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MARION COUNTY PUBLIC WORKS

To: Marion County Hearings Officer

From: Marion County Planning Division/Speckman

Date: February 20, 2025

Subject: Conditional Use/Comprehensive Plan Amendment 24-038/TLM Holdings LLC

The Marion County Planning Division has reviewed the above-named case and offers the following comments:

FACTS:

1. The subject property is designated Primary Agriculture in the Marion County Comprehensive Plan, and correspondingly zoned Exclusive Farm Use (EFU). The property consists of tax lots 800 & 900 of Section 2D of Township 4 South, Range 1 West.
2. The subject property is on the west side of Airport Rd NE. The property is vacant and in neither farm nor forest use. There are no rivers, streams, wetlands, floodplains or other natural hazards on the parcel or within the immediate vicinity. The property is entirely within the Airport Overlay (AO) Zone. Special Exception 77-37 (SE77-37) approved the property's current configuration and therefore the property is considered a legal parcel for land use purposes.
3. The subject parcel is bordered to the north, west and south by parcels in the Public (P) zone that are part of the Aurora Airport. To the east, on the other side of Airport Rd NE, are EFU zoned lands in primarily agricultural use that stretch to woodlands adjacent to the Pudding River which is the county line between Marion and Clackamas counties.
4. The applicant's proposal is for a conditional use permit to expand the Aurora Airport boundary to include the subject parcel, and to approve the airport uses identified in Oregon Revised Statute (ORS) 836.616(2) and Oregon Administrative Rule (OAR) 660-013-0100 and related development on the subject property. The application also includes a proposed comprehensive plan change to amend the Aurora Airport boundary map in Marion County Comprehensive Plan to include the subject property, concurrent with the expansion.

The proposal does not involve service to a larger class of airplanes than already served by the Aurora Airport. Therefore, no goal exception is required for the proposal as per OAR 660-012-0065 *Transportation Improvements on Rural Lands* section (3) "*The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule*", subsection (n) "*Expansions or alterations of public use airports that do not permit service to a larger class of airplanes*".

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

The applicant points out that this code implements ORS 215.283(3), “Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

- (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or
- (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993.”

The applicant must therefore meet the farm impacts test of ORS 215.296, which is implemented in MCC 17.136.060(A)(1), to for approval to expand Aurora Airport to include, and develop airport uses on, the subject property.

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

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

In summary, the applicant’s proposal addresses MCC 17.119.070 *Conditional Use*, MCC 17.136.060(A) *Conditional use criteria in EFU*, MCC 17.177 *Airport Overlay Zone*, applicable policies in the Marion County Comprehensive Plan, Oregon Statewide Planning Goals, and applicable Oregon Administrative rules in 660-13. Staff reviews the applicant’s responses to all applicable codes, policies, goals, and rules below.

5. Notice of the conditional use permit and comprehensive plan change request was provided to various agencies. Their comments are included or summarized below:

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

ENGINEERING CONDITIONS

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

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

ENGINEERING REQUIREMENTS

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

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

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

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

ENGINEERING ADVISORIES

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

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

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

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

1. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the applicant must submit an application for approval of the airport site to ODAV, as described in Oregon Revised Statutes (ORS) 836.090.
2. Prior to the construction or establishment of the proposed facility, the application fee must be paid to ODAV, as described in ORS 836.085.
3. The proposed development must adhere to the approval criteria for the establishment of an airport as described in ORS 836.095 and OAR 738-020 (Minimum Standards for Airports).
4. In accordance with FAR Part 77.9 and OAR 738-070-0060, the proposed development is required to undergo aeronautical evaluations by the FAA and ODAV. The aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an obstruction to aviation safety. The applicant should receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.
5. The height of any new structures, trees, and other planted vegetation shall not penetrate FAR Part 77 Imaginary Surfaces, as determined by the FAA and ODAV.
6. Any proposed external lights shall be designed as to not interfere with aircraft or airport operations.

Additionally, the applicant is advised to review the FAA's webpage which outlines procedures for establishing private-use airports: <https://www.faa.gov/faq/what-procedures-must-i-follow-build-private-use-airport>. This includes the submittal of FAA Form 7480-1.

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

6. The general conditional use criteria are found in MCC 17.119.070. Before granting a conditional use, the director, planning commission or hearings officer shall determine:

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

The application will be heard in front of the Hearings Officer (HO) for a recommendation which will subsequently be heard by the Board of Commissioners (Board). The application involves a change to the Comprehensive Plan which must be approved by the Board. The conditional use may be granted provided the Board approves the application. The criterion is met.

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

According to MCC 17.136.010, the purpose of the EFU zone is to provide areas for continued practice of commercial agriculture. The purpose of the zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain and improve the quality of air, water, and land resources of the county.

As a conditional use in the EFU zone, MCC 17.136.050(J)(4) lists "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 of OAR Chapter 660, Division 12"

In order to determine that the proposed conditional use for airport expansion and airport uses is in harmony with the purpose and intent of the zone, the proposal will be evaluated with the specific criteria for a conditional use in the EFU zone, and criteria for the AO zone.

3. 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.

This criterion can be met by ensuring 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.

7. MCC 17.119.180.190 guides the effective date of the Conditional Use;

17.119.180 Effective date of conditional use.

Conditional uses granted by the director, planning commission or hearings officer under the provisions of this title shall not be effective until 15 days after the mailing of the notice of

decision; provided, however, in case call up of the proceedings has been requested by the board or an appeal has been taken as herein provided, the conditional use shall not be effective until the planning commission, hearings officer or board has acted on the call up or appeal.

17.119.190 Conditional use right must be exercised to be effective.

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

The applicant is requesting a delayed effective date pending final decisions from this land use application, Oregon Department of Aviation (ODAV) and Oregon Department of Environmental Quality (DEQ) approvals. MCC 17.119.180 specifies that the conditional use is not effective until the planning commission, hearings officer or board of commissioners has acted on a call up or appeal of the decision. MCC 17.119.190 explains that the rights granted by a conditional use decision must be enacted within two years of the effective date, or receive an extension.

The applicant anticipates appeals beyond the Board of Commissioners based on the history of previous land use applications on the subject parcel. The required ODAV and DEQ approvals may also be appealed. In the event of land use approval that occurs before, or during, appeals of the ODAV and DEQ approvals, the exercise period for the conditional use permit may lapse due to these other appeals. The result would be a null decision on a technicality. Staff finds it reasonable to accommodate the entire process by postponing the effective date of this conditional use permit, and the two-year exercise period, until such time that the ODAV and DEQ permit processes have completed.

The applicant specifically requests that the effective date for the commencement of the 2-year exercise period be the latter of either the date of the final order or decision by the County, LUBA, Oregon Court of Appeals, Oregon Supreme Court, or the date of the ODAV decision approving development of the site, or the DEQ decision approving the noise plan becomes final following all administrative and/or judicial appeals of those agency decisions, whichever of these dates occurs last. Staff recommends the Board include this delayed effective date as a condition of approval. Any extensions to the 2-year period will also be based on the effective date as specified in MCC 17.119.190.

8. The criteria for a conditional use in the EFU zone are found in MCC 17.136.060(A):
 1. *The use will not force a significant change in, or significantly increase the cost of, accepted farm or forest practices on surrounding lands devoted to farm or forest use. Land devoted to farm or forest use does not include farm or forest use on lots or parcels upon which a non-farm or non-forest dwelling has been approved and established, in exception areas approved under ORS 197.732, or in an acknowledged urban growth boundary.*

This criterion implements the farm impacts test of ORS 215.296. The applicant identified farm/forest practices on surround lands, explained why the proposed use will not force significant change in those practices and why the proposed use will not significantly increase the cost of those practices.

Farm practices in the area are occurring east of Airport Rd NE, south of Keil Rd NE, and north of Arndt Rd NE. The farms to the east are engaged in hay and grass seed production. The farms to the south are engaged in row crop production, and orchards. The farms to the north are within Clackamas County and are engaged in a large variety of farm uses including nursery, hay, grass seed, and row crops. The applicant references these farming practices adjacent to the existing airport as examples that the use will not force a change in or significantly increase the cost of accepted farm practices on surrounding lands. While there are woodlands to the east along the Little Pudding, there are not any actual timber operations in the surrounding area that could be impacted by the proposed use.

The applicant identified five ways the proposal could impact surrounding farm practices. These potential impacts were environmental, related to noise, agricultural drone use, dust and transportation.

The environmental impact is addressed in subsection 3 of this section below, and sufficient evidence was provided to show the proposal will not have a significant adverse impact on watersheds, groundwater, fish and wildlife habitat, soil and slope stability, air and water quality.

The noise impact is addressed in subsection 4 of this section below, and sufficient evidence was provided to show the proposal will not create noise impacts that would significantly change farm practices in the surrounding area, nor increase the cost of farm impacts in the surrounding area.

During the hearings for the previously proposed, and denied, zone change on this property (ZC/CP/CU19-002) opponents brought up concerns about conflicts with the use of drones for agricultural purposes on adjacent lands. Agricultural drones are commercial drones and Federal Aviation Administration (FAA) regulations require them to coordinate with the air traffic control tower at Aurora State Airport (KUAO). The applicant goes on to explain that the subject parcel and adjacent farms are under the Airport overlay already. This coordination results in slight delays in take-off for the agricultural drones, which is not a significant change of farm practices.

The applicant addressed the potential for dust, considering the proposal involves take off and landing of rotorcraft. The applicant suggests that potential impacts from dust will be less after development of the parcel than they are currently. The parcel is vacant, creating potential for dust production due to current adjacent rotorcraft uses. If developed as proposed, much of the parcel would be paved which would significantly reduce the potential for dust production and dispersal.

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

Based on the evidence in the record, and provided by the applicant, the proposal will not incur any impacts that would result in significant change in, or significantly increase the cost of, farming practices in the area. The criterion is met.

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

The subject parcel is served by the Aurora Fire Department and Marion County Sheriff's Department. Both already serve the adjacent properties within the Aurora airport. There are no indications of barriers that would preclude the same level of existing service being extended to the subject parcel. The applicant proposes inclusion of the subject property within the Aurora Airport land use boundary, which would place it within the existing Water Control District for the Aurora Airport that ensures adequate water supply is available to fight fires. The criterion is met.

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

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

Concern has been raised in the past that the proposal may produce a significant adverse impact on the Pudding River. The Pudding is just over a half mile east of the subject parcel. The floodplain of the Pudding is almost exactly a half mile east of the subject parcel. The section of the Pudding directly east of the subject parcel is buffered by a wooded area 600-feet wide at its narrowest point. The applicant attests that the only connection to the Pudding is via a stormwater ditch along Airport Road. There is also a perennial stream that connects the Pudding which is mapped as beginning roughly 700-feet east of the southeast corner of the subject parcel. The ODAV and FAA requirements will include preparation for potential spills. There is no indication that the proposed use will have a significant adverse impact on the Pudding River.

The criterion is met.

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

The uses to the North, West, and South of the subject parcel are part of the Aurora Airport, noise intensive, and will not be significantly impacted by the proposal. The applicant attests that take off of fixed wing aircraft will not occur on the subject parcel itself. These aircraft will be stored on the subject parcel will be taxied over to the runway on ODAV property. Rotorcraft will however be taking off and landing on the subject parcel. Rotorcraft also currently take off and land on the south adjacent parcel, creating noise that does not have significant adverse impact on nearby land uses.

There are several residences amongst the farms to the east of the subject parcel. The closest are two homesites directly across from Airport Rd NE. One is 550-feet east, and another is 150-feet southeast from the eastern property line of the subject parcel.

The applicant's site plan shows hangers positioned on the northeastern side of the subject parcel, with take-off and land pads located on the western side of these hangers. The applicant attests that the structures will create barriers to help deflect noise from the neighbors. The applicant attests that three flight paths have been proposed that orient to roughly correspond with established flight paths that avoid residential uses. The rotorcraft that will be taking off from the subject parcel will rise to an elevation of 600-feet above grade before leaving the horizontal bounds of the subject parcel, which will decrease the decibels reaching the ground after leaving those horizontal bounds.

The applicant will be required to comply with DEQ's noise control regulations for airports set forth in OAR 340-035-0045. This compliance requires an approved application from DEQ. DEQ approval will ensure the noise mitigation practices on the subject parcel are sufficient to avoid significant adverse impacts on nearby parcels.

Based on the noise contours submitted by applicant the noise from the proposal will be less than the noise already created by the Aurora Airport. The proposal will therefore not increase the noise the neighbors are already experiencing, nor cause any new adverse impacts resulting from noise.

The applicant suggests a condition of approval, "requiring the Applicant to submit, consistent with the requirements set forth under OAR 340-035-0045, an application for DEQ approval of the projected Noise Impact Boundary and, if necessary, a noise abatement program, that receives DEQ approval prior to receiving a building permit for construction of the proposed airport uses and that those DEQ-approved materials be provided to the County."

The criterion may be met by compliance with conditions of approval.

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

There are no nearby water impoundments of significant mineral and aggregate sites identified around the subject parcel. The criterion is met.

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

17.177.010 Purpose.

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

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

17.177.030 Airport districts.

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

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

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

- a. No obstruction or object shall be permitted if it extends above the transitional and approach surfaces as defined in MCC [17.177.020\(C\)](#).*
- b. Roadways, parking areas and storage yards shall be located in such a manner that vehicle lights will not result in glare in the eyes of the pilots, or in any other way impair visibility in the vicinity of the runway approach.*
- c. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.*
- d. No game preserve or game reservation shall be permitted if the animals or birds have the potential to become a hazard to air navigation.*
- e. No structure or use intended for public assembly shall be allowed except by a conditional use permit.*

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

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

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

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

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

1. Use Limitations. Any use and accessory uses, buildings and structures allowed in the underlying zone shall be permitted; provided, that no obstruction penetrates the conical surface as defined in MCC [17.177.020\(C\)](#).

The subject property is within the transitional surface area for the Aurora Airport and is therefore within the Airport Development District as defined in MCC 17.177.020. Any development on the subject property shall be designed consistent with the listed standards that negate potential hazards to air navigation. Staff finds the uses and developments proposed to be consistent with these standards.

17.177.040 Procedure.

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

1. Property boundary lines as they relate to the airport approach and the end of the runway;

2. Location and height of all existing and proposed buildings, structures, utility lines and roads.

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\(C\)](#).

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.

The applicant is not seeking a building permit at this time, and attests that compliance with these standards will be followed when applying for building permits. The applicant understands compliance with the height restrictions regarding airport surfaces. The application submitted is being reviewed in accordance with the procedures in MCC 17.117. ODAV has been notified of the proposal and will be subsequently notified of public hearings regarding the proposal.

10. The proposal involves a comprehensive plan change to amend the boundary of the Aurora Airport in the County's Transportation Systems Plan (TSP). The proposal must therefore be consistent with the statewide planning goals or seek exceptions to them. The relevance of each goal in this proposal is discussed below.

Goal 1: Citizen Involvement

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

Goal 2: Land Use Planning

The application for expansion of the airport boundary to include the subject parcel, and airport uses on the subject parcel, has been submitted with Marion County Planning Department to review compliance with applicable zoning ordinances. The Marion County staff recommendation will be presented to the Hearings Officer for consideration and application of applicable case law. The Hearings Officer will make a recommendation to the Marion County Board of Commissioners who will make the decision on for the County. The goal is satisfied.

Goal 3: Agricultural Lands

Transportation facilities are a conditional use on EFU. The proposal is consistent with goal 3 as per:

OAR 660-012-0065(3) *The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:*

OAR 660-012-0065(3)(n) *Expansions or alterations of public use airports that do not permit service to a larger class of airplane.*

The applicant addresses the conditional use criteria in section 8 of this document that implements the farm impacts test of ORS 215.296. Having met the applicable criteria to show consistency as per the relevant OAR, the goal is satisfied.

Goal 4: Forest lands.

The subject parcel is not itself, nor adjacent to, forest lands. The applicant asserts that as a result of the proposed development, remote firefighting capabilities may be expanded which would contribute to conservation of forest lands. The goal does not apply.

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

The subject property is not affected by this goal, the goal does not apply.

Goal 6: Air, Water and Land Resources Quality

Compliance with Goal 6 requires evidence that it is reasonable to expect a proposal will be able to comply with applicable state and federal environmental quality standards. The applicant suggests that the proposed use of electric powered aircraft will result in far less emissions than the existing petroleum powered aircraft used at the Aurora Airport. As a result of the airport boundary being expanded, the applicant will have to meet all state and federal standards for aviation uses. The evidence and testimony from the applicant suggest that it is reasonable to expect the proposed development will be able to comply with all state and federal standards.

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

The applicant states that stormwater drainage, detention improvements and a DEQ National Pollutant Discharge Elimination System (NPDES) permit will be required to mitigate and manage stormwater runoff. The applicant provided a stormwater analysis demonstrating a feasible solution for managing stormwater that will comply with state and federal standards.

The cumulative effects of both stormwater and septic drainage were taken into account by the respective consultants hired by the applicant. Evidence was provided that the stormwater runoff will not exceed the capacity of the existing drainage system. Evidence was also provided that

septic can be provided without discharge contributing to a cumulative negative impact on the soil or groundwater. The applicant addresses several different potential solutions for the septic system. The applicant's consultant addresses the two options for septic dispersal on the subject parcel itself. The first option addressed is a holding tank, a system which involves total removal of wastewater from the property for processing at a wastewater treatment plant. The second is a septic system meeting the standards for a Water Pollution Control Facilities (WPCF) permit. The latter system suggested by the consultant would be built to a higher standard than the minimum standards for a WPCF permit, including effluent released with lower biochemical oxygen demand, lower total suspended solids, and a higher standard of bacteria treatment by ultraviolet light treatment at 99% efficiency prior to discharge.

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

Goal 7: Areas Subject to Natural Disasters and Hazards

The subject property is not within either the floodplain or geohazard overlays. Additionally, the applicant suggests that the establishment of rotorcraft on the subject parcel may enhance the Aurora Airport's ability to assist in emergency response during the next Cascadian subduction earthquake. The goal is satisfied.

Goal 8: Recreation needs

No recreational space is present on the subject property. The applicant mentions that potential private recreational aircraft or eVTOL us would be possible on the subject parcel but is not specifically being proposed. The goal does not apply.

Goal 9: Economic Development

This goal does not apply outside of an urban growth boundary. The applicant recognizes this but explains that the proposed development will create jobs and will likely attract early adopters of electric aircraft that may have direct or indirect positive economic impacts on the surrounding area and County as a whole. The goal is satisfied.

Goal 10: Housing

This goal applies to land within urban growth boundaries. This goal does not apply.

Goal 11: Public Facilities and Services

The applicant is not proposing the need for public water or sewage services to be extended. The applicant provided evidence that on-site water, wastewater, and stormwater facilities are all feasible. The applicant references OAR 660-012-0065(3)(n) which allows for expansions and alterations to a public use airport as consistent with Goals 3, 4, and 11. The goal is satisfied.

Goal 12: Transportation

The proposal requires compliance with the requirements of the Airport Planning Rule (APR) in OAR 660-13. As per OAR 660-13-0160(3), compliance with the requirements of division 13 satisfy the requirements of Goal 12 and division 12 regarding Airport Planning. The APR is addressed in section 13 of this document, and the proposal is consistent with all requirements.

Direct compliance with the requirements of the Transportation Planning Rule (TPR) in OAR 660-12 is therefore not required for the proposal to satisfy Goal 12. The applicant nevertheless addressed the TPR regulations in the event that they were applied. Staff addresses the applicant's responses to OAR 660-012 in section 12 of this document.

The applicant provides sufficient responses to both the APR and TPR to indicate that the proposal satisfies Goal 12.

Goal 13: Energy Conservation

The applicant explains that the proposal is consistent with the goal of conserving energy in several ways. The proposal involves electric powered aircraft which will require less non-renewable petroleum resources. The expansion of the Aurora Airport to include the subject parcel for airport uses is more energy efficient than establishing the proposal elsewhere, considering the aviation related travel. The subject property's proximity to major established transportation routes in the County ensures efficient travel times and distances to and from the subject parcel. The goal is satisfied.

Goal 14: Urbanization

The applicant references OAR 660-012-0065(3)(n) which allows for expansions and alterations to a public use airport as consistent with Goals 3, 4, 11, and 14. Additionally, the Aurora State Airport Master Plan of 1976 designated the subject property as appropriate for airport uses. The goal is satisfied.

Goal 15: Willamette River Greenway

Goal 16: Estuarine Resources

Goal 17: Coastal Shorelands

Goal 18: Beaches and dunes

Goal 19: Ocean Resources

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

11. The Marion County Comprehensive plan outlines policies to guide development. The following policies are all those that the applicant and Marion County Planning staff have agreed are relevant or applicable to the proposal. Excluded policies are those found to be inapplicable.

Rural Development (Introduction)

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

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

The applicant is not proposing a land division, this policy does not apply.

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

The proposal is for neither commercial nor residential development that could be described as "strip-type".

3. Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

The proposed expansion is compatible with the existing airport development to the north, west, and south of the subject parcel. The airport use is better suited for siting near similar uses, and those uses that are not noise sensitive such as crop farming, than near dense urban residential development. Compatibility with agricultural goals is accomplished by compliance with the farm impacts test administered as part of the Conditional Use criteria (MCC 17.136.060(A)(1)). The proposal is consistent with this policy.

Agricultural Lands Policies

1. Preserve lands designated as Primary Agriculture by zoning them EFU (Exclusive Farm Use). Lands designated as Special Agriculture should be protected by the corresponding SA zone and farmland in the Farm/Timber designation should be protected by the Farm/Timber zone.

The proposal does not involve changing the zoning or designation of the subject property, which is zoned EFU.

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

The subject property consists of two tax lots totaling 16.54-acres zoned EFU. The property is surrounded by airport uses to the north, west, and south. Airport Rd NE borders the eastern edge of the property, and on the other side of the road is a large tract of land in agricultural use. The property was not historically utilized for agricultural purposes, but rather as a church camp and retreat since at least sometime prior to 1970. The proposed use does not infringe on the agricultural uses to the east, nor does it remove agricultural land that could be utilized for large scale commercial agricultural production. Therefore, the proposal is consistent with this policy.

3. Discourage development of non-farm uses on high-value farmland and ensure that if such uses are allowed that they do no cause adverse impacts on farm uses.

The applicant understands that non-farm uses on high-value farmland are discouraged, and notes that this policy is discretionary. The subject parcel is surrounded on three sides by the Aurora Airport. Staff finds the criteria in MCC 17.136.060(A) for a conditional use, which includes the farm impacts test, has been met. Therefore, the proposal is consistent with this policy.

Rural Services Policies

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

The proposal includes explanations of feasible onsite water and stormwater services and no extensions onto other properties will be required for these services. The applicant provides expert testimony to affirm that DEQ approved wastewater treatment is feasible onsite. The 2024 Traffic Impact Analysis (TIA) shows that the proposal will not result in significant impact on a

transportation facility. The applicant proposes a condition of approval of ½ street frontage improvements on Airport Rd and paying a fee in-lieu. The proposal is consistent with this policy.

2. It is the intent of Marion County to maintain the rural character of the areas outside of urban growth boundaries by only allowing those uses that do not increase the potential for urban services.

The subject property is within the area designated in the 1976 Aurora Airport master plan as being appropriate for airport related uses under private ownership. This does not conflict with the general policy of maintaining the rural character of areas outside of urban growth boundaries. The applicant has shown that it is possible to provide all services for the proposal on site, therefore no potential requirement of urban levels of service is required. The proposal is consistent with this policy.

3. Only those facilities and services that are necessary to accommodate planned rural land uses should be provided unless it can be shown that the proposed service will not encourage development inconsistent with maintaining the rural density and character of the area.

The proposal is designated as appropriate for the use within the Aurora Airport master plan. The proposed expansion of the airport boundary would allow the property to enact uses appropriate within the Aurora Airport. No new facilities or services to serve the proposed development would be required. In addition to finding that onsite wastewater is feasible, the applicant proposed the other possibilities of connecting to the existing HDSE wastewater system which is located entirely within the Aurora Airport boundary, or the southern adjacent Columbia Helicopters drainfield which is also within the Aurora Airport boundary. The proposal is consistent with this policy.

4. The sizing of public or private service facilities shall be based on maintaining the rural character of the area. Systems that cannot be cost effective without exceeding the rural densities specified in this Plan shall not be approved. The County shall coordinate with private utilities to ensure that rural development can be serviced efficiently.

The applicant has shown that onsite services are feasible, and that there is also the potential for alternative wastewater options within the Aurora Airport boundary. No public facilities are required, and the private systems would not be incongruous with rural character of the area. The proposal is consistent with this policy.

Air, Rail, Water, Energy and Pipeline Transportation Policies

These policies address air, rail, water, energy, and pipeline transportation in the County. These modes are an important part of the existing and future transportation network in terms of moving freight, passengers, services and information in the County.

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

The proposal would expand the Aurora Airport boundary to encompass the subject parcel, which is itself designated within the Aurora Airport master plan as appropriate for airport uses. The southern adjacent parcel accommodates take off and landing of helicopters, and the north and

western parcels contain hangers with aircraft that utilize the Airports runway. The parcel is within an area that has proven to be safe for air operations and is compatible with the surrounding uses. The proposal is consistent with this policy.

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

The proposal is consistent with Aurora Airport master plan of 1976 which is adopted into the County's comprehensive plan. The proposal is consistent with this policy.

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

These provisions are provided for within MCC 17.177 Airport Over zone. The applicant provided responses to applicable criteria within MCC 17.177 showing that the proposal complies with the County's standards. The proposal is consistent with this policy.

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

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

Transportation System Management Policies

The purpose of Transportation System Management (TSM) strategies is to maximize the capacity, safety, and efficiency of the existing transportation system through the application of traffic control improvements, access management, and land use controls. The most notable of these policies relates to access management and are included below.

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

The applicant understands that the County will use this policy to determine potential requirements to mitigate traffic impacts. The proposal is consistent with this policy.

Development and Access Policies

Development and access policies provide guidelines for linking transportation and land use in an attempt to provide suitable transportation facilities while protecting and preserving the agricultural and rural nature of the County. The policies also outline right-of-way and roadway improvement requirements for new developments in the County.

These policies are particularly important because private developers, often through the subdivision process, are constructing most new local roads, and many of the projects that widen or enhance arterials and collectors.

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.

The applicant submitted a Traffic Impact Analysis in which the roadway classifications are addressed. The applicant understands the County will use this policy to determine potential requirements to mitigate traffic impacts. The proposal is consistent with this policy.

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

The TIA submitted by the applicant confirms that the proposal is consistent with this policy. Additional standards, and any mitigation, will be required by Marion County Public Works.

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

The subject property would take access from Airport Road NE and Stenbock Way NE. The Rural Transportation Systems Plan (RTSP) indicates capacity for an additional 3,000 daily drips on Airport Road NE, which is classified as a major collector. The TIA submitted by the applicant suggests that the proposal will not generate trips that could exceed the capacity of Airport Road NE. The proposal is consistent with this policy.

10. (A) The number of access points on arterial and major collector roadways shall be kept to a minimum to reduce the interruption to traffic flow and to promote safety. All new or expanded-use accesses must meet the access management standards in the RTSP (see Section 10.1.3).

The applicant acknowledges this policy, and the site plan indicates compliance will not be an issue. The proposal is consistent with this 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).

The applicant submitted an engineer's report regarding stormwater management requirements and a proposed system design for review by Marion County Public Works. The proposal is consistent with this policy.

Right-of-Way Policies

There is a significant amount of public right-of-way in Marion County. Much of it is occupied by roads, while some remain undeveloped. Policies with respect to use of this public right-of-way include:

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

The proposal is for an aircraft transportation facility that would only utilize existing rights-of-way to for access and egress onto the subject property. There is no indication that access to the parcel will result in significant disruption to existing land use in the area. The proposal is consistent with this policy.

Marion County Economic Development Goals

Marion County's major economic goals are:

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

The applicant suggests that the proposal will result in the creation of temporary job opportunities during the construction phase, and subsequently long term positions for eVTOL services that will require white collar, skilled and unskilled workers. The proposal is consistent with this policy.

b. Maintenance of a strong agricultural economy;

The proposal has met the conditional use criteria, that includes the farm impacts test, in MCC 17.136.060(A) and will therefore not be detrimental to the agricultural economy. Neighboring agricultural operations may now, and in the future are likely to, utilize electric takeoff and landing vehicles in their operations. The proximate location of the proposed vertical takeoff and landing aircraft facility where such aircraft can be hangered/stored for lease to farmers, will enable neighboring agricultural operations easy access to such aircraft that they are otherwise unable to afford to own or lack storage capacity or maintenance expertise. The proposed facility could serve as a leasing hub for aircraft such as large agricultural drones. The proposal is consistent with this policy.

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

The proposal would allow for development of a site for the next-generation of eVTOLs and electric-powered fixed-wing aircraft. This diversification of aerial vehicles will create a diversification of job opportunities at the Aurora Airport, for the County as a whole. The Aurora Airport is well-known to be a significant source of tax, wage and direct and indirect tourist and other spending revenue for Marion County and the immediately surrounding communities. However, the Airport does not currently have the capability to serve electric aircraft. The proposal enables the airport to diversify to include electric aircraft facilities served by the proposed hydrogen electricity source that otherwise does not exist at the airport. The proposal is consistent with this policy.

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

The 1976 Aurora Airport master plan indicates the need for growth in helicopter operations. The applicant submitted letters from potential users of the proposed facilities supporting the present need for an eVTOL site which is not currently available at the Aurora Airport. The proposal is consistent with this policy.

g. Coordination of planning and development of public facilities;

The proposal is for a public facility in the sense that it is for the expansion of a public use airport. The Aurora Airport master plan indicates that the subject property is appropriate for airport related uses in private ownership. The proposal is for an airport related use in private ownership. The applicant suggests, and provides supporting documentation to show, that public airport facilities are not being developed to sufficiently meet the growing demand for airport uses and more specifically eVTOL uses. The proposed expansion to the airport boundary, and establishment of airport uses, would allow the private sector to meet some of the demand for electric aircraft. The proposal is consistent with this policy.

Energy Policies

1. Future development should progress in the most energy efficient manner possible.

d. Development should progress in an orderly manner. It is more energy efficient to develop adjacent vacant lands rather than to allow continued “leap frog” development patterns.

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

The applicant has shown that the proposal is consistent with all applicable policies within the Marion County Comprehensive Plan.

12. As discussed in section 10 of this document regarding Goal 12, the applicant references OAR 660-013-160(3) within the APR regarding the proposal’s consistency with Goal 12 and OAR 660-012.

OAR 660-013-160(3) Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.

By addressing the APR, the requirements of the TPR are satisfied. The APR is addressed in section 13 of this document. Additionally, as a precautionary measure, the applicant opted to address the TPR in OAR 660-12. Staff considers the proposal’s compliance with the TPR below.

OAR 660-012-060

(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 (Adoption or Amendment of a UGB)(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.

The proposal does not seek to amend the zoning or comprehensive designation, but rather the boundary map of the Aurora Airport. Marion County has an acknowledged TSP, and the existing zoning is consistent with the TSP. The proposal is for a use consistent with the existing zoning as a conditional use. The applicant hired a transportation consultant to produce a TIA in 2024. The TIA determined that the proposal does not further degrade the performance of any transportation facility (i.e. roads), and does not cause any facility to exceed its performance standard. The conclusion of the TIA is that the proposal does not have a significant effect on a transportation facility. The proposal is consistent with this rule.

OAR 660-012-060

(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:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

The applicant's transportation consultant produced a TIA in 2024 to analyze potential impacts of the proposed development on the existing transportation system. The results of this TIA show that the proposal will have no significant effect on transportation facilities, and that the proposal complies with the requirements of Goal 12 and the TPR. The proposal does not change the function classification of any existing or planned transportation facility and does not propose a change in the standards of implementing a classification system. The current Marion County TSP was adopted on December 21, 2005, and is for the 20-year period ending December 21, 2025. The TIA shows that the types and levels of travel will not exceed the classification of the roads around the subject parcel. There is no need to change road functional classifications as a result of

this proposal. The TIA shows that the increased traffic related to the proposal will not degrade the performance of the roads or facilities around the subject parcel. Therefore, the measures provided in OAR 660-012-060(2) are not required. Furthermore, as shown above, the amendment is allowed under OAR 660-012-060(9).

13. OAR 660 division 13 provides rules required for the expansion of airports.

660-013-0010 Purpose and Policy

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

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

The proposal is consistent with the purpose and policy of this rule. The applicant submitted testimony and evidence showing the proposal will address present and future airport needs and create jobs at the Aurora Airport. The proposal takes existing development at the Aurora Airport into account and provides evidence that the proposed aircrafts will be able to operate in a safe manner. The proposal is consistent with the Aurora State Airport Master Plan of 1976, Oregon Aviation Plan forecast for growth both at the Aurora Airport and in overall new aviation technologies such as the proposed eVTOLs and electric airplanes.

660-013-0020 Definitions

For purposes of this division, the definitions in ORS Chapter 197 apply unless the context requires otherwise. In addition, the following definitions apply:

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

(2) "Aircraft" means helicopters and airplanes, but not hot air balloons or ultralights.(3)

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

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

(5) "Public Assembly Uses" means a structure or outdoor facility where concentrations of people gather for purposes such as deliberation, education, worship, shopping, business, entertainment, amusement, sporting events, or similar activities, excluding airshows. Public Assembly Uses does not include places where people congregate for short periods of time such as parking lots and bus stops or uses approved by the FAA in an adopted airport master plan.

(6) "Sponsor" means the owner, manager, other person, or entity designated to represent the interests of an airport.

The applicant notes that the above definition of "Aircraft" makes no reference to the power source of the aircraft. The proposed use on the subject property for eVTOLs and electric-powered fixed-wing aircraft falls within the existing definition.

The applicant also notes that the Court of Appeals concluded in *Schaefer v. Marion County* (318 Or. App. 617) that the Aurora State Airport is a “non-towered airport” despite the Aurora Airport currently having an Air Traffic Control Tower.

The proposal is consistent with the definitions of 660-013-0020.

660-013-0030 Preparation and Coordination of Aviation Plans

(1) The Oregon Department of Aviation (ODA) shall prepare and adopt a state Aviation System Plan (state ASP) in accordance with ORS Chapters 835 and 836 and the State Agency Coordination Program approved under ORS 197.180. ODA shall coordinate the preparation, adoption, and amendment of land use planning elements of the state ASP with local governments and airport sponsors. The purpose of the state ASP is to provide state policy guidance and a framework for planning and operation of a convenient and economic system of airports, and for land use planning to reduce risks to aircraft operations and nearby land uses. The state ASP shall encourage and support the continued operation and vitality of Oregon’s airports.

(2) A city or county with planning authority for one or more airports, or areas within safety zones or compatibility zones described in this division, shall adopt comprehensive plan and land use regulations for airports consistent with the requirements of this division and ORS 836.600 through 836.630. Local comprehensive plan and land use regulation requirements shall be coordinated with acknowledged transportation system plans for the city, county, and Metropolitan Planning Organization (MPO) required by OAR 660, division 12. Local comprehensive plan and land use regulation requirements shall be consistent with adopted elements of the state ASP and shall be coordinated with affected state and federal agencies, local governments, airport sponsors, and special districts. If a state ASP has not yet been adopted, the city or county shall coordinate the preparation of the local comprehensive plan and land use regulation requirements with ODA. Local comprehensive plan and land use regulation requirements shall encourage and support the continued operation and vitality of airports consistent with the requirements of ORS 836.600 through 836.630.

Marion County adopted the Aurora Airport Master Plan in 1976 and implements land use requirements through MCC 17.177 Airport Overlay Zone. As explained in section 9 of this document, the applicant has shown the proposal to be consistent with this rule and locally implemented aviation planning. The proposal is consistent with this rule.

660-013-0040 Aviation Facility Planning Requirements

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

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

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

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

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

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

- (B) Are compatible with existing and planned land uses surrounding the airport; and*
- (C) Are otherwise consistent with provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.*
- (d) "Compatible," as used in this rule, is not intended as an absolute term meaning no interference or adverse impacts of any type with surrounding land uses.*
- (2) A map or description of the location of existing and planned runways, taxiways, aprons, tiedown areas, and navigational aids;*
- (3) A map or description of the general location of existing and planned buildings and facilities;*
- (4) A projection of aeronautical facility and service needs;*
- (5) Provisions for airport uses not currently located at the airport or expansion of existing airport uses:*
- (a) Based on the projected needs for such uses over the planning period;*
- (b) Based on economic and use forecasts supported by market data;*
- (c) When such uses can be supported by adequate types and levels of public facilities and services and transportation facilities or systems authorized by applicable statewide planning goals;*
- (d) When such uses can be sited in a manner that does not create a hazard for aircraft operations; and*
- (e) When the uses can be sited in a manner that is:*
- (A) Compatible with existing and planned land uses surrounding the airport; and*
- (B) Consistent with applicable provisions of the acknowledged comprehensive plan, land use regulations, and any applicable statewide planning goals.*
- (6) When compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600.*
- (7) A description of the types and levels of public facilities and services necessary to support development located at or planned for the airport including transportation facilities and services. Provision of public facilities and services and transportation facilities or systems shall be consistent with applicable state and local planning requirements.*
- (8) Maps delineating the location of safety zones, compatibility zones, and existing noise impact boundaries that are identified pursuant to OAR 340, division 35.*
- (9) Local government shall request the airport sponsor to provide the economic and use forecast information required by this rule. The economic and use forecast information submitted by the sponsor shall be subject to local government review, modification and approval as part of the planning process outlined in this rule. Where the sponsor declines to provide such information, the local government may limit the airport boundary to areas currently devoted to airport uses described in OAR 660-013-0100.*

The proposal is to expand the current Aurora Airport Boundary to include the subject parcel. The applicant has supplied an expanded map that the County could adopt consistent with OAR 660-013-0040(1) to accomplish this expansion. Proposed site plans submitted by the applicant fulfill the requirements of OAR 660-013-0040(2) and (3). To meet the requirement of OAR 660-013-0040(4), consistent with OAR 660-013-0040(9), the applicant prepared projections from economic and use forecast information from ODAV and provided supplemental market-based evidence regarding aeronautical facility and service needs that will arise in the next 5 years and through the Aurora State Airport planning period which extends to 2041. The forecasts and

evidence provided support the applicant's assertion that aeronautical and service needs at the Aurora State Airport will continue to grow. The proposal is consistent with OAR 660-013-0040(4). The proposed eVTOL and electric powered fixed-wing airplane uses are new to the Aurora Airport consistent with OAR 660-013-0040(5). Other proposed uses include charging stations for eVTOLs and electric fixed-wing aircraft, onsite capacity to address peak demand periods for electricity, landing pad for eVTOLs, tiedown areas, hanger areas, and operations and maintenance facilities for aircraft. The ODAV and FAA review and approval of proposed operations will confirm the proposal meets the air traffic safety requirement of with OAR 660-013-0040(5)(d). The proposal meets the conditional use criteria, is consistent with the Marion County comprehensive plan and statewide land use planning goals. Therefore, the proposal is consistent with OAR 660-013-0040(5)(e)(A) & (B). The compatibility of the proposal is evident by compliance with the conditional use criteria, including the farm impacts test, and any potentially unaddressed compatibility issues may be solved by additional conditions of approval. Therefore, the proposal is consistent with OAR 660-013-0040(6). The applicant provided materials in the application to identify and describe the types and levels of public facilities and services needed for the proposed airport expansion and airport uses as required by OAR 660-013-0040(7). The applicant has submitted maps delineating the location of safety zones, compatibility zones, and existing noise impact boundaries as part of the application materials. As a condition of approval, the applicant will submit to the County a DEQ approved Noise Impact Boundary Diagram, and if required by the DEQ, an approved Airport Noise Abatement Program. The proposal is consistent with OAR 660-013-0040(8) The applicant has requested and submitted for review by the County, the economic and use forecasts from ODAV (sponsor of the Aurora State Airport) consistent with OAR 660-013-0040(9).

The proposal is consistent with all sections of OAR 660-013-0040.

660-013-0050 Implementation of Local Airport Planning

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

The proposal for expansion of the airport boundary, and establishment of airport uses ORS 836.616(2) falls within the standards of ORS 836.608(5) *A local government shall authorize a new use described in subsection (3)(b) of this section provided the use:*

- (a) Is or will be supported by adequate types and levels of public facilities and services and transportation systems authorized by applicable statewide land use planning goals;*
- (b) Does not seriously interfere with existing land uses in areas surrounding the airport; and*
- (c) The local government reviews the use under the standards described in ORS 215.296 (Standards for approval of certain uses in exclusive farm use zones) if the airport is adjacent to land zoned for exclusive farm use.*

Subsections a, b, and c of ORS 836.608(5) are addressed in section 8 of this document addressing the conditional use criteria.

ORS 836.608(6) states; *An applicant for a new use under subsection (5) of this section may demonstrate that the standards for approval will be satisfied through the imposition of conditions. Any conditions imposed shall be clear and objective.*

The applicant suggested several clear and objective conditions of approval to demonstrate satisfaction of the standards of approval. ODAV and LDEP both requested further conditions of approval. All conditions of approval have been organized in section 14 of this document. Meeting these conditions of approval will demonstrate that the standards of approval have been satisfied. The proposal is consistent with this rule.

660-013-0070 Local Government Safety Zones for Imaginary Surfaces

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

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

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

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

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

Marion County implements airport safety standards with MCC chapter 17.177 Airport Overlay Zone. Staff finds that the proposal is compliant with applicable standards in MCC 17.177 to promote aviation safety. Specifically for rotorcraft uses, the applicant submitted a map showing compliance with OAR 660-013-0070(1)(c) for heliports. The proposal is consistent with this rule.

660-013-0080 Local Government Land Use Compatibility Requirements for Public Use Airports

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

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

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

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

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

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

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

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

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

The County has adopted an Airport Overlay Zone in MCC 17.177 that includes compatibility requirements. The AO zone chapter may be amended in the future consistent with this rule. The County is not required to amend the AO zone chapter at this time.

660-013-0100 Airport Uses at Non-Towered Airports

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

(1) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tiedowns, construction and maintenance of airport facilities, fixed-base operator facilities, a residence for an airport caretaker or security officer, and other activities incidental to the normal operation of an airport. Residential, commercial, industrial, manufacturing, and other uses, except as provided in this rule, are not customary and usual aviation-related activities and may only be authorized pursuant to OAR 660-013-0110.

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

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

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

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

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

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

(8) Aeronautic Recreational and Sporting Activities, including activities, facilities and accessory structures at airports that support recreational use of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic Recreation and Sporting Activities on airport property shall be subject to approval of the airport sponsor.

Aeronautic recreation and sporting activities include but are not limited to: fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests;

gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used in this rule, parachuting and parachute drops includes all forms of skydiving. Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

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

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

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

As clarified in *Shaefer v. Marion County* (3188 Or. App. 617), the proposed airport expansion is for a “non-towered airport” as defined by OAR 660-013-0020(4). The proposal is to expand the airport boundary to include, and develop airport uses on, the subject property. The airport uses proposed are allowed under OAR 660-013-0100. The proposal is consistent with this rule.

660-013-0110 Other Uses Within the Airport Boundary

Notwithstanding the provisions of OAR 660-013-0100, a local government may authorize commercial, industrial, manufacturing and other uses in addition to those listed in OAR 660-013-0100 within the airport boundary where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide planning goals and LCDC administrative rules and where the uses do not create a safety hazard or otherwise limit approved airport uses.

The proposal includes only uses that are outlined in OAR 660-013-0100. The proposal is consistent with this rule.

660-013-0140 Safe Harbors

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

(1) Portions of existing acknowledged comprehensive plans, land use regulations, Airport Master Plans and Airport Layout Plans adopted or otherwise approved by the local government as mandatory standards or requirements shall be considered adequate to meet requirements of these rules for the subject areas of rule requirements addressed by such plans and elements, unless such provisions are contrary to provisions of ORS 836.600 through 836.630. To the extent these documents do not contain specific provisions related to requirements of this division, the documents can not be considered as a safe harbor. The adequacy of existing provisions shall be evaluated based on the specificity of the documents and relationship to requirements of these rules;

- (2) This division does not require elimination of existing or allowed airport related uses authorized by an acknowledged comprehensive plan and land use regulations; and
- (3) Notwithstanding the safe harbor provisions of this rule, land use regulations applicable to non-towered airports shall authorize airport uses required by this division.

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

660-013-0155 Planning Requirements for Small Airports

- (1) Airports described in ORS 836.608(2) shall be subject to the planning and zoning requirements described in ORS 836.608(2) through (6) and (8).
- (2) The provisions of OAR 660-013-0100 shall be used in conjunction with ORS 836.608 to determine appropriate types of uses authorized within airport boundaries for airports described in 836.608(2).
- (3) The provisions of OAR 660-013-0070(1)(b) shall be used to protect approach corridors at airports described in ORS 836.608(2).
- (4) Airport boundaries for airports described in ORS 836.608(2) shall be adopted by local government pursuant to the requirements in ORS 836.608(2).

The Aurora Airport is a publicly owned airport described in ORS 836.610(1). This rule does not apply to the proposal.

660-013-0160 Applicability

This division applies as follows:

- (1) Local government plans and land use regulations shall be updated to conform to this division at periodic review, except for provisions of chapter 859, OR Laws 1997 that became effective on passage. Prior to the adoption of the list of airports required by ORS 836.610(3), a local government shall be required to include a periodic review work task to comply with this division. However, the periodic review work task shall not begin prior to the Oregon Department of Aviation's adoption of the list of airports required by ORS 836.610(3). For airports affecting more than one local government, applicable requirements of this division shall be included in a coordinated work program developed for all affected local governments concurrent with the timing of periodic review for the jurisdiction with the most land area devoted to airport uses.
- (2) Amendments to plan and land use regulations may be accomplished through plan amendment requirements of ORS 197.610 to 197.625 in advance of periodic review where such amendments include coordination with and adoption by all local governments with responsibility for areas of the airport subject to the requirements of this division.
- (3) Compliance with the requirements of this division shall be deemed to satisfy the requirements of Statewide Planning Goal 12 (Transportation) and OAR 660, division 12 related Airport Planning.
- (4) Uses authorized by this division shall comply with all applicable requirements of other laws.
- (5) Notwithstanding the provisions of OAR 660-013-0140 amendments to acknowledged comprehensive plans and land use regulations, including map amendments and zone changes, require full compliance with the provisions of this division, except where the requirements of the new regulation or designation are the same as the requirements they replace.

Subsections (1) and (2) above do not apply the proposal. In compliance with the requirements of this division, OAR 660-013, the proposal satisfies the requirement of Goal 12, and OAR 660-12

related to Airport Planning. The applicant will be required to receive all necessary state and federal permits related to the proposed use as a condition of approval. The proposal includes an amendment to the Marion County Comprehensive Plan to expand the boundary of the Aurora Airport. The requirements will be implemented with the existing EFU zoning. The proposal is consistent with this rule.

14. Planning staff recommends approval of the application and suggests the following conditions of approval be applied:
 1. The applicant shall obtain any building and septic permits required.
 2. The applicant shall submit evidence of compliance with all required agencies to planning staff.
 3. Prior to building permit issuance, design rural type frontage improvements along the Airport Road subject property frontage that are anticipated to include a new access, removing prior existing accesses, vegetation clearing, 5-foot gravel road shoulder, proper foreslope and drainage ditch relocation, and obtain a Major Construction Permit for same. Prior to issuance of a Building Department Certificate of Occupancy, acquire final inspection approval of the public roadway related improvements.
 4. Prior to building permit issuance, contribute a proportional share in the amount of \$24,000 as presented in the February 2024 TIS Update toward the cost of planning, designing, and constructing signalization and turn lane improvements at the intersection of Ehlen Road and Airport Road as identified in the County RSTP and in the City of Aurora TSP, as a traffic mitigation measure.
 5. The MCC 117.119.180 effective date for the start of the MCC 117.119.190 2-year period for exercising a conditional use right shall be the latter of: (1) the date of the final order or decision by the County, LUBA, the Court of Appeals or the Oregon Supreme Court, beyond which there can be no further appeals and this land use decision become final; (2) the date the ODAV site approval decision become final following any administrative and judicial appeals, if any; or (3) the date the DEQ noise plan decision becomes final following any administrative or judicial appeals. If this local decision and the ODAV site approval decision and the DEQ decision are not appealed, the effective date for the start of the MCC 117.119.190 2-year period for exercising the conditional use right begins on the latest of the three approval dates.
 6. The uses allowed on the subject property are limited to airport uses identified under ORS 836.616(2) and OAR 660-013-0100 as uses that shall be authorized within airport boundaries and as shown on the submitted site plan Exhibit 1B and described in the application materials. Uses not listed under the statute or rule, or expansion of the approved uses or development must be approved through a separate land use application.
 7. Applicant will supply to the County clean copies of the airport boundary map (Exhibit 1A) and other maps required by OAR 660-013-0040 to be incorporated into the Marion Count Comprehensive Plan.

8. Prior to the issuance of any building permit, Applicant shall provide to the County a DEQ approved Noise Impact Boundary Diagram and, if required by DEQ, an approved Airport Noise Abatement Program for the uses authorized within the expanded airport boundary. All development and operations on the subject property must conform to the DEQ Noise Impact approval.
9. Prior to the issuance of any building permit for stormwater or wastewater facilities on the subject property, Applicant will provide a copy of the DEQ approvals for the requested system.
10. Applicant must submit a facility site plan for the proposed airport uses as required by OAR 738-014-0050 for Through the Fence Operations and receive approval from the Oregon Department of Aviation of the proposed site plan prior to applying for a building permit to develop the approved airport uses.
11. Applicant must submit to the County a written contract with ODAV, the Aurora State Airport sponsor, that meets the requirements of OAR 738-014-0050(3) before airport operations on the subject property begin.
12. Prior to the construction or establishment of the proposed vertical takeoff and landing facility, the applicant must submit an application for approval of the airport site to ODAV, as described in Oregon Revised Statutes (ORS) 836.090.
13. Prior to the construction or establishment of the proposed facility, the application fee must be paid to ODAV, as described in ORS 836.085.
14. The proposed development must adhere to the approval criteria for the establishment of an airport as described in ORS 836.095 and OAR 738-020 (Minimum Standards for Airports).
15. In accordance with FAR Part 77.9 and OAR 738-070-0060, the proposed development is required to undergo aeronautical evaluations by the FAA and ODAV. The aeronautical evaluations are initiated by the applicant providing separate notices to both the FAA and ODAV to determine if the proposal poses an obstruction to aviation safety. The applicant should receive the resulting aeronautical determination letters from the FAA and ODAV prior to approval of any building permits.
16. The height of any new structures, trees or planted vegetation shall not penetrate FAR Part 77 Imaginary Surfaces, as determined by the FAA and ODAV for the Aurora State Airport. Applicant shall submit to the County a clean copy of the imaginary surfaces diagram for the approved rotorcraft operations on the subject property, prepared consistent with OAR 660 division 13 Exhibit #3.
17. Any proposed external lights shall be designed so as to not interfere with aircraft or airport operations.
18. Any proposed external lights shall be designed so as to not interfere with any adjacent uses.

19. Prior to any airport operations on the subject property, Applicant shall apply for and receive required ODAV or FAA licenses or approvals for such operations.
20. Connection to either the HDSE or Columbia Helicopters wastewater systems, while approved by this decision, is not authorized until such properties and uses obtain final land use approvals that permit those facilities to serve other parcels such as the subject property. If either HDSE or Columbia Helicopters obtain the necessary land use approvals, the subject property is authorized by this decision to connect to the wastewater system without the need to obtain additional land use approvals to allow such connection.