate efficiently and can adequately and timely respond to emergency or time sensitive situations which comprise a proportion of the anticipated rotorcraft missions that will take place at the proposed facility during certain periods. Safety and efficiency reasons warrant locating any rotorcraft transportation facility to the east of the Aurora State Airport's runway and flight paths.

The fourth threshold relates to the need to minimize adverse impacts on the quality of life in nearby communities. This threshold mandates that the transportation facility be located a sufficient distance from developed or planned noise-sensitive uses. Such noise-sensitive uses include intensely developed residential uses such as residential subdivisions and can also include areas planned for small scale commercial uses or mapped sensitive wildlife areas depending on the species to be protected. It goes without saying that traditional helicopter operations are noisy and the vertiport will accommodate traditional helicopter traffic. There is no reasonable way to locate a rotorcraft transportation facility in close proximity to such noise sensitive uses without negatively impacting those uses such as impacting the quality of life for a residential community with respect to noise. In those respects, the vertiport is similar to the adjacent airport. Also, safety considerations warrant not locating a major rotorcraft facility in close proximity to many other types of intensive activities. In such instance, the distance buffer affords a degree of safety in the event of a vehicle failure. While an individual helipad at a hospital or on top of a corporate office building is suitable for many urban environments both from a noise and safety perspective, that is not the case for a vertiport such as the proposed transportation facility that is intended to have frequent rotorcraft activity on a day-to-day basis. Consequently, locating such transportation facilities away from noise-sensitive development is necessary.

The fifth threshold is that the site must have existing nearby electrical power lines that can be readily utilized and upgraded as may be needed, to support heavy power loads for electric rotorcraft and electric passenger vehicles. This threshold relates to the TSP need to improve rotorcraft access options and to provide transportation facilities that can address the changing rotorcraft technologies including with respect to all-electric rotorcraft. For that to happen, the site itself

must have the ability to upgrade existing on-site power lines or to connect to adjacent running power lines. Furthermore, this threshold furthers the TSP policy to facilitate and support improved connections between different transportation modes. Here those different modes requiring connection are electric terrestrial passenger vehicles getting people to the rotorcraft transportation facility.

Having identified the applicable thresholds and explained how each threshold directly relates to a transportation need identified in Marion County's TSP, the proposed findings turn to the criteria set forth in OAR 660-012-0070(3)(a) through (c).

OAR 660-012-0070(3)(a) requires the identification of a "corridor" within which a proposed transportation facility is to be located and should include showing the outer limits of the proposed location. That standard also states that specific sites or areas within the corridor may be excluded to avoid adverse impacts.

Here, the corridor consists of an area that extends roughly one (1) mile (5,280 feet) north of the Columbia Helicopters property, one (1) mile east of Airport Road NE and one (1) mile south of the Helicopter Transport Services property/Keil Road, all to the east of the footprint of the Aurora State Airport's approach surface.¹⁸ It also includes the subject property, which lies immediately north of the HTS property as well as other properties within or adjacent to the airport boundary east of the runway. See, Exhibit 33 (Corridor Area). A portion of the corridor area encroaches into the City of Aurora.

This corridor resolves two of the five threshold criteria. All of the properties within this area reasonably satisfy the distance threshold criteria, ensuring that the location of the transportation facility will be within one mile of the existing Columbia Helicopters operations. Also, based upon preliminary discussions with PGE, there are major electrical switches located at the intersection of Airport Road and Arndt Road in the north and at the intersection of Airport Road and Keil Road in the south. These switches will enable adequate electrical service to be provided to most of the properties within the threshold corridor.

OAR 660-012-0070(3)(b) requires a general description of the size, design, and capacity of the proposed facility sufficient to understand likely impacts from the proposed facility and to justify the amount of land needed for the transportation

¹⁸ MCC 17.177.020(C)(2) provides the following definition:

"Approach Surface.' This surface begins at the end of the primary surface. From its initial width, that is the same as the width of the primary surface, it extends upward and outward on both sides of the projected centerline of the runway with a specified slope and terminates where it intersects the horizontal surface."

facility. The needs of the two foreseeable main users of the proposed transportation facility are generally spelled out in the Columbia Helicopters and Life Flight materials that explain their operations in Exhibits 52 and 53. Add to that reasonable space for an additional rotorcraft-based business, itinerate rotorcraft operations and services, and reasonable space to provide electric rotorcraft facilities, their needed charging facilities, electric terrestrial vehicle charging facilities and parking for all terrestrial vehicles that will access the site, a site of 10 to 20 acres is needed. Exhibit 30. As the site plan (Exhibit 1) demonstrates, incorporating a design that includes a shared main landing area with one or more landing pads surrounded by tie down areas, which may also allow for take-off operations depending on operational needs, and further surrounded by hangar buildings allows for a more efficient use of space. Such a design will allow for several operators to utilize the transportation facility and afford flexibility regarding the nature of operations, the types of rotorcraft accommodated, and the area needs for hangars and operations now and in the future. This type of design also affords flexibility in operations, particularly to accommodate emergency fire-fighting and other emergency response situations. The only other general site design criteria required by a rotorcraft transportation facility is that the site is relatively flat and free of vertical obstructions such as trees or light poles and is not located in an area that is subject to mapped natural hazards.

Using the site plan (Exhibit 1) for the proposed subject property as an example, it is possible to have facilities that can accommodate upwards of 4 operations that can utilize the same vertiport (Exhibit 1 shows a configuration for 3 distinct vertiport-based operators along with a vertiport headquarters). Each operation would have a hangar varying from 30,000 to 35,000 square feet in different possible configurations to accommodate a variety of rotorcraft types and sizes. See, Exhibit 2 (NMCVH Building Size and Parking Calculation Table). Each hangar would have an accompanying structure for offices, a workshop and operations areas ranging from 7,500 to 17,000 square feet per floor. This will provide the vertiport operator, Columbia Helicopters and Life Flight separate facilities to house, maintain and repair their vehicles as well as space to manage and conduct operations as well as to serve itinerant flights. Shared exterior spaces would include tiedown pads, flight staging areas and the main central landing pad, in addition to shared parking areas. See, Exhibit 1 (site plan). The vertiport operator's offices, shop and hangar area would facilitate running the vertiport as well as provide services to itinerant helicopter operators and eVTOL vehicles not associated with any of the on-site businesses.

There are several potential impacts from the proposed rotorcraft transportation facility that must be understood and mitigated as necessary. First, there is the noise generated by gas engine rotorcraft operations, an impact that increases when the number of daily operations increases. Noise impact is one of the primary reasons for the threshold criterion that the transportation facility be located away from noise sensitive uses. Noise volume diminishes rapidly as distance away

from the source of the noise increases. And while electric rotorcrafts have greatly reduced noise impacts compared to gas engine rotorcrafts, eVTOLs are not silent. Second, the need for large areas of non-pervious surfaces to facilitate landing pads, tiedown areas, hangars, office, operations and sleeping bunk areas, electric charging facilities and terrestrial vehicle parking, means any ultimate design must accommodate the stormwater runoff from those surfaces. Third, because workers will be providing services at the transportation facility, there will be the normal road transportation impacts as well as wastewater needs generated by those workers. Fourth, because traditional rotorcraft use gas fuel and will need to refuel at the transportation facility, potential environmental impacts can result in the event of any type of spill. Last, because rotorcraft obviously fly, potential impacts to the nearby Aurora State Airport and operations there must be considered.

OAR 660-012-0070(3)(c) generally regards the process and standards for selecting the precise design and location of the transportation facility within the established corridor. The process and standards for selecting the location within the established corridor and the scope of the design of the transportation facility are set forth in other provisions of OAR 660-012-0070 and are addressed in those sections. The threshold requirements and design requirements have been established and discussed above. The findings below address each of these where appropriate.

The proposal is consistent with the above standards.

(d) Land use regulations implementing the exception may include standards for specific mitigation measures to offset unavoidable environmental, economic, social or energy impacts of the proposed facility or improvement or to assure compatibility with adjacent uses.

Proposed Finding: No new land use regulations are proposed to implement the exception other than the exception will be reflected in the County's plan. Applicant recognizes that the County Board may impose conditions of approval to assure compatibility of the proposal with adjacent uses. All conditions of approval must obviously relate to approval criteria and must be necessary for the proposal to comply with the approval standard. The proposal complies with this standard.

(4) To address Goal 2, Part II(c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:

Proposed Finding: This standard requires two separate sets of analysis and related findings. First, it requires findings justifying why the state policies for the goals for which an exception is sought should not apply. Second, the standard

requires addressing why the facility cannot be accommodated by one of or combination of a list of specified transportation measures. As OAR 660-012-0070(6) provides below, the analysis undertaken under OAR 660-012-0070(4) and (5) shall consider cost, operational feasibility, economic dislocation and other relevant factors.

The text of Goals 3, 11 and 14, the goals for which exceptions are sought, are presented above in the introduction to the proposed findings. In summary, Goal 3 seeks to protect agricultural land for agricultural use. Goal 11 seeks to ensure that public facilities and services in rural areas are sized only to serve rural uses at rural levels of development. Goal 14 seeks to locate urban development on urban land and to maintain rural land for rural uses. The proposal seeks to locate uses on rural land zoned EFU that have urban characteristics in the sense that the transportation facility will serve the needs of populations that are not exclusively rural. Reasons exist why exceptions should be granted for Goal 3, Goal 11 and Goal 14. Several of the reasons apply to each of these goals so the reasons are often discussed together.

The primary reason that justifies why Goals 3, 11 and 14 should not apply to this proposal is that the nature of the proposed transportation facility, while likely urban as LUBA and the Court of Appeals have concluded, has impacts that are fundamentally incompatible with noise sensitive uses such as dense residential neighborhoods that are generally found in urban areas. The evidence well documents the significant noise impacts caused by the takeoff and landing of helicopters and other aircraft and their normal operations when at low altitudes. See, e.g., Exhibit 15 (Aurora State Airport Noise Contours Map). As discussed above, the emergency response operations Columbia Helicopters and Life Flight undertake occur at any hour of the day or night and are particularly impactful to noise-sensitive uses when they occur at odd hours. Even small-town urban areas are more developed with concentrations of noise sensitive residential uses than is the case in rural areas. Those noise sensitive uses in urban areas are established and planned at densities not permitted in rural areas, which means the impacts from uses such as the proposed vertiport would affect an even greater number of residents than if in a rural location. The most effective mitigation measure for the types of noise impacts generated by rotorcraft take offs and landings and low altitude flight activity is distance. Distance is the great sound mitigator. Without effective distance buffers for noise sensitive urban residential uses, the adverse impacts from a rotorcraft-based vertiport are significant. This is why larger rotorcraft transportation facilities are typically located outside of urban residential areas. Generally, agricultural uses, such as the farm uses in the vicinity of the subject property, are not noise sensitive uses and the associated agricultural practices are not significantly impacted by rotorcraft operations.¹⁹ Nevertheless, the analysis will consider potential vacant land in urban areas that otherwise might satisfy the threshold criteria.

¹⁹ OAR 340-035-0015, the definition section for Noise Control Regulations provides:

Another reason justifying an exception to the three identified goals is the truism that transportation facilities must be appropriately located for the users of that facility. Just as rest stops, train stations or bus depots have to be appropriately located to serve the identified transportation needs and mode of transportation, a transportation facility that serves rotorcraft needs to be located in an appropriate location to serve rotorcraft. In this instance, two of the largest helicopter operators in the United States, nonetheless Oregon, are located in close proximity to the subject property. One of them, Columbia Helicopters, is a primary reason for establishing the threshold area, which is in a rural area predominantly surrounded by land zoned for agricultural use, but that also extends into the urban area of the City of Aurora. Columbia Helicopters is a private sector helicopter businesses that must maintain efficient operations to provide its needed helicopter-based services. Columbia Helicopters must operate in a manner that is competitive and profitable. Columbia Helicopters must continue to conduct all of their area operations in close proximity to their existing facility but is running out of room to accommodate their expansion needs. Exhibit 3. Similar is Life Flight, which has its base of operations on property in close proximity to the subject property, within the threshold area, and sees an opportunity to consolidate portions of its operations located elsewhere to the subject property and reduce economic dislocation costs. Exhibit 4.

The evidence in the record establishes that the success of Columbia Helicopters has resulted in full use of their current facilities and the need to expand certain operations to new facilities. The same holds true for Life Flight, the largest non-profit air ambulance service in the United States. See, Exhibits 3, and 4. The proposed transportation facility will serve these key existing operations and will provide significant operational flexibility and cost advantages by being located near these existing operators who plan to utilize the proposed transportation facility. These operations specialize in using rotorcraft to provide emergency services needed during earthquakes, windstorms, forest fires and medical emergencies, in addition to providing remote industrial and natural resource operations and require a transportation facility located in close proximity to their existing headquarters operations to continue to provide those services in an efficient manner.

The size of the transportation facility also provides a reason for an exception to both goals. Evidence in the record establishes that aviation businesses and services often locate near each other and create a whole, unique transportation ecosystem. See, Exhibit 30 (AFA Letter). That clustering of rotorcraft uses creates interactions and partnerships between even competing businesses where they share skills, employees and even specialized machinery. That is what has happened near the subject property with these rotorcraft operations. Both operations –Columbia

“(38) ‘Noise Sensitive Property’ means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.”

Helicopter and Life Flight – have a present need to expand their access to transportation facilities to meet current and anticipated rotorcraft needs for at least the next 5-10 years. Columbia Helicopter require additional pads, tie downs, hangar and repair maintenance facilities to support their current and forecasted future operations; Life Flight requires both to expand operations and consolidate its dislocated operations. Accommodating these needs requires a rotorcraft transportation facility of between 10 to 20 acres in size. Exhibit 30. The evidence in the record demonstrates that between 2012 and 2023 the P zoned property in the area has been extensively developed and so no single parcel or combination of parcels is of sufficient size to accommodate the growth needs of those three rotorcraft operators. Exhibit 30. Consequently, the rotorcraft transportation facility needs can only be met on EFU-zoned land if it is to be of sufficient size and located close to the existing rotorcraft uses that will be the transportation facility's primary customers. Furthermore, addressing the combined needs in a single transportation facility promotes operational efficiency and minimizes the amount of EFU land that will be used for the rotorcraft transportation facility to serve current and longer-term needs over the next 10 years. As the analysis below demonstrates, there is no land that is not zoned EFU located in the required proximity to these three existing rotorcraft operators that can meet the identified transportation facility need.

The need for the Goal 14 and Goal 11 exceptions flow from the nature of the proposed use and the need to locate that use on rural EFU land. LUBA and the courts are likely to consider the proposed vertiport to be an urban use of land, as they have with airports, despite the differences between the two uses. Such urban use and development of rural land requires a Goal 14 exception. Given that Goal 11 prescribes that rural facilities and services be sized to serve only rural uses at rural levels of development, and the proposed use will require some form of facilities to provide services such as water, sewer and stormwater management, a Goal 11 exception is likely required to appropriately size such facilities and services. Furthermore, should the HDSE sewer system or the Columbia Helicopters septic drain fields obtain the necessary land use approval to allow them to serve other properties, the subject property will need a Goal 11 exception to connect to those systems.

The above reasons justify why the state policies embodied in Goal 3, Goal 11 and Goal 14 should not apply to the proposed transportation facility.

(a) Alternative modes of transportation;

Proposed Finding: The identified transportation needs that justify the exception are the County's growing rotorcraft needs that largely support firefighting, natural disaster, emergency medical services, and industrial and resource operations in remote rural areas.

These needs cannot be reasonably met by other types of aviation such as fixed-wing aircraft. Airplanes require significantly larger landing areas than rotorcraft and have no ability to hover at a particular location when providing services. While aircraft can conduct some of the firefighting and emergency medical transport functions that rotorcraft can, airplanes cannot perform key aspects of firefighting and emergency medical service functions that are particular to rotorcraft's unique capabilities, such as hovering.

Furthermore, these identified needs cannot reasonably be met by ground-based transportation. Rotorcraft can operate in areas that are inaccessible to ground-based vehicles and in areas that may take hours if not days to access by road and then by foot or horseback. Given the nature of these predominately emergency services, time is of the essence and the time gap between rotorcraft access and ground-transportation access can be a matter of life or death, or determine whether a fire started by a lightning strike or public facility failure is suppressed or turns into a blaze that threatens human life and property.

The transportation needs the proposed transportation facility will meet cannot be met by alternative modes of transportation.

(b) Traffic management measures;

Proposed Finding: This standard relates to road traffic management measures; it does not apply to the identified rotorcraft transportation needs or to the proposed transportation facility. As discussed above, the identified transportation needs are rotorcraft specific and cannot be met by ground-based transportation systems. To the extent that these measures can be read as applying to rotorcraft traffic management there are no rotorcraft traffic management measures that can reduce the number of trips needed to be served or that can minimize the facilities for take offs and landings, tie downs, hangar spaces, electric vehicle charging stations for such rotorcraft. The issue is simply that there is a demonstrated need, particularly from Columbia Helicopters and Life Flight, for more rotorcraft facilities. The same is true for charging facilities for eVTOLs. Traffic management measures cannot solve these capacity needs.

(c) Improvements to existing transportation facilities.

Proposed Finding: LUBA has explained that when addressing this standard, determining whether a transportation need can be reasonably accommodated by an existing transportation is subject to the thresholds identified by the applicant. *Foland*, 61 Or LUBA at 291.

The only proximate transportation facility that satisfies the locational threshold and that might be able to accommodate the proposed use is the Aurora

State Airport. The Aurora State Airport cannot reasonably accommodate the identified transportation needs for a number of reasons. First, there is insufficient vacant property within the airport boundary to accommodate rotorcraft transportation facilities even at the smallest parcel size. *See*, Exhibit 30 (discussing development at Aurora State Airport). There are no 10-acre parcels available for anything at the airport, nonetheless sufficient to support a rotorcraft-oriented transportation facility. While recently the property at 23215 Airport Road NE was advertised for sale (*see*, Exhibit 34), that property is only 6.4 acres in size, significantly smaller than the threshold size needed for the vertiport. Furthermore, that property is encumbered by a hangar ill-suited for rotorcraft use and is an odd-shaped lot that makes use by multiple occupants difficult if not impossible given the narrow site width, which is further reduced by a 35-foot access easement and that has an unusable panhandle. *See*, Exhibit 34 (Sale Brochure showing hangar), Exhibit 35 (Analysis of Corridor Properties, TRS Map 04 1W 02A, Tax Lot 400 showing lot configuration). Consequently, the parcels on the Aurora State Airport fail the threshold for size.

The evidence in the record shows that between 2012 and 2022 development has occurred at the Aurora State Airport such that no sufficient acreage of vacant land exists for new transportation facilities. Exhibit 30. Furthermore, master planning for the Aurora State Airport has emphasized developing airport facilities for fixed wing aircraft and has not provided facilities specifically for rotorcraft use. Not only is there insufficient vacant space at the Aurora State Airport to accommodate the rotorcraft transportation needs identified in the record here, to accommodate the needs of rotorcraft would require a reconfiguration of the airport which is not contemplated and there is no evidence to suggest will ever be contemplated within the current to 10-year time frame driving the rotorcraft needs here. It may be in the long term that the Aurora State Airport will expand its boundary and include more land for aviation growth. But there is no such possibility at KUAO to serve current rotorcraft needs or the identified rotorcraft needs for the next 10 years either. The Aurora State Airport cannot reasonably accommodate the identified rotorcraft transportation needs.

Other airport facilities are excluded from further analysis for failure to satisfy other threshold criteria. For example, airports such as those in Salem, Troutdale, Hillsboro, or Portland are located more than one mile away from either of the County's two major helicopter operators and from Life Flight. The location of not just one, but three major helicopter operators within one (1) mile of the subject property is a major driver of rotorcraft operations in Marion County and Marion County's TSP contemplates keeping them in Marion County. These established operations have grown and with it, their need for a transportation facility that can accommodate additional rotorcraft growth in a manner that allows for the economic and operational efficiencies afforded by consolidated operations. Helicopter Transport Systems moved to its present site, in part, to consolidate its operations. Forcing new growth

for Columbia Helicopters to locate at distant airports will defeat the transportation need purpose of maximizing efficiencies and cost effectiveness reflected in the location-based threshold and in the County's TSP. Life Flight has testified in previous airport-related proceedings that its search has indicated that to relocate to an existing transportation facility that has sufficient space to consolidate its operations would require it to move its operations well outside of Marion County – namely to either Redmond, Oregon or Boise, Idaho and would cause Life Flight to suffer significant economic costs associated with relocating. The alternatives are for Life Flight to continue the economic dislocation costs of distant parcelized operations, to relocate to a new transportation facility outside of Marion County and potentially outside of Oregon or to utilize the alternative proposed here – to allow Life Flight to have their current 10-year needs met in place. The alternatives for Columbia Helicopters are to attempt to establish their own new facilities on nearby EFU zoned land, begin costly parcelized distinct operations elsewhere with the associated economic dislocation costs, move to another area altogether to operate in a consolidated manner, or to grow in place utilizing the subject property. The proposal requests that the County act consistently with its TSP to provide these large Marion County rotorcraft operators the opportunity to grow in place with the efficiencies that doing so brings and, with respect to Life Flight to consolidate operations at their main headquarters at KUAO with rotorcraft operations on the subject property.

The demonstrated need for the proposed rotorcraft-oriented transportation facility cannot be met by improvements to any existing transportation facility.

OAR 660-012-0070(4) also requires considering whether a combination of the above measures could accommodate the transportation facility. They cannot. As explained above, the proposed transportation facility supports a mode of transportation that can operate in locations that other modes generally cannot reach either at all, in a timely fashion, or in a manner that allows the mode of transportation to remain at the same precise location for lengthy periods of time. In short, rotorcraft are the only mode of transportation that can fly and hover and the services they provide are unique. The services certainly cannot be provided through traffic management of roadways. Nor can the transportation facility be reasonably accommodated by combining improvements to the Aurora State Airport with either or both of a different transportation mode and/or traffic management measures. As discussed above, there is insufficient space at KUAO for such improvements and neither the mode nor traffic management methodologies can resolve that shortcoming. Considering whether components of the proposed use, such as office space or parking, could be located at KUAO to decrease the acreage needed for the transportation facility, the proposed design minimizes the footprint of office and maintenance spaces by utilizing two-story structures for those uses. Any reduction in acreage from doing so would be minimal and would increase inefficiencies related to those activities, which is contrary to TSP policies. As for parking, there is not any location within the existing transportation facility to accommodate the parking

needed and the travel distances from parking areas and office and operational areas again would increase inefficiencies contrary to TSP policies.

The proposal is consistent with this standard.

(5) To address Goal 2, Part II(c)(2) the exception shall demonstrate that non-exception locations cannot reasonably accommodate the proposed transportation improvement or facility. The exception shall set forth the facts and assumptions used as the basis for determining why the use requires a location on resource land subject to Goals 3 or 4.

Proposed Finding:

The exhibits showing the comprehensive plan designations (Exhibit 9) and the zoning (Exhibit 10) in the corridor area show few exception sites. None can reasonably accommodate the proposed vertiport. Each is discussed below.

Several exception areas in the vicinity are located to the west of the Aurora State Airport flight path or directly in the flight path. This includes an industrial area on Arndt Road, residential areas to the west and north of the airport and several small commercial properties to the south of the runway. Each of these sites fail the threshold requirement that the use must be located to the east of the Aurora State Airport's flight path for the reasons discussed above justifying the threshold.

The only other non-exception properties in the corridor area, other than the Aurora State Airport site addressed above, lie within the City of Aurora. None can reasonably accommodate the use. A significant area of the northeast corner of the City and its UGB is vacant but is designated Flood Hazard (FH). See, Exhibit 36 (City of Aurora Zoning Map). Those properties fail the safety threshold. Another adjacent pair of UGB properties at the southwest corner of the intersection of Airport Road and Smith Lane NE are too small, partially developed with a residential use and surrounded on three sides by noise-sensitive urban residential development, thus failing several of the threshold requirements. See, Exhibit 35 (Analysis of Corridor Properties (Tax lots 100 and 200, TRS Map 04 1W 12CB)).

The only other possible site within the threshold distance of 1-mile from the target businesses boundaries consists of three adjacent properties on the western UGB boundary to the north zoned Urban Transition Farm (UTF). See, Exhibit 36 (City of Aurora Zoning Map). Those properties are Tax lot 1100, TRS Map 04S 1W 12 CB, and tax lots 2400 and 2500, TRS Map 04S 1W 12C. See, Exhibit 35 (Analysis of Corridor Properties (table discussion and tax maps)). If these three sites are consolidated, they would constitute a single site of 10.76 acres in size, at the bottom range of the threshold size requirement.

That potential site, however, fails to meet the threshold requirement that it be located away from noise sensitive uses. The site is not only immediately adjacent to developed residential uses located on County land, within the UGB and adjacent to the city limits, it is within several hundred feet of a fully developed residential subdivision within the City of Aurora City limits. The risk of adverse noise impacts to the quality of life of those residents that would result from the proposal being located at this consolidated site means the site cannot reasonably accommodate the proposed transportation facility. These sites fail the threshold requirements.

Given that a portion of the City of Aurora lies within the threshold corridor, it is reasonable to consider whether other parts of the city might reasonably accommodate the proposed transportation facility. None can. The city limits are fully developed such that no undeveloped sites of the size required for the proposed vertiport, either individually or in combination, are available. Within the city's UGB, there are two areas worth examining. The first is a combination of several minimally developed lots on the eastern edge of the city near the Aurora City Park that are zoned Urban Transition Farm (UTF). See, Exhibit 36 (City of Aurora Zoning Map). Those parcels lie just beyond the 1-mile threshold distance. They are not suitable because the topography is not level and drops towards the Pudding River. That site characteristic also means that those properties lie within the floodplain and do not satisfy the safety threshold. They cannot reasonably accommodate the proposed transportation facility.

The only other areas within the City of Aurora's UGB that might accommodate the proposed use are in the south on either side of Highway 99E. See, Exhibit 35 (Analysis of Corridor Properties (Tax lot 1000 TRS map 4S 1W Sec 14D; Tax lot 700 04S 1W 13C). Each parcel is over 13 acres in size, thus meeting the threshold size requirement and the sites appear to be fairly level and presently in agricultural use. The uses to the north of Hwy 99E within the city limits are planned for commercial and industrial use, while on the south of Hwy 99E the nearest planned uses are medium density residential. Each of these parcels is well beyond the threshold distance from the target businesses. Vehicle traffic to and from the businesses would have to travel 2 to 3 times the threshold distance for either site and the route would go through the entire length of the City, to include the City's historic district. Furthermore, flights from facilities located at these sites headed back to their headquarter facilities near the airport would either have to fly over the entire city and its residential districts, thereby introducing noise impacts that will affect the quality of life of all City of Aurora residents, or take a circuitous route around the city, thereby increasing the cost and operational complexities of operations at those southern properties. Not only do these two southern UGB sites fail to satisfy the distance threshold requirements, they introduce cost, operational feasibility and economic dislocation burdens that the threshold distance requirement minimizes. Neither of these southern sites can reasonably accommodate the proposed transportation facility.

There are no non-exception sites in the area that can reasonably accommodate the proposed transportation facility.

Given the specialized nature of a vertiport, the obvious question is why cannot the vertiport be located near another existing airport that has received an exception or an area, such as a city that might have an available 10- to 20-acre parcel.

Existing airports, which have already received an exception to Goals 3, 11 and 14 also cannot reasonably accommodate the proposed transportation facility. The only existing airport within the 1-mile area is the Aurora State Airport. As discussed above, while the Aurora State Airport satisfies the proximity to existing rotorcraft operators and other locational thresholds, the evidence in the record shows that the adjacent Aurora State Airport, which is zoned for public use, does not have sufficient vacant land to accommodate any of the identified rotorcraft transportation needs, nonetheless satisfy the parcel size threshold. The airport cannot reasonably accommodate the proposed transportation facility. Other airports in the greater area fail the proximity threshold and would have the economic dislocation costs associated with parcelized operations. See, Exhibit 27, page 18 of 83 (Figure 2-2: Area Airports).

There is no other exception land that lies within the exception corridor that satisfies the location thresholds (within one mile of either Columbia Helicopter, Life Flight, and the Arndt Rd/Airport Road/Keil Rd boundary, and east of the Aurora State Airport's approach surface footprint).

As Exhibit 33, the corridor map entered into the record, and the analysis under OAR 660-012-0070(6) below plainly demonstrates, the only land that satisfies the identified thresholds is land zoned EFU. Those parcels include the subject property as well as EFU-zoned land to the east of Airport Road NE and to the north and south of the existing Columbia Helicopter and HTS properties.

(6) To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation, and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception.

Proposed Finding: As required by this standard, the findings addressing the reasonableness of alternatives analysis provided above for OAR 660-012-0070(4) and (5) identify the evidence relied upon to reach the conclusions regarding each of the alternative locations noted in the standards as well as the reasoning – to include applicable thresholds, cost, operational feasibility, economic dislocation and other reasons – that support the conclusion that none of the identified alternatives can reasonably accommodate the proposed transportation facility use. The justification

for the thresholds were provided immediately following the list of thresholds provided above and is herein incorporated.

The findings below discuss the potential alternative sites. As authorized by OAR 660-012-0070(6)(c) below, a detailed analysis of each and every possible site within the identified corridor is not required unless a party identifies a particular site and describes with supporting facts why that particular location can more reasonably accommodate the identified need. No party has yet identified any such site within or outside the corridor. If a party identifies such a site with the requisite supporting evidence, Applicant will respond accordingly. Consequently, the findings below address similar potential sites generally, only noting distinctions about specific properties when they are relevant.

(a) In addressing sections (4) and (5) of this rule, the exception shall identify and address alternative methods and locations that are potentially reasonable to accommodate the identified transportation need.

(b) Detailed evaluation of such alternatives is not required when an alternative does not meet an identified threshold.

(c) Detailed evaluation of specific alternative methods or locations identified by parties during the local exceptions proceedings is not required unless the parties can specifically describe with supporting facts why such methods or locations can more reasonably accommodate the identified transportation need, taking into consideration the identified thresholds.

Proposed Finding: Following the elimination of the potential alternative methods and locations identified and analyzed above under OAR 660-012-0070(4) and (5), what remains are the properties identified and analyzed by Exhibit 33 (Corridor Diagram) and Exhibit 35 (Analysis of Corridor Properties).

The Corridor Diagram (Exhibit 33) graphically depicts all of the land that falls within the distance threshold requirement – within 1 mile of Columbia Helicopters or the Airport Road/Keil Rd perimeter (HTS) and lying east of the Aurora State Airport flight path areas.

The properties that lie within the distance threshold requirement are further analyzed in Exhibit 35, the Analysis of Corridor Properties. While the analysis contained in these findings is not necessarily parcel specific but rather addresses potential sites that share common characteristics, Exhibit 35 contains analysis notes that are site specific in many instances. Consequently, that exhibit warrants further explanation.

Exhibit 35 has several components. Exhibit 35 begins with a Table of Corridor Properties, which is discussed in more detail in the next paragraph. The Table is followed by two annotated aerial images of the locations of considered properties. The first annotated image is a Google Maps image of the locations of the considered properties. The subject property is identified by a yellow star. Properties that satisfy the threshold requirements, whether individually or in combination with adjacent properties, are indicated by a green star. Other properties that were considered but rejected as not able to reasonably accommodate the proposed use are indicated by a red X. The second aerial image uses the same green star, red X, identifiers, but placed on the Corridor Diagram (Exhibit 33) that shows the threshold 1-mile distance. Those aerial maps are then followed by two (2) TRS Map Guides and then by the TRS maps for the corridor area. The first TRS Map Guide has the guide overlain on a Google map base; the second TRS Map Guide is overlain on a satellite imagery base. The map guides have red dots with numbers in them that identifies the respective Section shown on the Map Guide that is relevant to the required analysis. These numbered red dots are used in the analysis table to associate together the different TRS maps in those sections that have multiple maps. The information in Exhibit 35 was obtained from publicly available resources such as Marion County and Clackamas County Tax Assessor web sites, FEMA, other state websites and Google Maps.

The main analytical component of Exhibit 35 is the Table of Corridor Properties on pages 1 through 6. The table refers to the other components of the exhibit. The left-hand column refers to the TRS Map Guides by reference to the number within the red dot used in the map guide. The red dot numbers are used instead of section numbers because the corridor overlaps two different townships, which leads to an unusual sequencing of map section numbers. The map guide helps orient the reader to where the relevant TRS maps are located in relation to the subject property and the target businesses within the corridor. The second column in the Table of Corridor Properties lists the TRS map number. These numbers refer to the TRS maps attached later within the exhibit. The next column provides the Tax Lot numbers of parcels within that particular TRS map that might reasonably accommodate the proposed transportation facility. Not all the tax lots within a particular TRS map are listed. Those that do not immediately fail one or more of the threshold requirements, such as the size of the property and inability to be combined with other parcels to meet the threshold size, are shown in the table. The next column in the Table of Corridor Properties responds to the inquiry whether the property can reasonably accommodate the proposed transportation facility. Many tax lots can, although others cannot even though they may satisfy the minimum size threshold. The last column is a notes column that generally identifies the size of the tax lot and provides some explanation as to why the tax lot can reasonably accommodate the proposed transportation facility or why it cannot.

Finally, the Locations of Considered Properties (pages 7 and 8 of Exhibit 35), which immediately follows the Table of Corridor Properties, graphically represents the "Can Reasonably Accommodate?" column of the table. The properties with a "yes" response are shown with a green star, those with a "no" response with a red X.

The corridor area includes multiple sites that satisfy the location-based threshold criteria identified above. The potential alternative sites that could reasonably accommodate the transportation facility are all within 1 mile of either the Columbia Helicopter or the Arndt Road/Airport Road/Keil Road boundary. The sites considered also generally meet the threshold size requirement. Each considered site is at least 10 acres in size or can be combined with other adjacent parcels to constitute a suitable site. See, e.g., Exhibit 35 (Table of Corridor Properties showing TRS 04S 1W 01, TL 100 (157.06 acres in size); and adjacent properties TRS 04S 1W 11A, Tax Lots 900 and 1200 (each under 10 acres but meeting threshold size requirement if combined)).

Other sub-sized parcels in the corridor area cannot reasonably accommodate the proposed transportation facility. Most of them are isolated or adjacent to other extremely sub-sized parcels but arranged such that they cannot be combined to create a suitable site. Furthermore, most of the smallest parcels are presently developed with a single-family residence and are not suited for redevelopment. These parcels have been excluded from further analysis as failing to meet the threshold size requirement.

Another limiting factor that excluded many of the sites or portions of sites that otherwise met the location and size thresholds is the prevalence of riparian vegetation and drainage areas that lead to the floodplain of the Pudding River. These areas are generally well vegetated with trees that may need to be removed if they are close to the proposed transportation facility. See, Exhibit 35, pages 7 and 8 of 30. Furthermore, the riparian areas generally have changes in elevation that are unsuitable for the proposed transportation facility. Consequently, heavily vegetated riparian areas or sites with stands of native timber are generally not suitable for development of the transportation facility because they fail to satisfy the site characteristics and lack of obstruction threshold requirements. Furthermore, those properties that lie within mapped floodplains or geologic hazard areas fail the hazards threshold. See, Exhibit 17 (Floodplain Areas) and Exhibit 18 (Geohazards). The proposed transportation facility must be available to provide emergency services even during natural hazard events.

Finally, several otherwise suitable sized sites were excluded because they were located within the flight path and approach surface, both north and south, for the Aurora State Airport. See, Exhibit 31 (Aurora State Airport Approach Surfaces Diagram); Exhibit 33 (Corridor Diagram (depicting runway flight path and approach surfaces); Exhibit 35 (Locations of Considered Properties – Threshold Distance)).

Note, however, that several of the larger properties contain one or more of the above excluding characteristics but appear to have sufficient suitable area to otherwise accommodate the transportation facility. These properties are deemed capable of reasonably accommodating the proposed use and are included in the analysis below. See, e.g., Exhibit 35 (Analysis of Corridor Properties (TRS 04S 1W 12B, Tax Lot 300 (portion of 29.0-acre property encumbered with riparian vegetation but deemed can reasonably accommodate the proposed transportation facility because sufficient area is not encumbered by vegetation)).

One final point is worth noting, within the corridor are multiple large parcels that are suitable for the proposed use. Several parcels are significantly larger than the 10 to 20 acres required for the proposed transportation facility and would require a partition for the transportation facility. However, given the sizes of the parcels, only one of the parcels could be partitioned and have a remainder that satisfies the statutory 80-acre minimum parcel size for farmland. The other parcels would result in a partition that would result in a sub-sized parcel of land for EFU purposes.

All of the potential sites that satisfy all of the threshold criteria are plan designated for farm use and are zoned Exclusive Farm Use (EFU), regardless of whether the property is located in Marion County or Clackamas County.²⁰ Consequently, all of the properties that could potentially reasonably accommodate the proposed transportation facility would require an exception to Goal 3, Goal 11 and Goal 14 to allow the facility.

The suitable properties in the identified corridor break down into several different types of properties, with each type sharing similar characteristics. As authorized by OAR 660-012-0070(5)(c), the properties with shared characteristics are analyzed together with the analysis focusing on the differences between the different groups. However, the analysis below also identifies particular site characteristics that may distinguish one property in a type group from another within the same group as warranted by the particular site. Again, OAR 660-012-0070(5)(c) does not require that each and every site be analyzed. It states only that particular sites must be analyzed separately only if a party identifies a particular site and provides facts and evidence why that party believes that particular site can more reasonably accommodate the proposed transportation facility given the identified thresholds. No party has identified any specific alternative sites or locations, supported by the requisite evidence, that would require further examination of that particular site or method. If that happens, the Applicant will analyze any such site as required.

The subject property is perhaps the most distinct of the properties capable of reasonably accommodating the proposed use. As discussed in more detail in the

²⁰ The Marion County-Clackamas County border runs along Arndt Road and the Pudding River.

section describing the property, despite being plan designated Primary Agriculture and zoned for exclusive farm use, the subject property is not now and has not been for decades – at least the past 50 years – in farm use. The subject property has no irrigation. The subject property is bordered on three sides by land designated and zoned for public use and developed with airport/aviation related uses. Its fourth side is bounded by Airport Rd NE. None of the other properties have similar characteristics. To the east, across Airport Road NE, are EFU zoned properties in farm use. The subject property site is relatively flat, has no trees, contains no identified wetlands, streams or riparian areas and contains no natural hazards.

In summary, the required analysis, under OAR 660-012-0070(7), of properties that could reasonably accommodate the proposed transportation facility includes the subject property, large properties currently in farm use that can accommodate the size of the proposed transportation facility, some of which may need to be partitioned to provide 10 to 20-acre parcel, and smaller contiguous properties currently in farm use that can be consolidated to accommodate the size of the proposed transportation facility. Each of these properties would require exceptions to allow the proposed use.

(7) To address Goal 2, Part II(c)(3), the exception shall:

(a) Compare the long-term economic, social, environmental and energy consequences of the proposed location and other alternative locations requiring exceptions. The exception shall describe the characteristics of each alternative location considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the location for the proposed transportation facility or improvement, and the typical positive and negative consequences resulting from the transportation facility or improvement at the proposed location with measures designed to reduce adverse impacts;

Proposed Finding: This standard requires identification and discussion of both negative and positive consequences of locating the proposed transportation facility at the subject property and at the other alternative locations that can reasonably accommodate the facility that also require an exception. The analysis of whether the ESEE consequences are significantly greater for the subject property compared to the other locations is provided under OAR 660-012-0070(7)(b) below. Furthermore, as provided by OAR 660-012-0070(7)(c), the analysis below is not site-specific, except for the subject property, and analyzes the different types of properties described above.

The general characteristics of the subject property and each of the types of properties that could reasonably accommodate the proposed transportation facility is discussed extensively above and is hereby incorporated. The threshold criteria contribute greatly to the characteristics common to each of the area types. For example, each is located in comparatively close proximity to Columbia Helicopters.

Each of the area types has sufficient level, open land to accommodate development of the transportation facility, although the surrounding land characteristics or land uses may vary somewhat. Significant similarities and differences that may weigh towards favoring one type of property over another are incorporated into the analysis below.

Economic Consequences

The economic consequences of the proposed transportation facility largely consist of weighing the economic loss of farmland in agricultural use versus the economic gains that may result from new transportation facility activities. While there are other economic considerations one may think of, such as the potential for home occupations, the economic loss of agricultural uses versus the economic gain from a vertiport present the most significant weights on the scale and override other potential economic considerations.

The primary negative economic consequence of the proposal will be the loss of farmland planned and zoned for agricultural use. Agriculture is the largest industry in Marion County and is an economic activity that Oregon seeks to protect state-wide. While the loss of the economic benefits from farming in terms of jobs and commerce generated should not be taken lightly, two economic factors mitigate the potential significance of the loss of farmland here. One is that the property has not been used for farming for decades – for so long as anyone can remember. Therefore, the subject property has not been contributing to the agricultural economy and so its conversion to the heliport will not result in the loss of farming economic activity. Second, is the comparatively low rate of onsite jobs per acre for farming in the County. The USDA estimates that there are 0.037 onsite jobs per acre on farms in Marion County. Exhibit 37. This contrasts significantly with the economic benefit in terms of jobs that could occur at the proposed transportation facility whether technical, such as rotorcraft repair and maintenance personnel, pilots and flight crew, or ground-based management and logistic personnel. *See, e.g., Exhibit 27, pages 15 and 17 or 83 (2022 Draft Airport Master Plan, indicating 2,672 direct jobs on 140-acre airport property, which equals 19 jobs per acre).*

The primary positive economic consequence of the proposal flows from the services provided by and operations at the proposed transportation facility and the jobs that are created there. Columbia Helicopters is a major employer at above-average wages and the expansion of their operations onto the transportation facility will create new jobs at significantly higher rates than 0.037 onsite jobs per acre. Similar economic benefit in terms of the number of jobs created should be gained for an expanded Life Flight headquarters. This gain in jobs will represent a positive economic consequence for the immediate area and the County. *See, Exhibit 38, page 6 of 6 (Oregon aviation Plan 2014 for Aurora State Airport showing economic contributions to local, regional and state economies).*

Similarly, the loss of agricultural commerce will be offset by the economic activity generated by the proposed transportation facility, which extends beyond the jobs created by the transportation facility. As indicated by the 2014 Oregon Department of Aviation Individual Report for the Aurora State Airport (Exhibit 38) aviation-based businesses generate extensive direct and spin-off economic benefits to the surrounding area and greater region.

Because there is currently no farm activity at the subject property and has not been any for decades – the property has always served some other use for so long as anyone can remember - development of the transportation facility will not preclude farm use of that land and the associated economic benefit from farming. Moreover, any economic benefit lost from the potential for farming the subject property, however, will be offset by the economic gain due to commerce and employment that will be derived from the transportation facility.

Looking at the advantages and disadvantages of the various sites that can reasonably accommodate the use, the negative economic consequences of the subject property appear to be less than for most of the other properties. While all of the properties are burdened by the AO overlay zone, which constrain farm and other operations that create dust, the subject property is isolated from other farm uses in a way that other potential sites are not. The ability for the subject property to provide economic benefit from farm activity, even in conjunction with other farm operations, is restricted due to this isolation. Even the farm operations on smaller sized lots that would have to be consolidated in order to accommodate the proposed transportation facility are adjacent to other farm use properties and can be put to farm use in an easier manner than the subject property, which has no direct access to other EFU land. None of those other sites are surrounded on three sides by P-zoned land and by a major road on the fourth side as is the subject property.

But importantly, as noted, the fact that the proposed site has not been in farm use for over the past 50 years factors into the analysis. On the other potentially eligible sites, placement of the transportation facility at those locations will require discontinuing active farm uses on the development site. Approval of the transportation facility at those locations will either totally remove farm activity for those sites that need to be combined to satisfy the size threshold or will require removal of a significant portion of land from active farming occurring on parcels that are even now smaller than the statutory minimum parcel size for EFU land. With these latter parcels, which will have to be partitioned to allow the proposed transportation facility, the additional question arises whether the remaining portion of those properties will continue to support viable farm operations that provide an economic benefit for the property owners and the County.

Another economic cost flows from proximity to one of the two main existing helicopter operations in the area, one that seek to use the proposed transportation facility. As the evidence in the record from Columbia Helicopters explains, the closer the transportation facility is to their existing operations, the better. This is due, in part, to the economic costs of moving workers and activities from one location to another. The farther the distance away from their existing operation, the higher the economic dislocation costs. This places some of the sites that can reasonably accommodate the transportation facility in a better position than the others. Those sites that are in closer proximity to the operations, such as the subject property for both Life Flight and Columbia Helicopters or Tax Lot 300, TRS Map 04 1W 01 for Columbia Helicopters, are economically better situated than those reasonably suitable sites that are more distant.

One final economic cost warrants analysis. There will be an economic cost of either partitioning land for the very large sites, or costs of consolidating land for the smaller sites that must be combined to accommodate the proposed uses. While such costs are a one-time cost with respect to the required local processes to execute the requisite land use action, given the determined opposition that all applications to develop in this area have seen in recent years, the litigation costs for even one additional land use action could be significant for any applicant.

Based upon the above analysis, the net adverse economic impacts from developing the proposed transportation facility at the subject property will not be any worse than developing the transportation facility at any of the other locations that can reasonably accommodate the proposed transportation facility.

Social Consequences

Several negative social impacts could flow from the proposed transportation facility. Regardless of where the facility is located, there will be associated noise and traffic attributable to use of the transportation facility. Traffic impacts from the proposed development at the subject property are discussed elsewhere in these findings and that analysis is incorporated herein. See, Exhibit 39 (DKS Transportation Impact Analysis).

Given the corridor area, the traffic impacts from the proposed use are expected to remain the same regardless of the location of the transportation facility within the corridor, with only slight variations in the traffic distribution based on specific location. As found elsewhere, despite the increase in vehicular traffic associated with the proposed transportation facility, the local roads will continue to operate within their classifications and the proposal does not change the performance standards or the compliance with those performance standards.

The only difference between locations would concern business hour-related traffic generated by the movement of workers and goods from the established target businesses to the proposed transportation facility during working hours. Such movement does not occur during peak travel periods so is not anticipated to present any issues. While rationally the more distant properties would generate "greater" impacts, within the 1-mile threshold distance the differences cannot be said to be significant. This contrasts greatly with sites located beyond the threshold distance, such as the properties in the southern part of the City of Aurora's UGB, if those sites were not precluded due to being located in the protected flight path or encumbered by flood plain issues. Those properties would require significantly farther drives between the established businesses and any transportation facility located in the UGB would require driving through the heart of the City of Aurora. Such impacts could be considered significant – but they are unable to reasonably accommodate the transportation facility.

The other primary social impact comes from noise that will be generated at the proposed transportation facility. The evidence in the record demonstrates that helicopter operations can be noisy, and the impacts are at their greatest when operations are occurring close to the ground, such as during takeoff and landing when conducted in close proximity to noise sensitive uses. The threshold requirement addresses the proximity to noise sensitive uses. One mitigation measure that would help off-set the operations impacts is to impose conditions that would prohibit unnecessary hovering over the transportation facility. While the Marion County Noise Ordinance expressly excludes noise generated from aircraft (rotorcraft are a type of aircraft), the impact that flows from such noise will nonetheless exist. Adjacent Helicopter Transport Services has permission to conduct and in fact conducts training exercises that involve the hovering of aircraft for an extended period of time. The subject property is adjacent to HTS as well as the Aurora State Airport itself and so is in an area that already experiences aircraft, including helicopter, noise.

There are also several positive social impacts that will likely flow from the proposed facility. First, the positive impacts to be gained by having excellent emergency response operations provided by the transportation facility, whether that is emergency medical response, firefighting, or natural disaster response, cannot be downplayed. There is a social benefit to the County and region from having those services at the proposed facility. Second, the social benefit of having a superior rotorcraft-oriented transportation facility that supports one of the country's largest helicopter operators and the country's largest non-profit air ambulance service includes attracting highly skilled workers to live in the County. This contributes to the communities they live in. Third, when eVTOLS come to the market and the transportation facility can implement services for those aircraft, the County's reputation for innovation into leading-edge, environmentally conscious technical

fields will be enhanced, which again will attract residents who will contribute to the larger community.

All of the sites that can reasonably accommodate the proposed transportation facility in the corridor area share in the above positive and negative impacts from the proposal. However, the effects from those impacts will differ between various properties.

The above negative social impacts should be less when occurring from the subject property when compared to the same impacts from most, if not all, of the other properties that can accommodate the proposed transportation facility. Unlike most of the other properties, the subject property is located within the Aurora State Airport's 55 – 65 dBA noise contours, which means that noise impacts at the subject property generated by off-site sources are already significant and that use of the subject property will not be occurring in an area that infrequently sees high noise levels at present. See, Exhibit 15 (noise contours map). The same cannot be said of the more distant located properties. Furthermore, the subject property is adjacent to the area of the HTS property where helicopter training is conducted, which means that the rotorcraft noise impacts from the transportation facility will occur largely in the same vicinity as those from HTS and have similar impacts as from that existing use. Again, building the transportation facility at the subject property will not introduce new significant noise disturbances to a comparatively undisturbed area – the area is already noise impacted.

By comparison, the farther away from the Columbia Helicopter, HTS and Aurora State Airport facilities the proposed transportation facility is located, generally the lower the existing base noise level is and the greater the social disruption caused by new helicopter operations from a transportation facility will seem. Development of those properties will introduce high noise levels where they do not presently exist and will cause the greatest impacts for properties located near the City of Aurora, given the city's noise sensitive residential development. In this respect, the closer to either Columbia Helicopters or HTS the transportation facility is located, the lesser the adverse noise impacts will seem. However, none of the other properties is similarly situated as the subject property. Those other properties are separated from the existing rotorcraft uses by at least a roadway instead of being located adjacent to one of them. Consequently, the impacts from the proposed use located on properties other than the subject property will be greater for the surrounding community. Furthermore, many of the farm operations within the corridor area have a dwelling in conjunction with a farm use or are located near other existing dwellings. Again, for residents of those dwellings, the noise impacts from helicopter operations will be significantly greater than if the transportation facility were to be located on the subject property or on farmland farther away (which would likely impose those impacts on other farm residents). In short, the noise impacts from the proposed use on the subject property will be similar to the status quo in terms of

noise levels for residents of the greater area. The same cannot be said if the proposed use is located elsewhere.

Another distinguishing difference between the proposed exception area and the other potential areas is the surrounding development. The subject property is surrounded on three sides with P-zone land developed with urban uses that are aviation or aviation related. The proposed transportation facility fits better in that social fabric than it would on any of the other sites, which would essentially locate a noisy transportation facility on rural land surrounded by farm uses or, potentially, near noise-sensitive urban residential development.

The social impacts of developing the proposed transportation facility at the proposed subject property are less than would result from development of the proposed transportation facility at the other sites that can adequately accommodate the proposal. Some of the social impacts, such as traffic, will be the same regardless of location; the same cannot be said of the impacts from noise generated by the proposed transportation facility. The social impacts from the facility, even though the noise levels will be the same, will vary based upon location. The least impactful of the sites is the subject property.

Environmental Consequences

There are a range of potential adverse air, land and water environmental impacts that could result from development of the proposed transportation facility.

A rotorcraft-oriented transportation facility will serve conventionally powered helicopters and eVTOLS and electric helicopters when they come to market. Conventional helicopters utilize carbon-based fuel, which results in air emissions. Any increase in air emissions due to increased aerial activity will be identical regardless of where the proposed transportation facility is located. Other than utilizing emission reduction technologies, which all aircraft do, there are no mitigation measures that will significantly affect environmental impacts to air quality that may flow from the activities at the proposed transportation facility. Similar emissions will occur from automobiles driven by workers and visitors to the transportation facility. The adverse impacts from those activities will only be slightly offset by the fact that development of the transportation facility will displace emissions from farm activity. Note that the offset will not exist for the subject property given that no farm activity has occurred on the subject property in recent decades.

Again, the environmental impacts from the proposed activity will be identical regardless of the location of the transportation facility within the corridor area. Changes to those emissions will result more from changes to emission reduction technologies and the use alternative energy vehicles such as eVTOLs and electric cars

than from where the transportation facility is located. Once more, any improvement in this respect will be identical regardless of where the transportation facility is located.

A variety of impacts to groundwater, surface water, riparian areas and soil could result from activities that take place at the proposed transportation facility. Use of the transportation facility and development of the facility itself will result in wastewater and stormwater and their potential impacts. As the aerial photo of the surrounding area shows, there are several riparian areas that extend into the corridor area that could be threatened by unmitigated discharges of stormwater or wastewater. The Applicant has submitted extensive evidence that demonstrates that the adverse environmental impacts from wastewater and stormwater can be successfully mitigated to state mandated standards and that such mitigation measures are feasible for the subject property. See, Exhibit 40 (Mackenzie Stormwater Analysis); Exhibit 41 (EMS – Wastewater Analysis). Those standards are intended to protect these environmental resources and attaining those standards effectively mitigates any potential environmental impacts that may result from the proposed transportation facility operating consistent with state environmental permits. There is little reason to believe that similar such measures cannot be implemented at the other locations that could accommodate the proposed use. Consequently, there is nothing that would readily distinguish those potential sites located closer to the floodplain or other riparian areas from the subject property or other sites more distant from environmentally sensitive areas when the development operates consistent with state environmental permitting.

One potential adverse environmental impact that can be prepared for but not fully mitigated is the accidental release of fuel or other contaminants either through a major spill or an accident or a failure in an environmental system. Here, prevention is the best medicine. If such a spill occurs and is not immediately contained, then those sites that are closest to riparian ways that lead to surface waters pose a greater risk of having an adverse long-term environmental impact than those properties that are located more distant from such environments. In that respect, the subject property is as well situated as any of the properties within the corridor area being located as far away from any of the major riparian areas as any of the properties in the threshold area.

A positive environmental consequence of the proposal that could result is when eVTOL vehicles come to market in a significant manner, their environmental consequence is relatively benign – they have low noise profiles and they do not operate with fuels that spill like diesel or gas. This benefit would largely be the same regardless of where the proposed transportation facility is located.

Turning to the properties themselves, there are no MCCP-identified geohazard, floodplain, big game habitat, wetland, sensitive headwater, or stream

areas on the subject property proposed for the transportation facility. The same is true for most of the other sites with only a few notable exceptions. Some properties within 1 mile of the intersection of Keil Road and Airport Road contain MCCP mapped geohazard, wetlands and floodplain. See, Exhibit 17 (floodplain areas); Exhibit 18 (geohazards); Exhibit 19 (wetlands). However, developable land outside those designated areas is sufficient in size to accommodate the transportation facility, though such a location would pose more of a risk to the environmental resources than sites located further away.

The subject property also contains no heavily vegetated areas or riparian drainage ways. Several of the properties that can reasonably accommodate the proposed transportation facility cannot say the same. Several of the potential alternative sites, particularly the larger properties east of Airport Road, have riparian areas that extend into the property from the east that are heavily vegetated and include topographic changes. Location of the transportation facility near to these areas represents a greater environmental risk in the event of accidental spillage than would occur if on the subject property.

Based on the above, development of the proposed transportation facility on the subject property will likely have fewer adverse environmental impacts than if it were to occur on many of the other sites that could reasonably accommodate the facility. In any event, there are no worse environmental consequences from development on the subject property when compared to the other properties that would also require an exception.

Energy Consequences

The energy consequences for the proposed development arise from the fact that the transportation facility will serve vehicles that use energy, and that energy will be used by workers to get to and from the property as well as to move from existing nearby operations locations to the transportation facility.

The proposed transportation facility will serve rotorcraft and will result in an increase in rotorcraft activity in the immediate area. Helicopters consume fuel, which means an increase in that form of energy usage at the transportation facility. Even if the future sees the implementation of an eVTOL station or three at the transportation facility, the electricity power demands for that technology are high and will result in an increase in energy usage related to the site. This increase, and any negative or positive impacts that may flow from the increase, will be identical regardless of where the proposed transportation facility is located.

Workers traveling to and from the facility from their homes will also consume fuel in the process. Given the restrictions the threshold criteria established for the corridor area, no particular location within the corridor area appears to be

significantly better or worse in terms of commuting energy consequences. Likewise, while some properties such as the subject property, are adjacent to the existing helicopter operations and might be seen to have a slight energy benefit over more remote locations in the corridor area with respect to moving from one location to another, such benefit from an energy savings perspective cannot be said to be significant given the relatively short distances involved.

The only positive energy consequence of the proposed transportation facility is that it could promote energy efficient technologies for electronic aerial transportation, should such modes become available to the general public and it becomes financially feasible to provide facilities to serve that mode of transportation. However, such benefit would accrue as a result of the transportation facility regardless of its location within the corridor area.

There is nothing to significantly distinguish any site within the corridor area that can reasonably accommodate the transportation facility, to include the subject property, based upon energy consequences.

(b) Determine whether the net adverse impacts associated with the proposed exception site, with mitigation measures designed to reduce adverse impacts, are significantly more adverse than the net impacts from other locations which would also require an exception. A proposed exception location would fail to meet this requirement only if the affected local government concludes that the impacts associated with it are significantly more adverse than the other identified exception sites. The exception shall include the reasons why the consequences of the needed transportation facility or improvement at the proposed exception location are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed location. Where the proposed goal exception location is on resource lands subject to Goals 3 or 4, the exception shall include the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base; and

Proposed Finding: As an initial matter, Applicant points out that the standard expressly states that a proposed location fails to meet the requirements of the standard “only if the affected local government concludes that the impacts associated with it are significantly more adverse than the other identified exception sites.” (Emphasis supplied). Based upon the above ESEE analysis, the net adverse impacts associated with the proposed transportation facility at the proposed exception site, with mitigation measures designed to reduce adverse impacts, will not be significantly more adverse than the net impacts from other locations which would also require an exception. In fact, given the location of the exception site and the analysis provided above, the net adverse impacts from locating at the subject property

will likely be less than if located at any of the other sites. The proposed exception area is consistent with this standard.

To summarize the above ESEE analysis, development of the transportation facility on the proposed exception site would likely have less adverse economic impacts than would result from the other sites that can reasonably accommodate the facility. While the impacts from a vertiport use are largely the same, the subject property is the one site that is not and has not been in active farm use for the past fifty years and is consequently the one location that would not remove economic benefits currently flowing from active farm use from the economy. Furthermore, being very close to the existing Columbia Helicopters and Life Flight operations provides the subject property advantages that most of the other locations do not offer due to their separation from those sites.

Regarding social impacts, the proposed exception site also has characteristics that the other sites do not, which supports the conclusion that the adverse social impacts will be fewer at the proposed exception site. The subject property lies within the 55 – 65 dBA zone for the Aurora State Airport and is immediately adjacent to the area HTS uses for helicopter training. Landing pads on the proposed subject site will not be introducing new noise impacts to areas at levels different than they already experience. All of the other sites, on the other hand, will be introducing loud helicopter operations in new areas where such noise impacts do not presently exist and at levels the properties are not accustomed to experiencing. Furthermore, the subject property is the only one of the potential sites that can reasonably accommodate the transportation facility that is surrounded on three sides by P-zoned lands that are developed with urban, aviation-oriented uses. The proposed transportation facility suits that surrounding context better than open land in farm use.

Regarding potential environmental impacts, the proposed exception site will likely have fewer adverse environmental impacts than many of the other sites that can reasonably accommodate the proposed transportation facility. There are no MSCP-identified geohazard, floodplain, big game habitat, wetland, sensitive headwater or stream areas on the subject property. The same is not true for many of the other properties, especially for those sites located farther east or south that have drainage ways that feed into Pudding River or Miles Creek.

Last, the energy impacts from the proposed transportation facility on the proposed exception area are no different than they would be if the proposed facility were to be located on any of the other sites that can reasonably accommodate the use. The operation of the facility will be similar regardless of the location, and the distances involved within the threshold corridor make the energy impacts from vehicular traffic for one site as compared to another negligible.

Overall, the evidence in the record and the analysis provided above demonstrates that the impacts of the proposed transportation facility on the proposed exception area are not significantly more adverse than the proposal being located at any of the other sites that require an exception. The proposal is consistent with this standard.

Because the proposed exception location is on resource land subject to Goal 3, this standard requires additional analysis concerning a number of issues. The first requires an analysis, citing the facts relied upon, to determine which resource land is least productive. Attached as Exhibit 42 is an NCRS soils map of the study area. Exhibit 43 consists of excerpts from "Agricultural Productivity Ratings for Soils of the Willamette Valley" published by the Oregon State University Extension Service in 1982. The soils map identifies the entire proposed exception area as labeled "Am" which stands for Amity silt loam. There are no portions of the subject property that the NRCS map identifies as consisting of resource land that is least productive. Returning to the soils map, the large flat areas on the other potentially suitable sites that could accommodate the proposed transportation facility consists of soils labeled AM, WIA (Willamette Silt Loam), and, for some of the sites north of Arndt Road, 88A (Willamette Silt Loam, wet, 0-3% slope), and for some sites south of Ehlen Road, WUD (Woodburn Silt Loam, 12 to 20% slope). The map also shows a few confined ribbons labeled Co (Concord Silt Loam) within some of the larger fields, but none of those limited areas are configured in a manner that could reasonably accommodate the proposed transportation facility either alone or in conjunction with other CO soil areas. All of the other soils designations on the map (e.g., Te, CM, WC, WUC, 21, 88B, 92F, etc.) are located in drainage ways and riparian areas and cannot reasonably accommodate the proposed transportation facility.

Exhibit 43 provides the agricultural ratings for each of the above soils types – the higher the number, the more productive the soils. The native productivity rating for Amity Silt Loam (AM) is 55. The productivity rating for Willamette Silt Loam 0-3% slope (WIA) is 75. The productivity rating for Willamette Silt Loam, wet 0-3% slope (88A) is 65. And the productivity rating for Woodburn Silt Loam 12-20% slope (WUD) is 59. With a native productivity rating of 55, the Amity silt loam at the subject property demonstrates that the proposed exception site has the least productive land of the sites that can reasonably accommodate the proposed transportation facility.

The second required additional analysis concerns the ability to sustain resource uses near the proposed use. The evidence in the record supports the conclusion that farm owners and operators near the proposed transportation facility will be able to sustain resource uses near the facility. Rotorcraft use at the subject property are expected to have little impact on farm operations directly across Airport Road NE from the subject property and elsewhere in the vicinity that they are not already experiencing, and those farmers have been able to sustain their resource use

of the land. Agricultural activities are generally not noise sensitive and are not significantly impacted by the type of rotorcraft activity that will occur. Evidence to support this is the continuation of the farm operations located adjacent to and near-by Columbia Helicopters, which has been located in this area since at least the 1970's. See, Exhibit 44 (Aurora State Airport Master Plan 1976, p. 30 (Table 2 (noting Columbia Helicopters Inc. 5.70-acre property in 1975))). The ability for farmers to sustain resource uses near helicopter operations has further support from the fact that none of the farm operations surrounding the HTS site have been forced to stop resource use of the land due to HTS operations since they were approved in 2010. Given that the proposed exception site is adjacent to the HTS operations, nothing about the proposed transportation facility supports a conclusion that farmers will not have the ability to sustain resource uses near the proposed use, particularly when the proposed transportation facility is located on the subject property.

The third, and last, additional analysis requirement mandates an analysis of the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Perhaps the best evidence that the long-term economic impact on the general area with respect to the removal of the subject property from the resource base will be minimal is the fact that the area does not rely upon resource use of the subject property and has not done so for well over the past 50 years. As the background section above explained, the proposed exception area has historically been used as a church camp and then a theological center and retreat. The subject property has not been in productive resource use for decades and the local economy has not depended upon resource use of the subject property in any way. The long-term economic impact caused by the removal of the land from the resource base should be no affect at all on the current resource economy and, as discussed in the ESEE analysis, development of the subject property should promote the economy by adding skilled jobs to the area.

For the above reasons, the proposal is consistent with this standard.

(c) The evaluation of the consequences of general locations or corridors need not be site-specific, but may be generalized consistent with the requirements of section (3) of this rule. Detailed evaluation of specific alternative locations identified by parties during the local exceptions proceeding is not required unless such locations are specifically described with facts to support the assertion that the locations have significantly fewer net adverse economic, social, environmental and energy impacts than the proposed exception location.

Proposed Finding: As discussed in the findings for OAR 660-012-0070(6) above, the evaluation of the consequences of development in this section have been general and not site-specific other than for the proposed site for the transportation facility. This is because each of the other properties in the identified corridor are similar with respect to zoning and present uses with the only real difference being

the size of the parcels, which is not significant in most instances given the identified thresholds and the ability to combine some of the smaller parcels into units of land that meet the threshold. Consequently, the above analysis concerning consequences was conducted generally with minor findings addressing particular sites or types of sites where warranted.

At this point, no party has identified any specific alternative locations with the requisite evidentiary demonstration to warrant findings concerning any specific site.

Based upon the analysis provided above, the net adverse impacts associated with locating the proposed transportation facility on the subject property, with mitigation measures designed to reduce adverse impacts, are not significantly more adverse than the net impacts that would result if the proposed transportation facility was developed at any of the other locations that would also require an exception. The proposal is consistent with OAR 660-012-0070(7).

(8) To address Goal 2, Part II(c)(4), the exception shall:

(a) Describe the adverse effects that the proposed transportation improvement is likely to have on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm or highway oriented development on areas made more accessible by the transportation improvement;

Proposed Finding: The focus of this standard is on adverse effects from the transportation facility on surrounding rural land and land uses that may result from the proposed transportation facility.

Many of the adverse effects the proposed transportation facility may have on surrounding rural lands and uses have been discussed above and are repeated here. Most significant is the noise impacts from helicopter and other rotorcraft activities at the transportation facility. While there should be no real increase in noise levels on surrounding rural lands given the significant helicopter activity at the adjacent HTS property, there will be an increase in the frequency of takeoffs and landings, which brings with it the associated noise impacts. Off-setting that is that the predominant use of the surrounding rural lands to the northeast, east and southeast is farming, which is not a noise-sensitive activity. While there are some individual residences located on the properties east of Airport Road, those residences have existed with the HTS, LifeFlight and Columbia Helicopters activities over the past decades. Nevertheless, those residences will be impacted by operations on the subject property.

Another potential adverse effect on the surrounding rural land and land uses to consider is ground vehicle traffic generated by activity at the proposed transportation facility. The proposed transportation facility and the services it provides will bring an increase in traffic along Airport Road NE and other key road

transportation facilities. However, as established in the attached Exhibit 39 DKS TIA, the traffic generated by the proposed use will not have a significant effect on any transportation facilities. The TIA analysis concludes that the time delay due to the proposed use for a farmer to drive half-way around the airport will be less than 5 seconds and the proposal will not change the manner in which the relevant facilities operate with or without the proposed facility or cause a safety issue.

Other potential adverse effects from the proposed transportation facility are unlikely to extend beyond the property boundary and consequently will not have an adverse effect on surrounding rural land or land uses. Evidence in the record demonstrates that it is feasible for wastewater and stormwater systems to be implemented on the subject property to mitigate any potential adverse effects on groundwater, which could affect surrounding properties, from uses at the transportation facility. See, Exhibits 40 (Mackenzie Stormwater Analysis) and 41 (EMS Wastewater Analysis). Similarly, there are no streams or drainage ways on the subject property that could result in accidental minor spills rapidly moving from the property to effect surrounding rural lands.

Regarding pressures for nonfarm development, the proposed vertiport is not the type of transportation facility that would promote off-shoot development of farm land. In this respect, the adjacent P-zoned properties are where aviation-related development can and should exist and while not plentiful, those are the properties where non-farm development would need to go.

Other than the effects described above, there are no adverse effects from the transportation facility on surrounding rural lands or uses, as evidenced by the helicopter operations that have long occurred at both the Columbia Helicopter and HTS properties and the ability of rural farm operations to continue to operate over the years.

The proposal is consistent with this standard.

(b) Demonstrate how the proposed transportation improvement is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Compatible is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses; and

Proposed Finding: This standard differs somewhat from the previous standard in that it applies to adjacent uses, not uses in the larger surrounding area, and is not expressly limited to "rural" lands and land uses. Consequently, the analysis under this standard looks at the compatibility of the proposed transportation facility with the adjacent P-zone uses as well as with the farm uses to the immediate east. Also, this standard requires an examination of the compatibility of the proposed

transportation facility with adjacent uses and measures that may reduce adverse impacts.

Regarding the adjacent P-zoned properties to the north, west and south of the subject property, they are all in airport-related uses and are already subject to the same type of noise impacts from helicopter and airplane uses that occur on those properties and from the Aurora State Airport. They all lie within the 65-75 dBA noise contour map from the airport uses. Exhibit 15. In the case of HTS and Columbia Helicopters, they generate their own helicopter noise impacts similar to those that will result from the proposed transportation facility. As the base satellite image layer for Exhibit 1, Site Plan, shows, the subject property lies adjacent to the area HTS uses for helicopter pilot training. See, Exhibit 1 (showing electrical tower used for heavy-lift training lying prone on ground). Similarly, the base imagery on Exhibit 1 shows aircraft taxiing to hangars adjacent to the north of the subject property and aircraft hangars to west of the property. All the properties to the north, west and south of the subject property are in aviation-related uses.

Operations at the proposed transportation facility will be compatible with the adjacent P-zoned uses. Similar to the helicopter operations at the HTS and Columbia Helicopter properties, which are also adjacent to other aviation related uses, rotorcraft operations will follow standard coordination and flight procedures that will ensure that operations at the proposed transportation facility operate safely and in a compatible manner with those surrounding uses. The helicopter and rotorcraft operations that will occur on the proposed transportation facility are consistent with the uses that occur on those adjacent and near-by properties.

Regarding the EFU-zoned land to the immediate east, across Airport Road NE, the proposed transportation facility is designed to be compatible with the farm and farm related uses that occur on those lots. Normal farming activities are not noise-sensitive uses, which is why they are commonly found around airports and other air-oriented transportation facilities. There are, however, several residences located along Airport Road in the vicinity of the subject property. To help mitigate noise and operational aspects on the transportation facility, Applicant's site plan includes locating hangars, other structures and parking (automobile and rotorcraft) between the landing pad where rotorcraft will be taking off and landing and Airport Road. The take-off and landing area on the property is located on the central western portion of the site. This will add distance and noise barriers between the noise generating takeoff and landing activities at the transportation facility and residences and farmlands to the east.

As discussed in the other vehicle transportation responses (see, above and Goal 12 analysis below), the traffic impacts from the proposal are not anticipated to significantly affect the area's road network.

For the above reasons, the proposal is consistent with this standard.

(c) Adopt as part of the exception, facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility or improvement and support continued rural use of surrounding lands.

Proposed Finding: Consistent with this standard, the site plan shows a site that has limited access from Airport Road and Stenbock Way, has fencing along the perimeter of the property along Airport Road, and parking areas and main buildings that face the adjacent rural lands. Exhibit 1. Furthermore, the hangars and interior work areas help to visually and physically separate activities at the transportation facility from rural uses on surrounding lands. These design measures help separate the proposed transportation facility activities from those rural lands and minimize the accessibility of the rural lands from the subject property. The proposal is consistent with this standard.

(9)(a) Exceptions taken pursuant to this rule shall indicate on a map or otherwise the locations of the proposed transportation facility or improvement and of alternatives identified under subsection (4)(c), sections (5) and (7) of this rule.

Proposed Finding: Applicant has entered into the record a map and a table that identifies the locations of the proposed transportation facility and the alternative sites discussed in the analysis above. See, Exhibit 1 (Site Plan); Exhibit 33 (Corridor Map); Exhibit 35 (Table of Corridor Properties). The proposal is consistent with this standard.

(b) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

Proposed Finding: The County should follow the notice requirements provided in the MCC and should ensure that each notice specifies that exceptions to Goals 3, 11 and 14 are proposed and that the notice summarizes the issues concerning the proposal in an understandable manner. Such action will allow adoption of a finding that this criterion has been satisfied.

(10) An exception taken pursuant to this rule does not authorize uses other than the transportation facilities or improvements justified in the exception.

Proposed Finding: The reasons exception only authorizes those uses and improvements expressly requested by this application that are listed in bullet form under Section II above. In summary, those identified uses include but are not limited to landing pads for vertical takeoffs and landings, tiedown areas, and structures that provide hangar space, maintenance and repair shops, accessory office and operations

areas to include crew sleeping and break areas for emergency medical evacuation (Medevac) and natural disaster response flights, remote firefighting and utility facility repair operations, flight training, and personal use rotorcraft services as well as facilities, such as electric vehicle charging stations, specific to the needs of zero-carbon generating, all-electric helicopters and eVTOLs, parking areas and electric automobile charging stations. To reiterate, the immediately preceding is not a comprehensive listing of the requested uses or development proposed – see Section II for a more comprehensive list. The configuration of these proposed uses and development is represented in the site plan (Exhibit 1), which is subject to refinement with a formal development application, but which will be consistent with the proposal as described in this application narrative. The proposal is also requesting approval of electrical, water, sewer and stormwater facilities to serve the proposed use, as well as approval to connect to the HDSE wastewater system or the Columbia Helicopters drain field should the appropriate land use approvals to expand and to connect to those facilities be obtained. The request also includes approval to connect to the airport if and when the Oregon Department of Aviation authorizes through-the-fence operations or decides to expand the airport boundary. Any transportation facility uses or improvements that go beyond those approved by this decision will require an application for a new exception consistent with this requirement.

(a) Modifications to unconstructed transportation facilities or improvements authorized in an exception shall not require a new exception if the modification is located entirely within the corridor approved in the exception.

Proposed Finding: The proposal does not request a modification to unconstructed transportation facilities. Any modification request to the approved transportation facility will not require a new exception if the modification is located within the subject property. Such a request will be processed as an alteration of a conditional use as prescribed by MCC Chapter 17.119.

(b) Modifications to constructed transportation facilities authorized in an exception shall require a new exception, unless the modification is permitted without an exception under OAR 660-012-0065(3)(b)–(f). For purposes of this rule, minor transportation improvements made to a transportation facility or improvement authorized in an exception shall not be considered a modification to a transportation facility or improvement and shall not require a new exception.

Proposed Finding: The proposal does not request a modification to a constructed transportation facility. Should such an application be submitted it will be processed consistent with the requirements of OAR 660-012-0065, OAR 660-012-0070 and the MCC.

(c) Notwithstanding subsections (a) and (b) of this section, the following modifications to transportation facilities or improvements authorized in an exception shall require new goal exceptions:

(A) New intersections or new interchanges on limited access highways or expressways, excluding replacement of an existing intersection with an interchange.

Proposed Finding: The proposal is not for a new intersection or new interchanges on a limited access highway or expressway. This standard does not apply to the proposal.

(B) New approach roads located within the influence area of an interchange.

Proposed Finding: The proposal is not for a new approach road within an influence area of an interchange. The standard does not apply to the proposal.

(C) Modifications that change the functional classification of the transportation facility.

Proposed Finding: There is no existing transportation facility on the property. The proposal does not change the functional classification of any transportation facility. This standard does not apply to the proposal.

(D) Modifications that materially reduce the effectiveness of facility design measures or land use measures adopted pursuant to subsection (8)(c) of this rule to minimize accessibility to rural lands or support continued rural use of surrounding rural lands, unless the area subject to the modification has subsequently been relocated inside an urban growth boundary.

Proposed Finding: The proposal does not request any modifications to facility design measures or land use measures. The standard does not apply to the proposal.

Based on the above analysis and the evidence entered into the record, the proposal complies with the applicable requirements of OAR 660-012-0070.

C. AO Zone standards

The subject property lies within the AO (Airport Overlay) zone, consequently, as part of the conditional use application, the findings must address consistency with MCC chapter 17.177 Airport Overlay Zone.

MCC 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.

Proposed Finding: The proposal is consistent with the purpose of the AO zone and the proposed uses and development are intended to minimize potential dangers to and from and conflicts with the adjacent Aurora State Airport. Indeed, the proposal is within the footprint of what the first Aurora State Airport Master Plan and every update has envisioned for future aviation-related uses. As Aron Faegre, an expert on heliport and airport design explains, the site plan (Exhibit 1) shows the approach and departure paths for the proposed vertiport that are consistent with FAA standards. Exhibit 30, page 3 of 9. The historic safe coexistence of helicopter-airport operations at Columbia Helicopter and HTS is evidence that helicopter operations, even those on properties adjacent to the Aurora State Airport, can be conducted safely, consistent with the purpose of the AO zone.

MCC 17.177.030 Airport Districts

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:[List follows].

Proposed Finding: The subject property lies within the transitional surface area and therefore lies within the Airport Development District defined in MCC 17.177.020. Consequently, any development on the property must be designed consistent with the listed standards that regulate the height of structures and objects, glare from vehicles, disposal of sewage and waste, and other potential hazards to air navigation.

The uses and structures proposed are consistent with these use and design limitations. Furthermore, compliance with the airport surfaces requirements will be confirmed by the building inspector at the time a building permit is applied for pursuant to MCC 17.177.040(A) and (B). Consequently, any development that occurs on the property will be consistent with this standard.

MCCC 17.177.040 Procedures

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.*

Proposed Finding: The 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 proposal is consistent with this standard.

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).

Proposed Finding: This is a directive to the building inspector. The 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 in Exhibit 1 and building descriptions in Exhibit 2 demonstrate, Applicant can and will comply with this requirement at the time a building permit is sought. The proposal is consistent with this standard.

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.

Proposed Finding: Applicant is seeking a conditional use permit for uses within the AO zone. This standard applies. The Applicant has submitted the required application materials for the proposed use. The evidence in the record demonstrates that the proposal is consistent with the limitations on development imposed by the Airport Development District. The County should review the proposal in accordance with the applicable MCC procedures. The County should also notify the State Aeronautics Division of the proposal and of any public hearing dates, so the agency has an opportunity to comment and to be notified of the County's final decision. The proposal is consistent with this standard.

D. Statewide Planning Goals

Because the conditional use requires an exception to be taken, and exceptions must be incorporated into the comprehensive plan, the application must address the standards for a comprehensive plan amendment. The MCCP does not contain specific review criteria for plan amendments, however, amendments to a comprehensive plan, to include adding a new exception site, must demonstrate that the proposal is consistent with all of the Statewide Planning Goals.

Goal 1 Citizen Involvement: To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Proposed Finding: Citizen involvement in land use decision making is achieved through implementing the County's acknowledged procedures for notice and hearings. The County should follow the MCC procedures for notice, hearing and appeal for the submitted application. Complying with these procedures will ensure consistency with Goal 1.

Goal 2 Land Use Planning: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Proposed Finding: The County has adopted standards and procedures for land use decision making that have been acknowledged as consistent with the Statewide Planning Goals. The County will ensure compliance with Goal 2 by reviewing this application for a goal exception and conditional use permit in the manner prescribed by the MCC. Because the Applicant proposes a site-specific comprehensive plan amendment, residents identified as entitled to notice as well as local, state and federal agencies should be notified so they may comment on the proposal. Any comments received should be included in the record and addressed where appropriate by the adopted findings.

Goal 3 Agricultural Lands: To preserve and maintain agricultural lands.

Proposed Finding: The Applicant is requesting an exception to this goal for the proposed use on the subject property. The evidence in the record establishes that the proposed use will be compatible with the surrounding agricultural land and uses consistent with the requirements of Goal 3.

Goal 4 Forest Lands: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water,

and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Proposed Finding: Neither the subject property nor any property in the vicinity is in a forest zone, so there will be no adverse impacts to Goal 4 lands. The expanded remote firefighting capability that the proposed vertiport may facilitate ultimately will conserve forest lands by protecting Oregon's forests for economically efficient forest practices. The proposal is consistent with Goal 4.

Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces: To protect natural resources and conserve scenic and historic areas and open spaces.

Proposed Finding: The MCCP does not identify 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. The proposal is consistent with Goal 5.

Goal 6 Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water and land resources of the state.

Proposed Finding: As an initial matter, LUBA has explained that compliance with Goal 6 involves whether there are adopted findings supported by evidence in the record that explains why it is reasonable to expect that the 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 at the transportation facility are not the type of uses that will result in significant particulate discharges into the air inconsistent with federal and state air pollution regulations. Furthermore, federal regulations prohibit the application of state or local standards to regulate emissions from helicopters and other aircraft engines that are not identical to corresponding federal standards. *See*, 40 CFR 1031 Control of Air Pollution from Aircraft Engines.

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 the transportation facility. The EMS materials establish that each approach could with State and County regulations governing septic disposal. Exhibit 41 (EMS Wastewater Analysis). Applicant's evidence explains how each of these potential solutions are both feasible and comply with DEQ standards. That evidence also explains why there will not be adverse cumulative effects under the identified

systems. Compliance with these environmental quality regulations will be administered through the County and will ensure consistency with this goal.

The evidence in the record from Applicant's engineer and consultants demonstrates that the subject property can have its own 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. Exhibit 45 (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. Exhibit 45 (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. See, Exhibit 45 (Water Analysis (included EPA, "Arsenic in Drinking Water")); Exhibit 46 (Nelsen Corporation, Quotation). 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.

There are no MCCC identified wetlands or streams on the subject property. Applicant has submitted a stormwater report and design, prepared a registered professional engineer, into the record. Comments from the project manager notes, and Applicant accepts, the need for a stormwater drainage and detention improvements and DEQ NPDES permitting. Exhibit 40 (Mackenzie Stormwater Analysis). Those materials demonstrate that a feasible solution exists for managing stormwater runoff from the property that complies with state and federal environmental quality standards. In summary, that system basically retains stormwater runoff on the subject property and meters it out into the public stormwater system, which has sufficient capacity for the entire 110-acre basin that includes the subject property, such that a post-developed 10-year storm will be discharged at the existing 5-year runoff rate. The stormwater analysis also 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.

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 there has been no complaints of adverse air quality impacts from those rotorcraft businesses. The evidence in the record demonstrates that the proposal will not result in waste discharges that, individually or collectively with other discharges in the area, will threaten to violate or will violate applicable state or federal environmental quality statutes, rules and standards.

LUBA had remanded a previous proposal for the subject property, in part, because the Goal 6 analysis did not address the cumulative effects of the discharges from the proposed use combined with such discharges from existing development. Applicant expressly requested its experts to address that cumulative impacts issue and each stated that the cumulative effects of the discharges from the proposal combined with the existing developments will be consistent with applicable state and federal environmental quality standards. There will be no cumulative effects that exceed regulatory limits if the use is approved.

The proposal is consistent with Goal 6.

Goal 7 Areas Subject to Natural Hazards: To protect people and property from natural hazards.

Proposed Finding: The subject property is not within an MCCP identified floodplain or geologic hazard area.

Applicant's consultant, GeoDesign has 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 proposed vertiport, for which GeoDesign did a site-specific seismic hazard evaluation. Exhibit 49, p. 2, p. 7 (Vicinity Map). Consequently, 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.

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 relatively 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. Exhibit 49, 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.

In summary, Applicant's geotechnical study demonstrates that there are no geologic hazards that would present problems for development of the subject property in the future.

The proposal is consistent with Goal 7.

Goal 8 Recreational Needs: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Proposed Finding: The County has not identified the subject property as necessary to meet the County's recreational needs. While the previous church retreat facility included aspects of recreational use, that use has been long discontinued and the structures that supported those activities have been demolished. The subject property is not currently used for recreational purposes and no recreational use of the subject property other than potential private recreational helicopter or eVTOL use is being proposed. No Goal 8 resources are identified on or near the subject property. The proposal is consistent with Goal 8.

Goal 9 Economic Development: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Proposed Finding: Goal 9 and the Goal 9 Rule at OAR chapter 660 division 09 applies only to comprehensive plans within urban growth boundaries. The subject property is located on rural land, outside of any UGB. Consequently, Goal 9 does not directly apply to the proposal.

Regardless, the proposal will bring direct and indirect economic benefits to the region. The proposed transportation facility will bring jobs and economic activity to the City of Aurora area specifically and more broadly to Marion County by increasing rotorcraft operations in the area. A 2014 Oregon Department of Aviation study (Exhibit 38) that analyzed the economic impacts from aviation-based transportation facilities concluded that aviation activities provide above-average wage jobs and produce significant off-facility economic benefits to the local area and greater region. The proposed facility will enable at least one of the state's largest helicopter-based businesses located in the immediate vicinity to expand their operations, which will lead to a direct increase in employment activity. Furthermore, the electric charging station and other facilities oriented towards eVTOL aircraft will be the first such facility in the state and will likely attract early eVTOL adopters as well as those vehicles traveling longer distances along the west coast that need a destination to stop for a recharge. As the 2014 Oregon Department of Aviation study shows, even such itinerant operations have an indirect economic benefit to the greater community.

The above conclusions are supported by more recent data from the Oregon Aviation Department. A 2021 assessment of the through the fence operations and public-private partnerships at the Aurora State Airport confirms that the private investment at the airport has created over 1,000 new jobs tied to the airport. Exhibit 48 (2021 ODA Aurora State Airport Review). Significantly, 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. Exhibit 48, page 11 of 19. Private development as proposed will add to those annual contributions.

The proposal is consistent with Goal 9.

Goal 10 Housing: To provide for the housing needs of citizens of the state.

Proposed Finding: Like Goal 9, Goal 10 and the Goal 10 Rule at OAR chapter 660 division 08 deal with the designation of sufficient buildable lands and provision of adequate number of needed housing units within urban growth boundaries. Goal 10 does not generally apply to properties such as the subject property that lie outside UGBs.

The proposal is for a transportation facility on EFU land; it does not propose housing. The subject property is not designated for residential uses and was not previously in residential use. The County has not identified the subject property as necessary to address any identified Goal 10 housing needs. Consequently, the proposal will not remove any residential units from the County's residential supply. The proposal is consistent with Goal 10.

Goal 11 Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Proposed Finding: The proposal seeks an exception to Goal 11 to allow for services on the property to be scaled to serve uses on the property that are likely to be considered urban.

The evidence in the record demonstrates that the proposal includes adequate on-site water and stormwater and sewer facilities to serve the proposed uses. See, Exhibit 45 (Edge Analytical, Water Analysis); Exhibit 41 (EMS Wastewater Analysis); Exhibit 40 (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. Development of power stations for eVTOLS and electric automobile charging stations as proposed will likely require improving near-by electrical switches and, if necessary, will likely be done at Applicant's expense. Applicant has been in communication with electrical service providers to identify appropriate solutions for the power needs from the proposed uses. This is why the application requests approval for possible solutions such as a large battery storage system and on-site hydrogen production, storage and hydrogen-powered generator. Furthermore, existing fire and police services for the subject property are adequate for the proposed use. The proposal is consistent with Goal 11.

The EMS analysis explains that there are several different feasible approaches to managing the wastewater (sewage) that may result from the proposed use. Exhibit 41. 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 that DEQ would approve appropriately designed systems.

The EMS materials also address the existing HDSE and Columbia Helicopter 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 (the Southend Airpark) and has excess capacity available for expansion. If such an alternative is to be pursued, it will require a modification to the existing Goal 11 exception for the properties where the HDSE facility is located. *See*, Exhibit 50. Such a decision would be a land use decision and would require prior notice and opportunity for surrounding property owners and interested parties to participate. Similarly, Columbia Helicopters likely has excess capacity with its existing septic drain field system that could accommodate wastewater from the vertiport. Use of that drainfield would require additional permitting given the piping necessary to utilize the Columbia Helicopters system as well as the approval needed for that system to serve off-site uses.

Applicants request 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 permissible by DEQ, authorize, without the need to amend or obtain a new Goal 11 Reasons Exception, connection to the HDSE facility or the Columbia Helicopter drain field should the appropriate permits for such extensions and connections be obtained.

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 additional land use approval.

With the proposed exception to allow facilities capable of serving urban levels of vertiport uses, this proposal is consistent with Goal 11.

Goal 12 Transportation: To provide and encourage a safe, convenient and economic transportation system.

Proposed Finding: Goal 12 is implemented through the Goal 12 rule at OAR chapter 660, division 12. This application proposes a conditional use on EFU land, which requires application of the exceptions process set forth under the Goal 12 rule at OAR 660-012-0070. As demonstrated above, the proposal satisfies all of requirements set forth under the rule and complies with the requirements for taking an exception for transportation facilities and improvements on rural land.

While it is clear that the proposed conditional use requires compliance with OAR 660-012-0070. It is not entirely clear whether the proposal is also subject to other potentially applicable parts of the Goal 12 rule other than OAR 660-012-0070, namely the Transportation Planning Rule (TPR) provisions for when and how to determine the adequacy of the existing and proposed roadway network set forth under OAR 660-012-0060.

The reason it is not clear whether the TPR applies is because, despite the fact that state statute and the MCC require the Applicant to take an exception for the proposed transportation facility, the use is 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. It is a change in the plan designation and/or zoning for land that triggers the application of the TPR, not conditional use applications.

Because the zoning and the plan designation for the subject property remain the same after the land use decision as before, the allowed uses (to include the proposed conditional use) have already been factored into the transportation impacts analysis for the TSP and the County can reasonably conclude that nothing triggers the Goal 12 rule's significant impacts analysis.

As discussed in more detail below, 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.²¹ The proposal here is analogous to that present in subsection (9) and the proposal satisfies all of OAR 660-012-0060(9)'s requirements.

²¹ OAR 660-012-0060(1) provides, in relevant part:

"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
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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.

Proposed Finding: The rule appears to apply only to applications for amendments to zoning maps and the present application does not propose a change to the zoning map. However, the proposal also changes neither the plan designation nor the zoning. So, while it may appear that OAR 660-012-0060(9) does not apply to the proposal, any assumption to that effect may be incorrect because the requirements for OAR 660-012-0060(9) that justify why a significant affect need not be found apply equally to this proposed conditional use.

Criteria (a) and (b) suggest that the purpose of the rule is to allow local governments to determine that, despite the requirements of OAR 660-012-0060(1), a local government may determine that there is not a significant effect on transportation facilities for proposals that: (1) retain the same comprehensive plan designation (does not change the comprehensive plan map); and (2) changes to a zone designation under that same plan designation when the local government has an acknowledged TSP. That purpose is furthered by a proposal that changes neither the plan designation nor the zoning, as is the case here.

The subsection (9) exclusion to the application of OAR 660-012-0060(1) makes sense. The TSP is supposed to be based on the traffic that can be generated by the comprehensive plan designations and zoning of properties in the plan area. *See, Ooten v. Clackamas County*, 70 Or LUBA 338 (2014), *aff'd*, 270 Or App 214, 349 P3d 1305

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.”

(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). When a proposal does not change the plan designation, and the existing, acknowledged TSP was based on zoning consistent with the plan designation, any slight difference in potential traffic volumes to another zone designation that is also consistent with the plan designation is reasonably likely to be *de minimis* and not require additional improvements to the local road network.

Such is the case here. Not only does the proposal not change the plan designation for the subject property, but the proposal does also not even change the zoning for the property. Both the plan designation and zoning remain the same in this instance. The proposed use is a conditional use allowed under the current zoning. For all intents and purposes, the TSP was adopted and acknowledged with consideration that conditional uses permitted in the EFU zone would be developed on properties in the area, to include the subject property.

The proposal is consistent with OAR 660-012-0060(9)(a) because there is no proposal to change the existing zoning, which is consistent with the comprehensive plan map designation for the property and the proposal does not change the comprehensive plan map. The proposal is consistent with OAR 660-012-0060(9)(b) because Marion County has an acknowledged TSP and the proposed EFU zoning is consistent with the plan designation the acknowledged TSP is based upon.

The proposal is also consistent with OAR 660-012-0060(9)(c) because the subject property was not exempted from the rule at the time of an urban growth boundary amendment, principally because the property is not in an urban growth boundary area.

Given the above analysis, the County can reasonably conclude that, based upon the fact that there are not proposed changes to the comprehensive plan designation or zoning for the subject property, that the subject property will remain with the EFU plan designation and zoning it had when the TSP was adopted, and that the proposed use is a conditional use under the present EFU zoning, there will not be a significant affect on an existing or planned transportation facility as a result of the proposed use.

In an abundance of caution, and without conceding that other provisions of the TPR are applicable to a transportation facility authorized under OAR 660-012-0070, the Applicant has requested that DKS Associates prepare a transportation impact analysis (2023 TIA) (Exhibit 39) as required by the MCC that addresses not only traffic impact analysis issues as mandated under the MCC and applicable to the conditional use proposal, but that also addresses other potentially applicable provisions of the TPR.

OAR 660-010-0060(1) requires a determination by the County of whether the amendment will “significantly affect a transportation facility” and provides the criteria used to evaluate whether a transportation facility is significantly affected. OAR 660-010-0060(2) and (3) prescribe what the County must or can do if it determines that a plan amendment will significantly affect an existing transportation facility.

The 2023 TIA provides such 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 relevant provisions of the TPR are below:

OAR 66-012-0060(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.

Proposed Finding: The current 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 has conducted a number of transportation studies and memos concerning transportation issues related to the subject property and to the Aurora State Airport. The most recent of those studies, the North Marion County Vertiport Development Transportation Impact Study (2023 TIA) (Exhibit 39)

Based on the analysis contained in the TIA, the proposed development is not anticipated to have a significant effect on any transportation facilities. The 2023 TIA (Exhibit 39) analyzes ten (10) 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 2023 conditions for each of the intersections, as well as a safety analysis based on the most recently available data.

The evidence in the record 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.

(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)).

Proposed Finding: Because the proposed use is not anticipated to significantly affect a transportation facility, no mitigation measures are necessary to demonstrate compliance with Goal 12.

The proposal is consistent with Goal 12.

Goal 13 Energy Conservation: To conserve energy.

Proposed Finding: Goal 13 promotes a variety of land use practices to maximize the conservation of all forms of energy. The proposed transportation facility is 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 all-electric helicopters and eVTOLs at the proposed

facility. That energy is provided by renewable resources. Second, the proposal promotes the maximum efficiency in energy efficiency by locating the transportation facility in close proximity to two of the state's largest helicopter-based businesses and close to the headquarters of the largest non-profit air ambulance service in the United States. Third, the proposal re-uses now-vacant land, putting it into a more productive transportation facility use in close proximity to potential business users. Furthermore, the subject property is located close to major transportation routes, thereby reducing potential travel times for persons traveling to and from the transportation facility to near-by urban areas. The proposal is consistent with Goal 13.

Goal 14 Urbanization: To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

Proposed Finding: The proposal seeks an exception to Statewide Planning Goal 14 Urbanization to allow urban use of rural land. The findings for that exception are addressed above. Furthermore, the Airport Layout Plan (ALP) Aurora State Airport Master Plan adopted in 1976 as part of the Marion County Comprehensive Plan and included with every ALP update subsequently adopted by the Oregon Aviation Department has envisioned the subject property as appropriate for the type of aviation-based development proposed here, whether one considers it urban or not. This proposal represents the orderly and efficient transition from rural to urban land use that has been part of the planning for the area for nearly fifty years. 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, and Goal 19 Ocean Resources.

Proposed Finding: Goals 15 through 19 do not apply to the subject property or this proposal because the subject property is not located within the Willamette River Greenway or near any ocean or coastal related resources.

E. Compliance with Comprehensive Plan Policies

As noted above, the MCCP does not contain specific review criteria for plan amendments, but plan amendments must also be consistent with applicable MCCP Goals and policies. As noted in previous Board of Commissioners decisions, MCCP Goals and policies written using the term "should" do not constitute mandatory approval criteria. The following Goals and policies are relevant to the proposal.

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

Proposed Finding:

The proposal does not propose a land division; policy 1.

The application 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 commercial and industrial uses. The use of such buildings will not appear out of context given the development on surrounding properties.

As discussed in the exceptions analysis above, because of noise and safety concerns, the location of the proposed rotorcraft-oriented transportation facility is best suited to a rural location. See, e.g., Exhibit 30, page 3 of 9 (discussing added aviation safety for operations over farmland). As the exceptions analysis above concluded, the proposed use is compatible with the existing rural development found to the east of the subject property. The proposal is consistent with the MCCP general development policies for rural lands.

The proposal is also consistent with the agricultural goals and policies as addressed below.

Agricultural Land Policy #2: Maintain primary agricultural lands in the largest areas with large tract to encourage larger scale commercial agricultural production.

Proposed Finding: The Applicant requests and the evidence in the record demonstrates compliance for a reasons exception to Agricultural Lands Statewide Planning Goal 3. While the subject property is planned and zoned for farm use, historically the property was used as a church camp and retreat since before the 1970s. The subject property, on its own, is not conducive to agricultural use given its 16.54-acre size and the poorer soils compared to near-by EFU parcels. Exhibits 42 and 43 (Soils Maps and NRCS productivity ratings for soils).

The State of Oregon has established 80 acres as a minimum parcel threshold for new parcels on agricultural land, which means the subject property is severely substandard from what the State would consider the minimum suitable for a new agricultural parcel. Furthermore, the potential for expansion of the property for farm use is greatly restricted, with roads on the north and east side of the property, and airport-related development located to the north, west and south. As explained in the reasons exception alternative sites analysis, other EFU zoned properties in the area that might be suitable for the proposed use are larger in size and using those other sites would be more inconsistent with this MCCP policy given that use of those sites would require breaking up a larger parcel or tract to provide for the proposed use. Given the discretionary wording used in Agricultural Land Policy #2 and #3 below, the Board should read these two policies together as aspirational policies to guide decision making and not as rigid approval standards. The proposal maintains larger-sized primary agricultural lands in large tracts that promote continued commercial agricultural production and uses a significantly smaller parcel of land that has not contributed to agricultural production in decades. Finally, the proposed use is one identified as a permissible conditional use within the EFU zone. The proposal seeks to locate that use on a parcel that is significantly smaller than the minimum lot size for EFU land. The proposal is consistent with this policy.

Agricultural Land Policy #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.

Proposed Finding: The subject property consists of soils that make it high value farmland, however for at least the past fifty years the property has been in non-farm use with a Methodist church camp and then a theological center/retreat. Furthermore, as demonstrated by Exhibits 42 and 43, the proposal is located on soils with the lowest productivity rating for the area. The subject property is not directly adjacent to any agricultural uses, being separated from those uses by Airport Road NE. Much of the activity at the proposed transportation facility will occur indoors and have no impact whatsoever on farm uses or practices. As comprehensively addressed in the analysis for the transportation facility reasons exception, the proposed uses on the subject property do not cause 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 change their established farm practices as a result of the proposed transportation facility use, which involve activities similar to those that the farm uses have long coexisted with in the area. The proposal is consistent with this policy.

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

Proposed Finding: Consistent with this policy, no new public services or facilities are required to support the proposed transportation facility. The evidence in the record demonstrates that the water and stormwater needs can be met on-site and will not impact any existing services or require additional public facility extensions to the site. Expert testimony in the record also 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 submitted transportation impact analysis demonstrates that, with the proposed mitigation, the existing transportation system is sufficient to handle the traffic increases that would result from approval of the proposal. The proposal is consistent with this policy.

Rural Services 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.

Proposed Finding: As discussed above, the proposed transportation facility does not require the extension of urban services to the site. All services will be provided on site. Evidence in the record demonstrates that the subject property had adequate onsite capacity and resources to serve the proposal's water, sewer and stormwater needs. Exhibits 39, 40, 41. The subject property is located immediately adjacent to other rotorcraft and aviation-oriented operations 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. As discussed above, Applicant is requesting approval to connect to that existing internal system if HDSE obtains a Goal 11 modification to its exception to expand its service footprint or to the Columbia Helicopter drain field if appropriate land use permits are obtained. However, such additional approval is not necessary for the vertiport application to be approved – the evidence in the record demonstrates the proposal can be implemented with an on-site system. This further demonstrates that the proposed transportation facility does not require urban services. While the City of Aurora's UGB is approximately 2650 feet from the subject property, there is no current plan to extend urban services to the subject property and the application does not propose to do so. The proposal is consistent with this policy.

Rural Services 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.

Proposed Finding: The proposed transportation facility likely represents an urban use on rural land, for which exceptions to Statewide Planning Goal 3 Agriculture, Goal 11 Public Facilities and Services and Goal 14 Urbanization are requested. However, the proposal does not request nor does the proposed transportation facility require the extension of public services. The proposal requests only rural, on-site services for water, sewer and stormwater management, and approval to connect to the existing HDSE wastewater system located entirely within the airport boundary and through the fence operations or to the Columbia Helicopters drain field adjacent to the airport. Such services are oriented to and limited to serving the uses and levels of development approved by the reasons exceptions. Consequently, they 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. The proposal is consistent with this policy.

Rural Services 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.

Proposed Finding: As discussed above, the transportation facility uses and services can be met by on-site water, sewer and stormwater systems scaled to the proposed development or, in the case of sewer, connect to the existing internal wastewater system that serves adjacent airport-related uses if that facility receives approvals to expand. No public or private service facilities are required to meet the needs generated by the proposed transportation facility. Such services 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 Policy #1: Airports and airstrips shall be located in areas that are safe for air operations and should be compatible with surrounding uses.

Proposed Finding: The proposed transportation facility is not for an airport or an airstrip but does include facilities commonly found at those facilities such as landing pads and hangars. As discussed elsewhere in the findings, the proposal is located in an area that is safe for air operations and is compatible with the various surrounding uses. See, e.g., Exhibit 30; Exhibit 32 (showing vertiport flight paths consistent with FAA regulations for not interfering with Aurora State Airport's operations). The helicopter-based operations at the HTS and Columbia Helicopters properties demonstrates that rotorcraft can safely take off and land as well as operate in close proximity to the Aurora State Airport as well as with the surrounding agricultural lands, and that such activity is compatible with those uses. While the proposed transportation facility has some fundamental differences in the proposed

facilities and activities, the air operations components are sufficiently similar to the adjacent airport uses to reach the conclusion that the proposed transportation facility is located in an area that is safe for air operations and is compatible with surrounding uses. The proposal complies with this policy.

Air, Rail, Water, Energy, and Pipeline Transportation Policy #2: The County should review and take appropriate actions to adopt State master plans for public airports in Marion County.

Proposed Finding: The County has implemented this policy and adopted the Aurora State Airport Master Plan (1976) and incorporated it into the comprehensive plan. As noted below, that plan results in development restrictions on surrounding lands, to include the subject property. The proposal is consistent with those development restrictions. Furthermore, the adopted master plan identified the subject property as part of a larger area identified with the annotation, "THIS AREA ACCEPTABLE FOR AIRPORT RELATED DEVELOPMENT UNDER PRIVATE OWNERSHIP." See, Exhibit 44, page 96 of 113 (1976 Airport Master Plan, p. 85 (Development Staging Plan)). Nothing about the proposed transportation facility is inconsistent with that statement or with similar statements made in subsequent airport master plan updates. See, Exhibit 16 (2022 Draft Airport Master Plan, Figure 2-12 showing property suitable for TTF operations). If and when the County amends its Aurora State Airport planning map to include the subject property, the proposed transportation facility and activities can occur not only on the subject property but also as a TTF operation. The proposal is consistent with this policy.

Air, Rail, Water, Energy, and Pipeline Transportation 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.

Proposed Finding: The County has implemented this policy and adopted MCC chapter 17.177 Airport Overlay Zone (AO), which applies to properties that fall within any of the specified "airport surfaces." The subject property falls within the Horizontal Surface District of the Aurora State Airport. A demonstration of compliance with the AO zone requirements was provided above and is herein incorporated. The proposal complies with this policy.

Air, Rail, Water, Energy, and Pipeline Transportation Policy #4: The County will discourage noise-sensitive uses from locating in close proximity to public airports.

Proposed Finding: The proposed transportation facility is not a noise sensitive use. The proposed transportation facility and services lie within the Aurora State Airport's 55 – 65 dBA noise contour and is compatible with those noise levels. The proposal is consistent with this policy.

Transportation System Management Policy #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.

Proposed Finding: This policy is not an approval standard, but rather a directive for how the County should proceed before approving development. The Applicant has submitted a TIA (Exhibit 39) and other supporting evidence and analysis that demonstrates the potential traffic impacts that will flow from the proposal and proposed appropriate mitigation so that County staff can adequately assess potential negative impacts and mitigate for those impacts. The proposal is consistent with this policy.

Transportation Development and Access 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.

Proposed Finding: The Applicant's TIA (Exhibit 39) addresses roadway functional classifications, the capacity and current conditions of those roadways in the analysis. 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 transportation facility. The proposal is consistent with this policy.

Transportation Development and Access 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.

Proposed Finding: The Applicant's TIA and other traffic impact evidence and analysis evaluated potential impacts to the County's transportation system and facilities. Applicant's transportation consultant, DKS, has been in communication with County staff and with ODOT to ensure the TIA was properly scoped and its conclusions can be supported by the County. The proposal is consistent with this policy.

Transportation Development and Access 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.)

Proposed Finding: 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. All access points will operate consistent with the functional classification of Airport Road. The evidence in the record supports the conclusion that the proposal will not exceed the trip generation level indicated in Table 10-3. The proposal is consistent with this policy.

Transportation Development and Access 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.

Proposed Finding: This 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 site review process. Applicant's site plan and TIA and related analysis demonstrates that compliance with the County's access management standards is feasible for the proposed transportation facility on the subject property.

Transportation Development and Access 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).

Proposed Finding: The Applicant's engineering experts have provided an engineer's report regarding stormwater management needs and a system designed to address those needs prepared consistent with the Marion County's Engineering Standards. Exhibit 40 (Mackenzie Stormwater Analysis). This report should be forwarded to Marion County Public Works for their comments, which will be incorporated into the designed solution. The submitted evidence demonstrates that compliance with the County's engineering standards is feasible. The proposal is consistent with this standard.

Right of Way Policy #2: New transportation facilities of all types should use existing right-of-way to the extent possible to minimize disruption to existing land use.

Proposed Finding: The proposed transportation facility is not the type of transportation facility that is typically situated in rights-of-way. Furthermore, it is proposed on land that has not been put to farm use since long before current land use practices, consequently, impacts from the proposal will represent a minimal disruption to the farm uses allowed under the property's plan designation and zoning. No new road transportation facilities are needed for this proposal. Access to the subject property will be via existing rights of way that are already improved and will not disrupt existing land uses. The proposal is consistent with this policy.

Economic Development Goal a: Provision of increased employment opportunities for all residents of the County;

Proposed Finding: The proposed transportation facility will provide increased employment opportunities in several respects. The construction related to building the transportation facility will require the employment of skilled workers during the period of development. The services provided at the transportation facility will provide employment opportunities. Some may be transplant positions from services offered elsewhere, but services related to expanded operations and services related to the eVTOL services will require the creation of new employment opportunities as will any expansion provided to companies such as Columbia Helicopters who are seeking potential locations for expansion. Also, as the ODA 2014 economic analysis demonstrates, aviation-based activity creates economic opportunities in the area immediately around the activity as well as the greater region. Exhibit 38. That should be the case for the proposed transportation facility. The proposal is consistent with this policy.

Economic Development Goal b: Maintenance of a strong agricultural economy;

Proposed Finding: As noted above, the proposal does not remove any land that is presently in agricultural use. 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 – the subject property is not appropriate for agricultural use. Consequently, the proposal maintains the surrounding strong agricultural economy. The proposal is consistent with this policy.

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

Proposed Finding: The establishment of a rotorcraft-oriented transportation facility on the subject property helps diversify the types of aerial vehicles that come to the area and will create year-round employment opportunities consistent with this policy.

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

Proposed Finding: The purpose of the proposed rotorcraft-oriented transportation facility is to develop a transportation system for the safe and efficient movement of persons and goods via rotorcraft to address the demonstrated growing demand for such transportation facilities. The need for transportation facilities to accommodate the growth in helicopter operations was recognized as far back as 1976 with the adoption of the 1976 Aurora State Airport Master Plan (Exhibit 44). The present need for the transportation facility is reflected in the letters submitted by potential users of the vertiport. Exhibits 3, 4.

The proposal is consistent with this policy.

Economic Development Goal g: Coordination of planning and development of public facilities;

Proposed Finding: As discussed in the exception's demonstrated needs analysis, the growth in rotorcraft use has been documented in various studies. See, e.g., Exhibit 27 (2022 Aurora State Airport Draft Master Plan Update); Exhibit 44 (1976 Aurora State Airport Master Plan). However, the planning and development of public facilities to address the growing demand for rotorcraft facilities has generally not been met in various airport plan improvements or has been left to the private sector to address. The proposed transportation facility is consistent with this approach and addresses a need identified by existing commercial rotorcraft operations and particularly with respect to the recent rapid development in eVTOL technology. Through the land use planning process, interested parties at the state and local level can be involved in the planning and development of this transportation facility. The proposal is consistent with this policy.

Energy 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.*

Proposed Finding: The proposal does not seek "leap frog" development and represents infill development of the existing development pattern for the area. As

this policy recognizes, development of the subject property with the proposed transportation facility is a more energy efficient approach to developing this vacant land compared to any proposal to develop the transportation facility 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 airport master plans since the 1970's as suitable to support aviation-based activities. The property has been long envisioned for the type of development presently being proposed and the proposal represents development to progress in an orderly manner. The proposal is consistent with this policy.

In conclusion, the proposal is consistent with the applicable Marion County Comprehensive Plan Policies and Goals. The economic and transportation benefits of locating the transportation facility on the subject property far outweigh the impacts associated with development of a likely urban use on other lands designated Primary Agriculture and zoned EFU, particularly given the subject property has not been in agricultural use for over 50 years and the proposal does not take any active farmland out of productive use. Any adverse impacts, such as traffic and noise impacts can readily be mitigated by conditions of approval.

F. Conclusion

Based upon the findings above, supported by the evidence in the record, the Marion County Board of Commissioners should approve the reasons exception to Goal 3, Goal 11 and Goal 14, adopt a comprehensive plan amendment to incorporate the exception, and approve the conditional use application to allow the proposed transportation facility on the subject property.

VII. Alternative Findings

As discussed in the narrative above, the Applicant requests that in addition to the above findings, the Board of Commissioners adopt additional alternative findings that support the exception. The exceptions findings above do not rely upon the presence of the nearby Aurora State Airport to justify the exception. They independently constitute adequate findings supported by substantial evidence to approve the exceptions requested and to authorize the proposed transportation facility without relying upon the airport. However, when one considers the Aurora State Airport, the justification for the proposal and the exception is even more robust. Consequently, Applicant requests these additional findings.

A. Conditional Use Standards

Proposed Finding: The presence of the Aurora State Airport has little bearing on findings related to the conditional use criteria set forth under MCC 17.119.070. The findings for the conditional use criteria provided under the primary

findings are herein incorporated and demonstrate that the proposal complies with the County's conditional use standards.

B. Exceptions to Statewide Planning Goals 3, 11 and 14

The Court of Appeals in an opinion concerning a previous application for the subject property questioned whether the rule that precludes an exception from relying upon the presence of a transportation facility as a basis to grant an exception, OAR 660-012-0060(5), even applies for exceptions for transportation facilities. *Schaefer v. Marion County*, 323 Or App at 408. While the court noted it was not explicitly deciding the issue, that position is consistent with previous appellate review of decisions that granted exceptions for transportation facilities.

The best example of a transportation facility relying upon the presence of another transportation facility to justify an exception pertains is the approval of the I-5 northbound highway rest area project located between Ashland and the California border.²² In *Foland v. Jackson County*, 61 Or LUBA 264 (2010), opponents challenged the county's initial approval of the I-5 rest stop. One of the "thresholds" for determining appropriate alternative locations under OAR 660-012-007(4), (5), and (6) was "that the rest area must be located not more than one-quarter mile from I-5 and the location must be visible from the northbound lanes of I-5." *Id.* at 290. Obviously, not only did that application rely upon the existence of the I-5 transportation facility as a justification for the exception to allow the rest stop, that application used that existing transportation facility as a locational threshold for the rest stop. Nobody invoked OAR 660-012-0060(5) in that proceeding to argue that the rest stop could not rely on the presence of I-5 to justify the exception. The reason why no party raised that rule is understandable because it makes little sense that OAR 660-012-0060(5) could or should be used to preclude consideration of whether or where a rest stop and welcome center (which *Foland* concluded were "transportation facilities" (61 Or LUBA at 277-78)) should be located. Where else would such a transportation facility be located?

Consequently, the following analysis relies upon the presence of the Aurora State Airport as further justification for the reasons exception to Goals 3, 11 and 14 to allow the proposed transportation facility on the subject property. For purposes of brevity and to avoid unnecessary repetition, the responses to the exception standards provided above are hereby incorporated in full. Below, Applicant presents the exception standards and summarizes the main points discussed in greater detail above and, where appropriate, supplements the findings with analysis that relies upon the presence of the Aurora State Airport.

²² That project saw a number of appeals. See, e.g., *Foland v. Jackson County*, 70 Or LUBA 247 (2014) (noting that the opinion concerns the fourth appeal of the Oregon Department of Transportation application for the rest stop). This application discusses one of the earlier decisions.

OAR 660-012-0070 provides:

(1) Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands.

(a) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons that demonstrate that the standards in this rule have been met. A local government denying a proposed exception shall adopt findings of fact and a statement of reasons explaining why the standards in this rule have not been met. However, findings and reasons denying a proposed exception need not be incorporated into the local comprehensive plan.

(b) The facts and reasons relied upon to approve or deny a proposed exception shall be supported by substantial evidence in the record of the local exceptions proceeding.

Proposed Finding: As found above, the proposed exception findings shall be adopted as part of the comprehensive plan and the findings are supported by substantial evidence in the whole record. The proposal is consistent with this standard.

(2) When an exception to Goals 3, 4, 11, or 14 is required to locate a transportation improvement on rural lands, the exception shall be taken pursuant to ORS 197.732(1)(c), Goal 2, and this division. The exceptions standards in OAR chapter 660, division 4 and OAR chapter 660, division 14 shall not apply. Exceptions adopted pursuant to this division shall be deemed to fulfill the requirements for goal exceptions required under ORS 197.732(1)(c) and Goal 2.

Proposed Finding: As discussed above, because the application requests exceptions to Goals 3, 11 and 14, only the exception standards set forth under OAR 660-012-0070 are addressed. The proposal is consistent with this standard.

(3) An exception shall, at a minimum, decide need, mode, function and general location for the proposed facility or improvement:

(a) The general location shall be specified as a corridor within which the proposed facility or improvement is to be located, including the outer limits of the proposed location. Specific sites or areas within the corridor may be excluded from the exception to avoid or lessen likely adverse impacts. Where detailed design level information is available, the exception may be specified as a specific alignment;

(b) The size, design and capacity of the proposed facility or improvement shall be described generally, but in sufficient detail to allow a general understanding of the likely impacts of the proposed facility or improvement and to justify the amount of land for the proposed transportation facility. Measures limiting the size, design or

capacity may be specified in the description of the proposed use in order to simplify the analysis of the effects of the proposed use;

(c) The adopted exception shall include a process and standards to guide selection of the precise design and location within the corridor and consistent with the general description of the proposed facility or improvement. For example, where a general location or corridor crosses a river, the exception would specify that a bridge crossing would be built but would defer to project development decisions about precise location and design of the bridge within the selected corridor subject to requirements to minimize impacts on riparian vegetation, habitat values, etc.;

(d) Land use regulations implementing the exception may include standards for specific mitigation measures to offset unavoidable environmental, economic, social or energy impacts of the proposed facility or improvement or to assure compatibility with adjacent uses.

Proposed Finding: The incorporated findings discuss the need, mode, function and general location for the proposed transportation facility. The findings also address the general location of the corridor, which includes areas within the Aurora State Airport and the subject property. The lack of availability of suitable sites within the Aurora State Airport is also addressed above, under another standard.

The incorporated findings also discuss the size, design and capacity of the proposed facility, establish threshold standards to guide site selection, and include mitigation measures for consideration.

The proposal is consistent with this standard.

(4) To address Goal 2, Part II (c)(1) the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:

(a) Alternative modes of transportation;

(b) Traffic management measures; and

(c) Improvements to existing transportation facilities.

Proposed Finding: In addition to the incorporated findings addressing reasons justifying why the policies in Goals 3, 11 and 14 should not apply, the

Applicant provides the following reasons based upon the presence of the Aurora State Airport.

The 1976 Aurora State Airport Master Plan, adopted by the County as part of the TSP, has always envisioned the subject property as contributing to the aviation operations of the Aurora State Airport. For example, the Terminal Area Plan labels the area that includes the subject property and the HTS property as, "THIS AREA ACCEPTABLE FOR AIRPORT RELATED DEVELOPMENT UNDER PRIVATE OWNERSHIP." Exhibit 44 (1976 Airport Master Plan, p. 72). The same caption is provided for this area in the 1976 AMP's Figure 30 Aurora State Airport Development Staging. Exhibit 44 (1976 Airport Master Plan, p. 85).

Subsequent updates to the Aurora State Master Plan have consistently expressed the same intention regarding the subject property. For example, the 2012 Aurora State Airport Master Plan update discusses the subject property under the heading "Demand-Based Improvements" and states,

"It is expected that not all of the demand-based needs will be met by development on state-owned land, and development/reconfiguration of private property will likely occur. Accordingly, the adjacent 16-acre church camp property is identified as suitable for airport-related development. * * *. The church camp property east of the Airport is a logical area for excess demand to be met because it is adjacent to the Airport and on the Airport side of Airport Road." Exhibit 47, page 1 of 2 (2012 AMP, p. 5-25-26).

Similar statements are made in the current planning for the Aurora State Airport. The 2022 Draft Airport Master Plan shows the subject property as integral to the airport's future. See, Exhibit 27, pages 41 and 48 of 83 (2022 Draft Airport Master Plan p. 2-30, Figure 2-12 Existing Conditions (identifying subject property as "Aviation Related Through-the-fence (TTF)"; and p.2-37, Figure 2-14: Aurora State Airport Development Areas (identifying property as part of "Southern TTF Development Area")). These planning descriptions are consistent with the Aurora State Airport's planning documents since its first adopted ALP. Figure 2-14 identifies both the Columbia Helicopters property and the Helicopter Transport Services property and shows them as lying outside the airport's development areas. Exhibit 27, page 48 of 83 (p. 2-37).

The identification of the subject property as lying within the Aurora State Airport's through the fence development area is due to the "Commercial Access Agreement" (hereinafter Through the Fence Agreement) between the applicant and the Oregon Department of Aviation and the Flight Strip Easement the airport holds over portions of the subject property. Exhibit 14 is the Flight Strip Easement. Those documents are the mechanisms by which the through the fence operation can operate

when the County amends its Aurora State Airport Planning Map. Those documents allow direct access from the subject property to the airport's runways, which is something neither Columbia Helicopters nor HTS, the other major rotorcraft operators in the area, presently has. As noted above, the design of the vertiport leaves the southwest corner, the corner that connects to airport accessways, undeveloped with structures for potential subsequent connection to the Aurora State Airport. This approval should expressly determine that if the County amends its airport map in the manner contemplated by the Court of Appeals in its decision at 323 Or App 390 (2022), that no further goal exceptions are needed. If that happens, because of the existing Through the Fence Agreement and Flight Strip Easement, no purpose is served by the subject property being required to obtain a modification to this reasons exception.

The above analysis indicates three additional reasons that justify why the state policies in Goals 3, 11 and 14 should not apply. First, the Aurora State Master Plan, throughout its various updates, has always envisioned future use of the subject property as part of the extended airport, identifying the subject property as appropriate for aviation related and/or through the fence uses. That was so even though fifty years ago the property was under a very different use as a church camp. Second, for at least the past decade, the Aurora State Airport has recognized that private parcels lying outside of the airport boundaries, such as the subject property, are needed to meet demand-based transportation facility improvements triggered by private aviation related development in and around the airport. Third, the subject property is encumbered by an access easement, held by the US Government and the State of Oregon, that can support TTF operations as well as has an existing Through the Fence Agreement that allows airport access when the County's airport map is amended. This means that, at any point, the County can amend its planning map of the airport to include the operation of the transportation facility as an integrated part of the airport's operations.

These reasons implement the County's TSP Air, Rail, Water, Energy, and Pipeline Transportation Policy 2 "The County should review and take appropriate actions to adopt State master plans for public airports in Marion County." The purpose of the County adopting a master plan is so that the County can make decisions that are consistent with and implement the airport master plan provisions. Approval of the exception will do that.

The findings adopted above regarding alternative modes of transportation, traffic management measures and improvements to existing transportation facilities remain valid even when the presence of the Aurora State Airport is considered. The above findings addressed the lack of vacant property within the airport boundary to accommodate the demonstrated need for a rotorcraft transportation facility as well as why other airport facilities fail to meet threshold criteria.

The proposal is consistent with this standard.

(5) To address Goal 2 Part II(c)(2) the exception shall demonstrate that non-exception locations cannot reasonably accommodate the proposed transportation improvement or facility. The exception shall set forth the facts and assumptions used as the basis for determining why the use requires a location on resource land subject to Goals 3 or 4.

Proposed Finding: The findings for this standard provided above, and herein incorporated, explain why development within urban areas and at other airports in rural areas cannot reasonably accommodate the proposed transportation facility based on the identified thresholds. Likewise, the finding explains there are no other exception lands within the corridor area that can reasonably accommodate the use. The proposal is consistent with this standard.

(6) To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception.

(a) In addressing sections (4) and (5) of this rule, the exception shall identify and address alternative methods and locations that are potentially reasonable to accommodate the identified transportation need.

(b) Detailed evaluation of such alternatives is not required when an alternative does not meet an identified threshold.

(c) Detailed evaluation of specific alternative methods or locations identified by parties during the local exceptions proceedings is not required unless the parties can specifically describe with supporting facts why such methods or locations can more reasonably accommodate the identified transportation need, taking into consideration the identified thresholds.

Proposed Finding: The primary findings for the above standard are hereby incorporated. When the presence of the Aurora State Airport is considered, factors relating to cost, operational feasibility and economic dislocation weigh even more towards the subject property.

As the 2012 AMP recognized, the subject property is the only one of the potential sites that lies within the roads that encircle the Aurora State Airport. Furthermore, it is the only one of the sites that the Aurora State Airport holds an access easement over that could allow for through the fence operations. Note that the site plan (Exhibit 1) shows a layout that would facilitate airport access at the

southwest corner of the subject property. This is not only consistent with the access easement but also is consistent with the existing Through the Fence Agreement. This raises the possibility of potential future expansion of the Aurora State Airport. From that perspective alone, the operational feasibility for the proposed transportation facility to become a part of the airport is significantly better than for any of the other sites. Related to that access are the costs that would be incurred to obtain access easements to any of the other sites should the airport choose to do so, and the cost of paying for pavement that would allow aircraft to access those sites. Given the existence of Airport Road, Arndt Road and Keil Road, such access would likely never occur unless somehow the expense of relocating those roads could be somehow paid for and approved. Again, nothing Applicant is aware of indicates that would be feasible.

The proposal is consistent with this standard.

(7) To address Goal 2, Part II(c)(3), the exception shall:

(a) Compare the long-term economic, social, environmental and energy consequences of the proposed location and other alternative locations requiring exceptions. The exception shall describe the characteristics of each alternative location considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the location for the proposed transportation facility or improvement, and the typical positive and negative consequences resulting from the transportation facility or improvement at the proposed location with measures designed to reduce adverse impacts;

Proposed Finding: Applicant hereby incorporates the ESEE analysis provided above under the primary findings. The findings below supplement those findings and will address potential impacts considering the presence of the Aurora State Airport transportation facility.

Economic Consequences

There should be no greater adverse economic consequences that arise from the presence of the airport transportation facility that were not considered in the primary findings. Rather, if the presence of the Aurora State Airport is considered, the economic consequences further benefit the subject property over the other properties in the corridor area that could reasonably accommodate the use.

While not immediately adjacent to the airport, the subject property has several factors that support economic integration with the Aurora State Airport in ways that the other properties cannot. As discussed above, the preferred exception site is surrounded on three sides by properties in airport related uses, with the properties to the north, west and southwest operating in conjunction with the airport. The

subject property is the only one of the properties that could reasonably accommodate the proposed transportation facility that is located within the roads that surround the airport – which promotes economic efficiencies unique to the subject property with any activity conducted in coordination with airport facilities. The Aurora State Airport also holds a Flight Strip Easement over part of the subject property that provides direct access to the airport's runways and the potential economic benefits that can provide to both the subject property and the airport. As the written testimony of Aron Faegre explains, the clustering of aviation-related businesses creates economic synergies that promote economic development. Exhibit 30, page 6-7 of 9. Last, the subject property has always been part of the Aurora State Airport long-term planning for expansion and affiliated economic activity via through-the-fence operations.

None of the other sites within the corridor area that could reasonably accommodate the proposed transportation facility have any of the above factors that would promote economic integration with the Aurora State Airport. Furthermore, each of those alternative sites are separated from the airport by an existing improved roadway, which would increase the economic costs of integrating operations at those locations with the airport.

Based upon the above analysis and that in the primary findings, the net adverse economic impacts from developing the proposed transportation facility at the subject property will not be any worse than developing the transportation facility at any of the other locations that can reasonably accommodate the proposed transportation facility when the presence of the Aurora State Airport transportation facility is considered. Rather, the economic consequences favor the subject property over all others.

Social Consequences

Similar to the economic consequences discussed above, when the social consequences of developing the proposed transportation facility at the proposed exception area or other reasonably suitable sites are evaluated considering the presence of the Aurora State Airport transportation facility, the conclusion further weighs in favor of the subject property over the other reasonably suitable sites.

Regarding the social impact from noise addressed above, when one considers that the airport is a major noise generator that significantly adds to the noise from this specific location (in addition to the helicopter flights at Columbia Helicopter and HTS), it makes sense to concentrate all noise generating activity within the Aurora State Airport planning area, which includes the subject property, instead of spreading noise generating uses farther away and increasing the overall noise footprint generated by the proposed transportation facility and the Aurora State

Airport. Locating the proposed transportation facility at the proposed exception site minimizes that noise footprint.

Another social benefit to be gained from locating the proposed transportation facility at the subject property is that, as noted immediately above, the subject property has always been part of the Aurora State Area planning area. In the 1976 Airport Master Plan the subject property was included in an area described as, "This Area Acceptable for Airport Related Development Under Private Ownership." As Oregon's land use framework recognizes, there is a social benefit that is gained from short-term and long-term land use planning and there is social benefit to development that is consistent with the land use planning for the area. Society relies upon not only such planning, but its implementation. Here, the only property that can reasonably accommodate the proposed transportation facility that has been identified as suitable for aviation-related development in the County's adopted comprehensive plan and the Aurora State Airport Master Plan updates has been the subject property.

In summary, consideration of the presence of the Aurora State Airport the social consequences analysis adds further weight to the proposed exception area over the other potential exception sites. Based upon the above analysis and that in the primary findings, the net adverse social impacts from developing the proposed transportation facility at the subject property will not be any worse than developing the transportation facility at any of the other locations that can reasonably accommodate the proposed transportation facility, even when the presence of the Aurora State Airport transportation facility is considered.

Environmental Consequences

The environmental consequences of developing the proposed transportation facility at the proposed exception site or at any of the other sites where the proposed facility could be developed does not change when the presence of the Aurora State Airport is taken into consideration. The presence of the airport does not change the analysis of the impacts at the subject property or other properties – those impacts for each property will remain the same, independent of the airport. The proposal however, does provide access aircraft charging facilities that could be used by electric aircraft at the Aurora State Airport, which is a positive environmental consequence. Other sites would not have direct access for such aircraft at the Aurora State Airport that the site can provide.

The conclusion that the environmental impacts from development of the proposed transportation facility will be no worse than those of the proposed development on the other properties that could reasonably accommodate the proposed use remains unchanged even when the presence of the Aurora State Airport transportation facility is considered.

Energy Consequences

The energy consequences of the ESEE analysis also does not change in any substantive way when the presence of the Aurora State Airport is considered. While there are distance differences between the airport and the subject property versus the other properties, they cannot be said to be significantly different from an energy consequences perspective.

The energy consequences from locating the proposed transportation facility at the proposed exception site are not significantly more adverse than those that would arise from development of any of the other sites that can reasonably accommodate the proposed use that would require an exception.

(b) Determine whether the net adverse impacts associated with the proposed exception site, with mitigation measures designed to reduce adverse impacts, are significantly more adverse than the net impacts from other locations which would also require an exception. A proposed exception location would fail to meet this requirement only if the affected local government concludes that the impacts associated with it are significantly more adverse than the other identified exception sites. The exception shall include the reasons why the consequences of the needed transportation facility or improvement at the proposed exception location are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed location. Where the proposed goal exception location is on resource lands subject to Goals 3 or 4, the exception shall include the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base; and

Proposed Finding: The net adverse impacts associated with the proposal located at the exception site, with mitigation measures that reduce potential adverse impacts, are not significantly more adverse than the net impacts from the proposal at other locations within the corridor area that would also require an exception. This ultimate conclusion does not change from the primary findings, which are herein incorporated. Nothing about the presence of the Aurora State Airport changes that conclusion or fundamentally alters the analysis that leads to that conclusion other than to add more weight in favor of the subject property.

To summarize the reasons that support this conclusion, the presence of the Aurora State Airport transportation facility increases the economic benefits of the proposed exception site's location compared to the other sites within the corridor area, which means the proposed exception site will have even less of an adverse economic impact than the other sites that can reasonably accommodate the facility.

Likewise, the presence of the airport transportation facility has a slightly beneficial impact socially, given the fact that airport planning for the past 50 years has included the subject property in its long-range planning. Having transportation facilities and their surrounding areas develop in a manner that is consistent with long-range planning is a social benefit that none of the other exception sites in the corridor area can provide and lessens the perceived social impact of developing the proposed exception site compared to the others.

Environmentally, the presence of the airport transportation facility has no effect on the environmental impacts analysis. The environmental impacts will be the same regardless of whether the Aurora State Airport is considered.

The same is true for energy impacts. The presence of the airport transportation facility does not change the analysis.

With respect to the resource land analysis, the primary findings regarding land productivity, the ability to sustain resource use near the proposed area and potential long term economic impacts from removing from the resource base do not differ based on whether the existing airport is considered. Consequently, those findings are hereby incorporated.

For the above reasons, the proposal is consistent with this standard.

(c) The evaluation of the consequences of general locations or corridors need not be site-specific, but may be generalized consistent with the requirements of section (3) of this rule. Detailed evaluation of specific alternative locations identified by parties during the local exceptions proceeding is not required unless such locations are specifically described with facts to support the assertion that the locations have significantly fewer net adverse economic, social, environmental and energy impacts than the proposed exception location.

Proposed Finding: The above primary findings for this standard are hereby incorporated.

Based upon the analysis provided immediately above and the incorporated findings from the primary analysis, the net adverse impacts associated with locating the transportation facility on the subject property, with mitigation measures designed to reduce adverse impacts, are not significantly more adverse than the net impacts that would result if the proposed transportation facility was developed at any of the other locations that would also require an exception. The proposal is consistent with OAR 660-012-0070(7).

(8) To address Goal 2, Part II(c)(4), the exception shall:

(a) Describe the adverse effects that the proposed transportation improvement is likely to have on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm or highway oriented development on areas made more accessible by the transportation improvement;

Proposed Finding: The presence of the Aurora State Airport transportation facility does not alter the analysis under this standard for other rural lands and uses provided under the primary findings, which are hereby incorporated.

The airport is considered an urban use on rural land. Given that the Aurora State Airport is a noise-intensive use, much like the existing uses on the Columbia Helicopters and HTS sites and like the transportation facility proposed here, the adverse noise impacts from the proposed transportation facility should be consistent with the nature of and the impacts from those other uses. There is nothing in the record or elsewhere that would indicate that a rotorcraft-oriented transportation facility will have any different adverse effects on the Aurora State Airport than those rotorcraft operations presented by HTS and Columbia Helicopters, which are consistent with the airport's uses.

The transportation impact analysis remains the same, given the TIA included traffic from the current airport uses in its traffic counts. There should be no other traffic impacts for the airport itself given the separate entrances onto the subject property from Airport Road NE and Stenbock Way.

Given that the proposed exception area is not immediately adjacent to the airport and that other potential adverse effects from the proposed transportation facility are unlikely to extend beyond the property boundary, as analyzed under this standard in the primary findings, the proposal should have no adverse effects on the Aurora State Airport transportation facility.

The proposal is consistent with this standard.

(b) Demonstrate how the proposed transportation improvement is compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts. Compatible is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses; and

Proposed Finding: While the Aurora State Airport is not immediately adjacent to the subject property, similar to the subject property's adjacent P-zoned properties, the proposed rotorcraft aviation use of the proposed transportation facility is compatible with the aviation and aviation related uses at the airport. The best

example of this is the fact that both Columbia Helicopters and HTS are not within the airport boundaries, but their aviation activity is consistent with the airport and its operations. The proposed transportation facility will operate under the same type of protocols required by the FAA due to the fact that the facility itself will be regulated by the FAA and its proximity of the airport, and will be compatible with the airport use. The primary findings for this standard are hereby incorporated. The proposal is consistent with this standard.

(c) Adopt as part of the exception, facility design and land use measures which minimize accessibility of rural lands from the proposed transportation facility or improvement and support continued rural use of surrounding lands.

Proposed Finding: The primary findings for this standard are hereby incorporated. As the site plan (Exhibit 1) demonstrates, it is feasible to design a transportation facility that is consistent with the Aurora State Airport's present design and planning for future development, to include the Flight Strip Easement held by the airport. The proposal will not authorize use of the Vertiport by users other than those with operations based at the Vertiport and itinerant operations. It will not be open to the general public. No changes to rural lands are proposed, necessary or appropriate. This standard is met.

(9)(a) Exceptions taken pursuant to this rule shall indicate on a map or otherwise the locations of the proposed transportation facility or improvement and of alternatives identified under subsection (4)(c), sections (5) and (7) of this rule.

(b) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

Proposed Finding: As discussed above, Applicant has entered into the record a map and table that identifies the locations of the proposed transportation facility and the alternative sites discussed in the analysis. See, Exhibit 33 (Corridor Diagram). The corridor map also shows the airport property. The presence of the airport does not alter the requirements for what must be contained in a notice of public hearing. Given the proximity of the subject property to the Aurora State Airport, the Oregon Department of Aviation must be notified of the application and hearing dates. The proposal is consistent with this standard.

(10) An exception taken pursuant to this rule does not authorize uses other than the transportation facilities or improvements justified in the exception.

(a) Modifications to unconstructed transportation facilities or improvements authorized in an exception shall not require a new exception if the modification is located entirely within the corridor approved in the exception.

(b) Modifications to constructed transportation facilities authorized in an exception shall require a new exception, unless the modification is permitted without an exception under OAR 660-012-0065(3)(b)-(f). For purposes of this rule, minor transportation improvements made to a transportation facility or improvement authorized in an exception shall not be considered a modification to a transportation facility or improvement and shall not require a new exception.

(c) Notwithstanding subsections (a) and (b) of this section, the following modifications to transportation facilities or improvements authorized in an exception shall require new goal exceptions:

(A) New intersections or new interchanges on limited access highways or expressways, excluding replacement of an existing intersection with an interchange.

(B) New approach roads located within the influence area of an interchange.

(C) Modifications that change the functional classification of the transportation facility.

(D) Modifications that materially reduce the effectiveness of facility design measures or land use measures adopted pursuant to subsection (8)(c) of this rule to minimize accessibility to rural lands or support continued rural use of surrounding rural lands, unless the area subject to the modification has subsequently been relocated inside an urban growth boundary.

Proposed Finding: The presence of the Aurora State Airport transportation facility does not alter the fact that the reasons exception for the proposed transportation facility will authorize only the uses expressly requested by this application. The findings for the above standard provided in the primary findings are hereby incorporated.

Based upon the reasons provided above, the Board of County Commissioners should approve the reasons exceptions to Goal 3, Goal 11 and Goal 14 and adopt the alternative findings, in addition to the primary findings.

C. AO Zone Standards

Proposed Finding: Development of the subject property is subject to the AO zone standards due to the proximity of the property to the Aurora State Airport. However, the presence of the airport otherwise has little bearing on whether the uses and structures proposed are consistent with the design limitations set forth under MCC 17.177.030 are met. The primary findings for this standard set forth above are herein incorporated and demonstrate that the proposal satisfies the use limitation

and procedural standards for the Airport Development District. The proposal is consistent with these standards.

D. Statewide Planning Goals

The presence of the Aurora State Airport near the subject property adds little to the analysis incorporated herein for most of the Statewide Planning Goals so the above primary findings responses are incorporated herein in whole. The few goals that warrant additional discussion are addressed below.

Goal 2 Land Use Planning: To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Proposed Finding: As discussed above in the exceptions section, the subject property where the proposed transportation facility is to be located has historically been identified by the Aurora State Airport master plans as appropriate for the type of development proposed. The County has incorporated the 1976 Master Plan into the MCCP. In short, the Aurora State Airport and Marion County have planned for the subject property to be developed with aviation related uses, which is what the proposed transportation facility is. Approval of the proposed use is entirely consistent with the long-term planning the state has done for the property and represents an orderly and efficient arrangement of a rotorcraft-oriented transportation facility consistent with the Aurora State Airport and the County's adopted plans.

The proposal is consistent with Goal 2.

Goal 9 Economic Development: To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Proposed Finding: The 2014 Oregon Department of Aviation Individual Report for the Aurora State Airport (Exhibit 38) discusses the extensive economic benefit the airport provides to the City of Aurora and to Marion County more widely. That report documents that the annual wages for the jobs at the airport, direct off-airport and 'spin-off' (multiplier effects) jobs amounts to \$148,718,000 and that the annual business sales, both aviation and non-aviation related, at the airport total \$546,060,000. Exhibit 38, page 6 of 6.

The proposed transportation facility will similarly provide significant job opportunities and produce above average wage jobs that will further support the County and surrounding communities. Moreover, the proposed facility will be the first of its kind in the County and perhaps the state to provide a facility for electric vertical takeoff and landing aircraft. That is an important economic opportunity for

the County. As discussed above, in 2021 the ODA's assessment of the private business activity at the Aurora State Airport has created over 1,000 new jobs and brings tax revenues to Marion County of \$1.9 million. Exhibit 48.

The proposal is consistent with Goal 9.

Goal 11 Public Facilities and Services: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Proposed Finding: As discussed above under Goal 11, the evidence in the record demonstrates that it is feasible to provide adequate on-site water and stormwater and sewer facilities to serve the proposed uses. Applicants also request 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, without the need to amend or obtain a new Goal 11 Reasons Exception, connection to the HDSE facility or the Columbia Helicopter drain field should the appropriate permits for such extensions.

The HDSE facility, which has sufficient capacity to handle the projected sewage produced by the proposal, is located within the airport boundary and serves the Southend Corporate Airpark and other KUAO uses. The proposal requests preauthorization to connect to the HDSE sewer facility located on airport property if and when land use approval is obtained for that facility to serve additional properties.

Similarly, while Columbia Helicopters is not located within the airport boundary, any connection from the subject property to the Columbia Helicopters septic drainfields, which have sufficient capacity to handle sewage from the proposed use, would have to cross KUAO property. The proposal requests preauthorization to connect to the Columbia Helicopters drainfields should the appropriate land use approvals be obtained for the connecting piping and the drainfield use on the Columbia Helicopters property.

The purpose of such preauthorization is to have the subject property not to have to take another Goal 11 exception should either of those facilities obtain the land use approvals necessary to serve additional properties. Any preauthorization approval would not authorize the actual use of or connection to those facilities without additional land use approvals.

With the requested exception, the proposal is consistent with Goal 11.

Goal 12 Transportation: To provide and encourage a safe, convenient and economic transportation system.

Proposed Finding: The proposed transportation facility fits nicely with the Aurora State Airport transportation facility and will provide rotorcraft aviation services that the airport does not have the space or facilities to provide. Furthermore, it does so through private development, which promotes the economic component of this standard, and on property that every airport master plan has envisioned will someday become part of the airport. As discussed above, the 2022 Aurora State Airport Draft Airport Master Plan's, Figure 2-12 Existing Conditions shows the property as a Through-the-Fence (TTF) Parcel. Exhibit 16. Furthermore, the fact that the rotorcraft use that will occur at the proposed transportation facility can operate safely in such close proximity to the Aurora State Airport is demonstrated by the fact that HTS and Columbia Helicopters conduct safe helicopter operations and are similarly situated with respect to the Aurora State Airport as the subject property.

As explained above, the proposal is consistent with Goal 12 and the TPR and does not significantly affect a transportation facility.

The proposal is consistent with Goal 12.

The proposal when considered with the presence of the Aurora State Airport transportation facility is consistent with the statewide planning goals.

E. Compliance with Comprehensive Plan Policies

As with the statewide planning goals, the findings for compliance with the Marion County Comprehensive Plan Policies adopted under the primary findings are equally valid when one also considers the presence of the Aurora State Airport transportation facility and are hereby incorporated.

The one policy that is specifically relevant and worth additional discussion is the one discussed above, TSP Air, Rail, Water, Energy, and Pipeline Transportation Policy 2, which provides:

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

Proposed Finding: While the policy expressly speaks to adopting the Aurora State Airport Master Plan, the effect of the policy goes much further. Its adoption into the County's TSP means that land use decisions that concern the airport are to be made consistent with that Master Plan. As discussed above, the 1976 Airport

Master Plan and its several updates, to include present updated planning, envision the subject property as providing aviation related uses that are consistent with the Aurora State Airport. Those planning efforts also note the growth in rotorcraft use, and the inability of the existing airport facilities to accommodate that growth.

This proposal is consistent with this policy and furthers the planning vision embodied in the State master plan for the Aurora State Airport.

The proposal, when considered with the presence of the Aurora State Airport transportation facility, is consistent with the County's comprehensive plan policies.

F. Conclusion

For the reasons provided above, which are supported by the evidence entered into the record, the Board of County Commissioners should adopt the alternative findings in addition to the original findings as an alternative basis for approving the proposed transportation facility.

VIII. CONCLUSION

This application has been submitted in accordance with the Marion County Rural Zoning Code, which authorizes transportation facilities that have received an exception to Goal 3 in the EFU zone as a conditional use. Exceptions to Statewide Planning Goal 3 Agriculture, Goal 11 Public Facilities and Services and Goal 14 Urbanization to allow transportation facilities are authorized by OAR chapter 660 division 12. The proposed transportation facility is requested to address needs identified by Marion County's Transportation Systems Plan, as reflected in the evidence submitted with this application. If approved, development under this proposal will allow transportation facilities to meet those identified needs to the further benefit of the local economy.

This application narrative and the evidence entered into the record demonstrates that the proposal satisfies all applicable state and local land use regulations necessary for taking a reasons exception to Goals 3, 11 and 14 for a transportation facility, and the conditional use standards necessary to approve the proposed uses. For the above reasons, the County should approve the applications for the proposed transportation facility as conditioned below.

Proposed Conditions of Approval:

Condition 1: 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 2 years from 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 the decision becomes final. If the local decision is not appealed, the effective date remains as prescribed by MCC 117.119.180.

Condition 2: Through-the-fence (TTF) operations will not take place until the County amends its Aurora State Airport planning map to include the subject property. If the County amends its Aurora State Airport planning map, then no additional exceptions shall be required.

Condition 3: Connections to the HDSE or Columbia Helicopters wastewater systems are not authorized until such properties and uses obtain final land use approvals that permit those facilities to server other parcels such as the subject property. If either HDSE or Columbia Helicopters obtain the necessary land use approvals, the subject property is authorized to connect to the wastewater system without the need to obtain additional land use approvals.