



Marion County
OREGON

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SEP 18 2024

CONDITIONAL USE APPLICATION

Marion County
Planning

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

Fee: Please check the appropriate box:

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

PROPERTY OWNER(S): TLM Holdings, LLC	ADDRESS, CITY, STATE, AND ZIP: 14379 Keli 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 P.O. Box 2209, Lake Oswego, OR 97035
DAYTIME PHONE (if staff has questions about this application): (503)-804-0535	E-MAIL (if any): wk@klgpc.com
ADDRESS OF SUBJECT PROPERTY: 22515 Airport Road NE, Aurora, OR 97002	SIZE OF SUBJECT PROPERTY: 16.54 acres +/-
<p>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.</u></p> <p>MCC 17.136.050(J)(4) authorizes as a conditional use of 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.</p>	

FOR OFFICE USE ONLY:			Application elements submitted:
Township <u>4S</u>	Range <u>1W</u>	Section <u>2D</u>	<input checked="" type="checkbox"/> Title transfer instrument
Tax lot number(s) <u>800,900</u>			<input checked="" type="checkbox"/> Site plan
Zone: <u>EFU</u>			<input checked="" type="checkbox"/> Applicant statement
Zone map number: <u>3</u>			<input checked="" type="checkbox"/> Filing Fee
<input type="checkbox"/> TPA/header			<input type="checkbox"/> GeoHazard Peer Review (if applicable)
Case Number: <u>CU24-037</u>			<input type="checkbox"/> Physician's Certificate (if applicable)
<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural			<input type="checkbox"/> Home Occupation Supplemental (if applicable)
Signs given:			<input type="checkbox"/> Agri-Tourism Supplemental (if applicable)
Date determined complete:			Application accepted by: <u>Team</u>
			Date: <u>9/18/24</u>

IF THIS IS FOR A CONDITIONAL USE HARDSHIP: NOT APPLICABLE

WILL THE TEMPORARY DWELLING BE () MANUFACTURED HOME OR () RV? Check one.

IF USING AN RV, DO YOU INTEND TO:

() CONNECT TO THE EXISTING SEPTIC SYSTEM OR () USE THE RV HOLDING TANK? Check one.

NAME OF PERSON(S) WITH MEDICAL HARDSHIP:

HE/SHE/THEY WILL RESIDE IN: () PRIMARY DWELLING OR () TEMPORARY DWELLING

NAME OF CAREGIVER:

HE/SHE WILL RESIDE IN: () PRIMARY DWELLING OR () TEMPORARY DWELLING

RELATIONSHIP OF CAREGIVER TO PERSON(S) WITH MEDICAL HARDSHIP:

WHAT TYPE OF ASSISTANCE WILL CAREGIVER PROVIDE:

IF THERE ARE OTHER ADULTS THAT RESIDE OR WILL RESIDE IN THE DWELLING WITH THE PERSON(S) NEEDING CARE, PLEASE EXPLAIN WHY HE/SHE CANNOT BE THE CAREGIVER:

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.

Ted Millar
Ted Millar (Imp 10, 2024 12-18 PDI)

Ted Millar

Print Name Signature

Print Name Signature

Print Name Signature

Print Name Signature

DATED this 10 day of September, 2024






Conditional Use Application - Vertiport

Final Audit Report

2024-09-10

Created:	2024-09-10
By:	Samantha Bush (sb@klgpc.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAJfUcN3OQ-dCAoJGNVGGluXxi1l-Xef_s

"Conditional Use Application - Vertiport" History

-  Document created by Samantha Bush (sb@klgpc.com)
2024-09-10 - 7:39:06 PM GMT
-  Document emailed to Ted Millar (tmillar@wwpmi.com) for signature
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-  Document e-signed by Ted Millar (tmillar@wwpmi.com)
Signature Date: 2024-09-10 - 7:48:48 PM GMT - Time Source: server
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Wendie L. Kellington
P.O. Box 2209
Lake Oswego Or
97035

Phone (503) 636-0069
Mobile (503) 804-0535
Email: wk@klgpc.com

September 18, 2024

Via Hand Delivery
Brandon Reich
Planning Director
Marion County
5155 Silverton Rd NE
Salem Or 97305

RE: TLM Applications for property at 22515 Airport Road NE, Aurora, OR 97002

Dear Brandon:

Attached please find TWO land use applications for filing on this date. One application is wholly new and seeks a CUP to expand the existing Aurora Airport, airport boundary and to alter that airport to establish particular airport uses on the subject property. This application does not permit service to a larger class of airplane. The required application fee in the amount of \$6355 is also attached.

The second application is for the same TLM property and seeks to establish a standalone transportation facility - a heliport/vertiport – on the subject property. For the second application, per OAR 660-012-0060(5), the presence of the Aurora Airport is not a basis for the required Goal exceptions. However, following the suggestion of the court of appeals questioning whether OAR 660-012-0060(5) applies to exceptions taken for transportation facilities themselves (establishing a transportation facility is the point of the second application) as opposed to commercial, industrial or residential uses), alternative findings supporting the second application are also included for which the presence of the Aurora Airport is a basis for the exceptions. The second application is essentially the same as the application filed for the subject property on December 19, 2023. That application was never fully processed and stalled out. We hereby formally withdraw that application filed on December 19, 2023 for the subject property. In its place, we file the attached second application for a transportation facility. We understand that because the prior application was never fully processed, that there is no new application fee for this second application that we file today, but rather the fee for the now withdrawn application can be applied to this nearly identical one that supersedes it. If that is incorrect, please let us know.

Finally, the applications filed this date are separate and discrete and neither relies upon the other. In fact, if the first application is approved, then the second one is wholly unnecessary. However, the Applicant wishes to pursue both applications so that it may establish aviation related uses on its property – which are uses that the County's acknowledged comprehensive

plan since the time it adopted the 1976 Aurora Airport Master Plan, has designated for aviation related uses.

If you have any questions or concerns, please let me know. Thank you for your courtesies and patience.

Very truly yours,



Wendie L. Kellington

WLK:wlk

CC: Client (w/o attachments)
Aron Faegre (w/o attachments)

TRANSPORTATION FACILITY (VERTIPOINT) APPLICATION NARRATIVE
September 18, 2024

I. APPLICATION INFORMATION

Applicant/Owner:

TLM Holdings, LLC
14379 Keil Road NE #11
Aurora, OR 97002

Applicant's Representative:

Wendie Kellington
Kellington Law Group, P.C.
PO Box 2209
Lake Oswego, OR 97035

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 (Vertiport¹)

Application Requirements:

Conditional Use Permit
Exception to Statewide Planning Goal 3 and Precautionary Exceptions to Goals 11
and 14
Comprehensive Plan Amendment for Exception

¹The proposed facility is called a vertiport but could just as easily be called a heliport. The proposal is designed to accommodate all types of rotorcraft to include a new breed termed "eVTOLs" which is an abbreviation for electric vertical take off and landing aircraft which are a type of rotor craft - a type of helicopter - that runs on electric power and that will eventually be autonomous. We refer to the facility as a "vertiport" because that appears to be the more modern nomenclature. But we do not intend to propose or create anything other than a facility to accommodate all types of rotorcraft – both gas and electric powered.

Compliance with AO zone requirements
Compliance with Airport Planning Rule

II. INTRODUCTION

Summary of Proposal, Background and Applications

TLM Holdings, LLC (“Applicant”) is proposing a vertiport,² which the application materials and application narrative refers to as the North Marion County Vertiport (“NMCV”). Vertiports are a type of “transportation facility or improvement” that enables rotorcraft-based³ movement of people and goods to and from a subject property. Such transportation facilities are commonly identified as heliports and more recently vertiports, although the facility itself is the same for all rotorcraft. 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 as has been long-envisioned by the Marion County Comprehensive Plan and the Aurora State Airport Master Plan, for which the 1976 version is an acknowledged part of the County’s Comprehensive Plan. Therefore, all land use decisions that invoke the County Comprehensive Plan must be consistent with the 1976 Aurora Airport Master Plan designations for the subject property.

The development of and the operations for the proposal will be subject to Oregon Department of Aviation (“ODAV”) and Federal Aviation Administration (“FAA”) approval and regulations. All rotorcraft to include eVTOLs are strictly regulated by the FAA and all operations, to include autonomous operations, will require FAA certificates and must conform to FAA flight requirements. Likewise, while the proposed vertiport will be considered an independent “airport” under ODAV and FAA regulations, all rotorcraft that use the proposed vertiport will be required to coordinate operations with the Aurora State Airport’s FAA control tower due to the proximity of the subject property to the airport. When the FAA control tower is in operation (current hours of operation are 7 am to 8 pm every day) any takeoffs and

² As defined in HB 2834 (2023), codified at ORS 836.636(1)(b), “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 proposed transportation facility by all rotorcraft including eVTOLs. As noted in the beginning of this narrative, in this application, we refer to vertiports and heliports interchangeably because they mean the same thing – a facility for the take off and landing of rotorcraft of all types. Vertiport is simply the more modern name for such facilities.

³ 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 electric vertical take-off and landing (“eVTOL”) vehicles, which are a type of helicopter. The emergence of eVTOLs and other innovative aircraft types and aviation technologies have established a new and rapidly-growing sector of the aerospace industry referred to as Advanced Air Mobility (AAM). See, e.g., National Business Aviation Association website: <https://nbaa.org/aircraft-operations/emerging-technologies/advanced-air-mobility-aam/>.

landings from the NMCV can only occur when the pilot receives approval from the tower by radio communication. During other hours the pilot will use standard radio procedures for non-towered airport, just as will all other Aurora Airport, Helicopter Transport Services, and Columbia Helicopter pilots.

The proposed vertiport seeks to be an independent airport under state and federal regulations. This application does not request and does not need to request that either the Airport Layout Plan ("ALP") for the Aurora State Airport or the County's Aurora State Airport Planning Map be amended to include the proposed use.⁴ Neither are required to be amended for the proposed use to be approved. Relatedly, the Applicant is not requesting an expansion of the Aurora State Airport boundary to include the subject property. The proposal is for an independent vertiport, which is a transportation facility, adjacent to but separate from the existing airport and outside the Aurora State Airport boundary. It will be similarly situated to the existing Columbia Helicopters and Helicopter Transport Services (HTS) operations that are adjacent to but outside the Aurora State Airport boundary (note they both nonetheless require coordination with the Aurora Airport control tower). The proposed vertiport will have its own airport boundary. Exhibit 59 (NMCV Airport Boundary Map). Despite having a separate airport boundary, the proposed use of the subject property is consistent with the County's current Aurora State Airport Planning Map and the current ALP and will be consistent with any future updates the County or State may ultimately adopt that would seek to expand that airport boundary to include the subject property or other properties.

The subject property has previously been used as a retreat facility for well more than 40 years, first as a Methodist Church Camp and then as the Beyond the Reef Theological Center. While the subject property is zoned exclusive farm use (EFU), the property has not been in resource use since before the retreat facility use began. Ever since the adoption of the first 1976 Aurora State Airport Master Plan that was in turn adopted by the County as part of the now acknowledged Marion County Comprehensive Plan, the subject property has been envisioned for development with aviation uses under the caption: "THIS AREA ACCEPTABLE FOR AIRPORT RELATED DEVELOPMENT UNDER PRIVATE OWNERSHIP." Exhibit 44, page 31, 44; Exhibit 2, p 41. The Airport Master Plan's Land Use Plan" designates the subject property as "Airport Development." Exhibit 44, p 50. Since the mid-1970's, development of the area west of Airport Road has occurred in a manner that is consistent with the now acknowledged 1976 Aurora Airport Master Plan, with the subject property being the only major vacant property identified by the County Plan as suitable for aviation use that remains undeveloped.

⁴ A companion application is also being filed this date which seeks to expand the Aurora State Airport boundary to include the subject property and to obtain permission for through the fence airport uses on the subject property that support aeronautical activities at the airport. That is a wholly separate and distinct land use application.

Following the closure of the retreat facility, the property owner, Applicant, has sought to put the subject property to productive use consistent with the vision expressed in the acknowledged County Plan and 1976 Airport Master Plan. Applicant last proposed an airplane-based design for the subject property, which relied upon taxi lane access to the Aurora State Airport. For several reasons, the Oregon Court of Appeals decided that approval of that proposed use required expansion of the Aurora State Airport boundary, which had not been requested or approved, and the County's approval of that use without an airport boundary expansion was reversed. *See e.g.*, Exhibits 6, 23, 24, 25 (LUBA and Court of Appeals decisions).

This application seeks to put the subject property to productive use consistent with acknowledged Marion County Comprehensive Plan and to do so with an independent vertiport that does not rely upon the expansion of the Aurora State Airport boundary while still being consistent with the adopted airport plans and County planning documents. The proposal seeks to take advantage of several factors that indicate a growing need for a vertiport. First, as the Aurora State Airport has grown, the facilities available at the airport for supporting any rotorcraft operations has not kept up with increased local and regional demand. There is now a shortage of facilities for local area and regional rotorcraft operations. Second is the emerging eVTOL technology, which many experts predict will significantly transform aerial transport in coming years and for which there is a dearth of transportation facilities that can support those vehicles with required electric power. The proposal will allow Marion County to become one of the first or perhaps the first of available areas within Oregon to support eVTOLs and will establish the County as a leader in this emerging transportation technology.⁵ Third, is the fact that two of the country's largest helicopter operators, Columbia Helicopters and HTS, have located their operations near the subject property, which has created economic synergies that has attracted additional rotorcraft-based businesses and operations. This has created a rotorcraft ecosystem that will support the proposed vertiport and to which the vertiport can contribute, to include providing the Life Flight Network the opportunity to locate its rotorcraft operations adjacent to its headquarters at the Aurora State Airport. The presence of these three factors, in addition to those identified in the reasons exception analysis, warrants establishing an independent vertiport on the subject property to meet this growing demand.

Several Marion County Code ("MCC") standards apply to this application. The proposed vertiport is an allowed conditional use on EFU land. MCC 17.136.050(J)(4)⁶

⁵ The vertiport will differ from other rotorcraft facilities because it will have dedicated electric rotorcraft charging stations, utilizing hydrogen for electric power. Exhibit 12.

⁶ 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:

TLM Holdings, LLC Application for a Vertiport Transportation Facility

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. Note, the purpose for the exception is not to change the plan designation or zoning for the property, but rather to comply with EFU standards for the permitted use under state law as well as the existing Marion County Code plan designation and zoning. Because the subject property is within the Airport Overlay (AO) zone, the applicable MCC Chapter 17.177 AO standards are also addressed as part of the conditional use application. Finally, because the application requires an exception and exceptions are required to be adopted into the County's comprehensive plan, the Applicant is also herein applying to amend the text of the Marion County Comprehensive Plan ("MCCP") to incorporate the exception. To reiterate, the application here 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 proposed use is an allowed conditional use under the subject property's current EFU zoning. As part of the comprehensive plan amendment component for the reasons exception, the nature of the use requires the application to also demonstrate compliance with the airport planning rule under OAR Chapter 660 division 13 and to provide the documents the rule requires the County to adopt for the proposed vertiport. Those documents should be adopted as part of this approval and incorporated into the Comprehensive Plan as part of the reasons exception.

In addition to the above land use applications, Applicant is preparing applications and notifications for submittal to ODAV and the FAA pursuant to the requirements of ORS 836.085 through 836.120, OAR Chapter 738 division 20, and 14 CFR Part 157 (FAR Part 157 (attached as Exhibit 62)). For ODAV, this includes an ODAV Site Approval application, which must be approved prior to any construction of the vertiport, and an ODAV License to operate the vertiport. Therefore, obtaining these state and federal approvals will be required as a condition of approval of this request. The FAA notifications and applications include a notification of intent to establish an airport and a notification intent for construction of the vertiport. The FAA's review is primarily focused on air safety. The Applicant will also need to prepare an application to the Department of Environmental Quality (DEQ) pursuant to OAR 340-035-0045 to review and approve a noise impact study and related Noise Impact Boundary map for the vertiport use. The noise impact study and impact map

* * * *

"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."

are attached to this application as Exhibit 60 (HMCVH Noise Study). Applicant will also be required to obtain the normal DEQ permits for wastewater and stormwater management. Ultimately, Applicant requires for the proposed use County land use and building permit approvals, site design and operations approval from ODAV and the FAA, and regulatory approval from the DEQ prior to the construction or operation of the proposal. The findings below address each how the proposal complies with each of the relevant land use standards and also demonstrate that it is feasible to obtain all necessary ODAV, FAA and DEQ permits. Also, the findings below recommend conditions of approval to ensure the required permits are obtained before the proposed vertiport becomes operational.

The Proposed Vertiport Transportation Facility

As noted above, TLM Holdings, LLC (“Applicant”) is proposing to develop a vertiport, which is a transportation facility, on the subject property. The proposed vertiport 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 when they are authorized to fly. As such, the proposed vertiport constitutes an “airport” and Applicants request an airport boundary be established for the entire subject property as shown on Exhibit 59. Within the vertiport’s airport boundary, the proposal is to develop landing pads for vertical takeoffs and landings, rotorcraft tiedown areas, charging stations,⁷ 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 vertiport 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 vertiport 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, p 1.

⁷ 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.

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 interest in additional rotorcraft facilities that has been 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 vertiport that can support these existing operations and their anticipated growth. Exhibit 5 (Vicinity Map). Furthermore, advances in avionics, to include the increasing development of all-electric (battery powered) rotorcraft in response to climate change, environmental emissions, and noise pollution concerns, require adequate numbers of vertiports 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 proposed vertiport: 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 vertiport. Exhibits 3, 4.

The proposed vertiport also will serve itinerant operations. Itinerant operations involve rotorcraft that are based at other locations landing at the vertiport and not remaining at the vertiport for extended periods. This may include rotorcraft operations of all types requiring a fuel stop or maintenance or stopping to conduct business in the area and includes eVTOLs traveling up or down the coast that need to charge their batteries to continue onward to their destination.

Proposed Uses

As the Court of Appeals observed in *Schaefer v. Marion County*, 323 Or App 390, 392, 408-09, 523 P3d 1142 (2022), an airport such as the Aurora State Airport is a transportation facility or improvement. 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. Here, the

Applicant requests only authorization of the discrete transportation facilities, improvements and uses that are described in this application:

- Use of the vertiport 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 all types of rotorcraft 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. This will include peaking/resilience systems for peak power load draws or disaster response such as large battery storage systems, and an on-site hydrogen storage tank, filled by truck deliveries, and a standby generator that can run on hydrogen fuel. Note, Applicant is not requesting approval for an energy generating facility to produce the hydrogen that will be stored and used on the site; rather hydrogen will be trucked to the site in the same way that petroleum is trucked to sites to provide petroleum based vehicle fuels.
- Electric charging stations for not only electric rotorcraft but also for electric cars that transport people and goods to the facility.

- Small offices to manage traffic and operations using the vertiport.
- 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 Aurora State Airport decides to expand its airport boundary and the County in a subsequent process amends its planning map to show the subject property within that 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 that operator receive a Goal 11 exception to serve additional parcels or to utilize the Columbia Helicopter drain field if a similar land use approval is obtained from the operator, as well as the extension to the subject property of existing and available electrical, gas, internet and telecommunications and other existing services necessary for the proposed use.

As discussed below, the Marion County Code (MCC) and state statute allows, 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. As explained above, a vertiport is a transportation facility. 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 (the described vertiport), 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 and discussed below, the vertiport will serve present and near-future needs that were identified and anticipated by the County's transportation planning process and incorporated into the County's planning documents.

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 fixed-aircraft and 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.⁸ *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

This application narrative and its supporting exhibits demonstrate that the proposal complies with all applicable approval criteria that apply to the proposed vertiport and that it is feasible to obtain all necessary State and Federal agency permits for the proposed vertiport. To summarize the application requirements, MCC 17.136.050(J)(4)⁹ 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 improvement does not comply, and subject to OAR Chapter 660, Division 12.”

The proposed vertiport 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.¹⁰ MCC 17.136.050(J)(4) invokes the exceptions standards set forth by OAR chapter 660, division 12 Transportation Planning under OAR 660-012-0070. Consequently, the proposed vertiport requires an exception to Goals 3, 11 and, as a precaution, Goal

⁸ The court stated “neither the county nor LUBA suggested that the proposed development itself—that is, the applied-for commercial and industrial uses, independent of the airport—qualifies as a transportation facility. OAR 660-012-0005(46) (A transportation facility is “any physical facility that moves or assist[s] in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage, and water systems.”). 323 Or App 407.

⁹ MCC 17.136.050(J)(4) implements ORS 215.283(3), which identifies uses permitted on EFU land and 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[.]”

¹⁰ Note that because the proposed vertiport 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).

14¹¹ 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 as a result of the property's proximity to the Aurora State Airport. Last, because the application involves an exception to the planning goals, the application must request a plan amendment to add the exception and the vertiport to the Marion County Comprehensive Plan. The plan amendment requires demonstrating consistency with the Statewide Planning Goals and relevant MCCP policies, as well as OAR Chapter 660 division 13, the airport planning rule. Several of the standards and the use itself trigger review of aspects of the proposal by the DEQ and the ODAV and FAA, and approvals from those agencies before construction can begin or operations started at the proposed vertiport. 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 upon 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 for or location of the proposed uses.¹² The primary findings reflect OAR 660-012-

¹¹ 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 under that reasoning that any facility providing air movement of goods and services to and from rural and urban areas is likely considered an "urban" use.

¹² 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 proposals for transportation facilities (in this case the proposed vertiport) – hence the alternative findings discussed herein 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

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.¹³ The primary findings will, of course, consider potential impacts from the proposed use on the airport as is required by the exception standards concerning 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 the proposed vertiport.¹⁴

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 not a part of the Aurora State Airport operations and facilities.¹⁵ Neither lies within the Aurora State Airport boundary and neither is a through-the-fence ("TTF") operation. The proposed vertiport 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 vertiport 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.

rotorcraft needs in the required analysis regardless of the source of that need, to include from KUAO.

¹³ 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."

¹⁴ It is more likely than not that OAR 660-012-0060(5) does not apply to exceptions for transportation facilities, to include the proposed vertiport. 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 such as the proposed vertiport.

¹⁵ The Aurora State Airport Draft Airport Master Plan (2022) (Exhibit 27) states:

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

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Accordingly, to recap: 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 further requests that the County adopt alternative findings for the proposal in addition to the primary findings. The alternative findings would 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, 523 P3d 1142 (2022) (“we question, but need not decide, whether OAR 660-012-0060(5) even applies to exceptions for transportation facilities themselves.”), Exhibit 6, p 19. 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*, Exhibit 26, p 7. The proposal in *Foland v. Jackson County*, 61 Or LUBA 264, 290 (2010) (Exhibit 26), 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, the final decision maker to adopt such an ordinance must be the Marion County Board of Commissioners. The Applicant respectfully requests that the Board of Commissioners approve the applications to authorize a vertiport on the subject property as proposed.

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 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 1A (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 increasingly available in the state and 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 subject property holds a taxi lane easement over property owned by Yellow Gate Corporate Hangars LLC as well as ODAV to access the taxiway and runway. Exhibit 14A, p 1, 8 (2(d), 17. The design of the vertiport is such that the southwest corner, which touches upon an airport access way, will remain undeveloped to allow for the possibility of future through-the-fence (TTF) operations as envisioned by Aurora State Airport master planning at such time the proper planning steps are taken to amend the Aurora State Airport boundary map and approve TTF operations. *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 Annual Average Day-Night (Ldn) 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. 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 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 Aurora State 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 Aurora State 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 Aurora State 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 vertiport 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 vertiport. 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 Aurora State Airport boundary and does not have TTF access to the Aurora State Airport (although HTS is zoned P). 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’s UGB which is 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. Ever since the County’s adoption of the first Aurora State Airport Master Plan (“AMP”) in 1976, which includes the 1976 Airport Layout Plan (“ALP”) as part of the acknowledged Marion County Comprehensive Plan (as an element of the Transportation System Plan), the subject property has been designated for development with aviation uses under the caption: “THIS AREA ACCEPTABLE FOR AIRPORT RELATED DEVELOPMENT UNDER PRIVATE OWNERSHIP.” See e.g., Exhibit 44, p 31 and 44 (which is the 1976 Aurora Airport Master Plan Airport Layout Plan or “ALP”). Moreover, that 1976 Aurora State Airport Master Plan’s Land Use Plan similarly designates the TLM property for “Airport Development”. Exhibit 44, p 50, and see p 55. Because this Aurora State Airport Land Use Plan is an acknowledged part of the County Comprehensive Plan, it is relevant to demonstrating that the subject property is intended to be developed with aviation uses.

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. Those uses have ceased and most of the structures and infrastructure has been removed

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, 523 P3d 1142

(2022). See Exhibit 6. On remand again from the Court of Appeals, LUBA sustained the first assignment of error because the County had not identified 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 vertiport 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.” (emphasis supplied).¹⁶

The proposed vertiport is an “other transportation facility” because it is not otherwise allowed in MCC chapter 17.136. Because transportation facilities that have received an exception to Goal 3 and any other relevant goals are 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.

¹⁶ 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.”