

## Zone Change/Comprehensive Plan Change/Conditional Use 19-002

Comments for Hearings Officer hearing March 27, 2019

### **Introduction**

Thanks to the county staff, the hearings officer and the applicant's team for their proposal to expand the Southend Airpark at the Aurora Airport. The proposed development will be a terrific benefit to the community. As described in the applicant's narrative, the proposed office and aviation development is an urban land use that is not allowed in the current EFU zone. Because this application for an urban use does not satisfy the criteria for development on rural land, it can only be approved with goal exceptions or upon annexation into the City of Aurora. The application proposes two goal exceptions, and unfortunately the information provided by the applicant and in the staff report is unable to satisfy the rigorous criteria for conversion of high-value farm land to an urban use that is outside of an urban growth boundary. Therefore, the City of Aurora continues to extend its open invitation to the applicant and other airport stakeholders to pursue annexation in order to obtain the entitlements necessary for the project.

In the interim, the application deficiencies fall within three basic categories: traffic, on-site wastewater disposal, and unauthorized uses of the land. This memorandum is limited to traffic, and the other issues will be addressed in future submittals.

### **MCZC 171.060(J)**

For the proposed conditional use approval, the application must satisfy MCZC 17.171.060(J), Traffic Analysis. The application does not satisfy this criterion because it is inconsistent with the identified function of Airport Rd, and inconsistent with the capacity and level of service of several nearby intersections. Subsection (J) states:

Demonstrate that the development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site. A transportation impact analysis, approved by the Marion County department of public works, may be required prior to building permit approval.

More specifically, the applicant's traffic study undercounts the passenger vehicle trip generation. The traffic study deducts 631 average daily passenger trips based on the

former seasonal use of the property by the prior owner, the Beyond the Reef Theological Center. This deduction lacks an adequate factual base, for several reasons. First, because both the retreat center and the Missionary Memorial Church religious uses ceased more than one year ago, the nonconforming use status is lost and the property is subject to all the current regulations in Title 17. MCZC 171.114.050. Following cessation of the religious uses, the property is now in forest use as demonstrated by the recent timber harvest, and subject to all regulations of the EFU zone, including state and county regulations that impose traffic analysis requirements for a rezone that are based on the allowed uses in the EFU zone and not based on an expired nonconforming use.

Several documents confirm this. The retreat cabins have not been occupied or maintained in many decades, as shown in attached photos. The property was sold to the current owner, an aviation business, in June of 2015, as shown by the assessor records.

Finally, the retreat center's own web page and social media postings recap the proud history of their religious mission, the two elements of that mission on the site, and the transfer of their activities to Hawaii. Their Facebook page includes many photos of a religious service in July, 2017 at the Missionary Memorial Church, without any photos or other information to indicate the retreat cabins were utilized. Most importantly, the web page clarifies that the retreat center use terminated in 1988, and since then, the "main mission" has been the Missionary Memorial Church.

In 1977, Reverend Bush established Beyond the Reef Theological Center/Missionary Memorial Church in Aurora, Oregon by purchasing a 17 acre Methodist Church Camp. After remodeling the buildings, Beyond the Reef trained over 75 Micronesian and South Pacific island pastors from 1981-1988, while reaching out to multiple islands along the way.

From 1989-2017 Beyond the Reef responded to God raising up the people of Chuuk in the Northwest as its main mission. Missionary Memorial Church became the focal point of the ministry...

As of 2017, Beyond the Reef is now established on the island of Oahu, Hawaii...

<https://beyondthereefministry.com/about>.

In summary, the property has not been operated as a retreat center on a regular basis since at least 1989. The small scale Missionary Memorial Church use ceased in August, 2017, more than one year before the current application was submitted. Therefore all nonconforming use rights are lost, and there is no basis for a reduction in the trip generation as calculated by the applicant's traffic report.

An additional flaw in the assumption is the scale of the religious use, which the applicant's traffic report indicates is 100,000 square feet. There is no information the traffic report to support the assertion that the buildings comprise 100,000 square feet. There is, however, substantial contrary information readily available from reliable sources. The county assessor data lists the square footage of all structures on the site, and those total to 21,251 square feet. County assessor staff are renowned for measuring buildings carefully and their data on the square footage is substantial information that a reasonable decision maker would rely on. Aerial photos taken since the timber harvest reveal clearly all the site structures, and there is no information on those photos or from any other source to support the assumed 100,000 square foot size of the former religious use reported in the applicant's traffic study. Even assuming the 21,251 square feet of buildings were occupied daily, the applicant's traffic report overstates trip generation for the former religious use by approximately 370%.

Because the religious use ceased more than one year before the application was submitted, all nonconforming use rights, including the right to deduct allegedly current trip generation, were lost, and as a result the applicant's traffic study underestimates the trip generation. The deduction for 631 trips lacks an adequate factual base, is contrary to the information in the county assessor records, and site conditions as shown in recent ground level and aerial photographs. The applicant's traffic report is not objective because it does not include all relevant and pertinent information regarding the scale and termination of the former religious uses, and therefore the report is not based on an adequate knowledge of the facts.

The applicant's traffic report states the net increase in trip generation is 961 daily trips, when 1592 would be more accurate; a difference of 65%. Thus the report does not accurately evaluate the affected transportation facilities and the function, capacity or level of service for the surrounding roads and state highways. The intersection analyses must be repeated using at least 1592 daily trips.

In the county's Appendix B Marion County Rural Road Inventory, the 1.53 mile segment of Airport Rd from the Aurora city limits to Arndt Rd is identified as Road 59. In 2011, this segment had a volume of 2800 daily trips. (See also Figure 5-5c, Average Daily Traffic Volume, from Chapter 5 Urban Strategy, 2012, in the 2013 Rural Transportation System Plan Update.) Assuming the customary 2% annual increase in background traffic (the same assumption utilized in the applicant's traffic report) there are an estimated 3280 daily trips in 2019. Therefore the addition of 1592 trips represents a 48% increase in daily trips on Airport Rd.

The applicant's traffic report uses the ITE Land Use Code 150 for Warehousing without any explanation for why Land Use Code 022 General Aviation is not used. It also does not account for other uses allowed by the proposed rezone to Public that generate more trips than the uses proposed in this application, commonly known as the reasonable worst case scenario. This undercounting of the potential trip generation results in noncompliance with MCZC 17.171.060(J), Traffic Analysis.

Finally, the applicant's traffic report does not account for truck trips. Clearly the scale of the development requires many truck trips, including tanker trucks for pumping of the proposed sewage holding tanks and delivery of aviation fuel to the proposed FBO. The applicant's traffic report utilizes the ITE Land Use Code 150, Warehousing, and therefore contemplates substantial truck traffic. This omission is contrary to the county's TIA requirements 10, 11, 13 and 17 for the following reasons. Requirement 10 states:

10) Complete trip generation figures for all aspects of the proposed development, including number of trips by vehicle type and size, and time-of-day and entering/exiting percentages. These figures shall include trip generation figures for any other proposed developments on the subject property, and/or any proposed developments that would share access with the subject property. For developments expected to generate a significant amount of truck traffic (more than 30 trucks per day), include separate figures for trucks. Document the sources of this trip generation data. If the source is other than ITE's Trip Generation, the preparer must obtain approval of the use of such data from County staff before using it in the TIA.

The applicant's traffic report does not account for any vehicle types other than passenger vehicles, which is necessary due to the inherently different characteristics of truck traffic; that is, they are both substantially larger and accelerate much more slowly than passenger vehicles. The tanker trucks carrying fuel and sanitary wastewater are especially slow. There are no provisions for these characteristics, such as turning lanes to accommodate them.

Second, this property will share access with the larger Southend Airpark properties. The application notes the new development will serve as a FBO; that is, a fixed base operator. That use is defined by Wikipedia as:

A fixed-base operator (FBO) is an organization granted the right by an airport to operate at the airport and provide aeronautical services such as fueling, hangaring, tie-down and parking, aircraft rental, aircraft maintenance, flight instruction, and similar services. In common practice, an FBO is the primary provider of support services to general aviation operators at a public-use airport and is located either on airport leasehold property or, in rare cases, adjacent to airport leasehold property as a "through the fence operation". (Footnotes and emphasis omitted.)

[https://en.wikipedia.org/wiki/Fixed-base\\_operator](https://en.wikipedia.org/wiki/Fixed-base_operator)

This means that trucks and other vehicles originating from the existing airport will share the access to Airport Rd and to Keil Road, as they move back and forth to the subject property for the goods and services provided by the proposed fixed base operator. The site plan clearly shows the reciprocal access to the applicant's other large land holdings on tax lots 01700, 30000, 70000 (commonly known as Yellow Gate Lane) and 90000. By not accounting for the truck traffic or the traffic from the existing Southend Airpark and other development that will use the proposed FBO goods and services, requirement 10 is not satisfied.

Requirement 11 is to include "[t]rip generation figures for any pending and approved developments that would affect the study area. County staff will facilitate procurement of applicable data in these cases." Pending developments include the proposed new hangars on tax lot 1700, among others. The applicant's traffic report omits mention of this pending building permit, or any other pending developments that will add additional trips to the affected facilities.

Number 13 requires “[t]rip distribution for the proposed development. For developments expected to generate more than 30 truck trips per day, include separate trip distribution figures for trucks.” Trip distribution for trucks is not discussed and as noted above, the large size and slow acceleration of trucks significantly affect intersection operations. Thus the distribution of those truck trips and their access points are especially important. The lack of any data on this point means the traffic study lacks an adequate factual base.

Number 17 presents a similar requirement; “...[f]or developments expected to generate a significant percentage of truck traffic, demonstrate how the analysis adequately accounts for the presence of these trucks in the traffic flow.” The analysis of 158,000 square feet of warehouse without any evaluation of how trucks affect the flow of traffic on the transportation network is another omission that demonstrates the applicant’s traffic report lacks an adequate factual base.

The failure to satisfy county requirements by undercounting vehicle trips overall, and failing to account for any truck traffic, means that a new traffic report is required. The addition of another 631 daily vehicle trips and truck trips to the analysis will surely demonstrate more significant effects on surrounding roads and intersections than described in the current traffic study. This will require reconsideration of the county’s TIA requirements 26 and 27 regarding analysis of significantly affected facilities and mitigation thereof.

The memorandum of March 6, 2019 provided by Marion County Public Works is deficient in these areas because it is based on an incorrect assumption regarding a deduction for an expired nonconforming use. The county memo made no effort to examine the incorrect trip generation assumption and therefore lacks an adequate factual base. We note the memo is not stamped by a licensed engineer; and the county apparently made no effort to verify the false assumptions underlying the trip generation deduction.

In the section of the county’s Traffic Impact Analysis Requirements titled Additional Study Requirements, the county notes:

County staff may require additional study beyond the scope of the original TIA, especially in cases where additional transportation system concerns arise either as part of the traffic analysis process, as part of the approval process, or from the general public.

The county's Methodologies and Analysis Parameter J requires that "[t]he conclusions presented in the TIA shall be consistent with and supported by the data, calculations, and analysis in the report. Inconsistent and/or unsupported conclusions will not be accepted, and may lead to the TIA being returned to the applicant's representative for correction." Based on the information provided in this memorandum, the county must implement this provision and compel a new study without a trip generation deduction for the expired nonconforming use, with truck traffic, with traffic from pending developments, and with traffic origination from the adjacent properties that will share access. Parameter K requires that "if any portion of the study area falls within another jurisdiction (such as a state highway or a city), consult that jurisdiction to determine the number of additional copies that they will need for their review." The applicant's traffic engineer has not consulted with the City of Aurora and must be required to do so.

The traffic analysis criterion MCZC 17.171.060(J) is not satisfied.

## **Transportation Planning Rule**

Because the application includes comprehensive plan map and text changes, and zoning map changes, it must satisfy the Transportation Planning Rule, OAR 660-012-0060. Among the many purposes of transportation planning, “[c]oordinating land use and transportation planning will also complement efforts...protecting farm and forest land.” OAR 660-012-0000(3). The application does not satisfy several subsections of the rule, as follows.

The first subsection of the TPR (OAR 660-012-0060(1)) requires that:

(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 first step is to determine whether the zone change will “significantly affect an existing or planned transportation facility.” This requires analysis of the most traffic intensive use in the new Public zone, as compared to the most traffic intensive use of the current EFU zone. This analysis is commonly known as the reasonable worst case scenario. The applicant’s traffic report performs no such analysis, and neither do the county memoranda provided to date. Absent such analysis, the TPR is not satisfied.

The applicant’s traffic report does not study the reasonable worst case scenario for several reasons. It deducts 631 daily trips based on an assumed 100,000 square feet of church buildings, which vastly exceeds the actual square footage of existing buildings on the site. Most of the buildings from the former Beyond the Reef religious retreat center use have been abandoned for many decades, and all have been abandoned for more than one year, and thus no longer have nonconforming use status. MCZC 171.114.050. This inflated trip deduction for a purported existing use is inconsistent with both the county’s TIA requirement and ODOT requirements. The traffic study wrongly uses the ITE Land Use Code 150 for Warehousing when the code 022 for General Aviation should be used; and it does not account for other uses allowed in the Public zone that generate more trips than the uses proposed in this application. This undercounting of the potential trip generation means the reasonable worst case scenario has not been analyzed and therefore the TPR is not satisfied.

Subsection (1)(c)(A) applies because this application for expanding the urban uses at the Aurora airport is not consistent with the functional classification of Airport Rd as a rural major collector with daily trips of 1000 or less, as per county TSP Table 8.2. Therefore Airport Rd must be reclassified to reflect its actual function as an urban collector, along the east frontage of the airport and its urban land uses. The lack of shoulders, the lack of stormwater detention or treatment, the lack of sidewalks and bicycle facilities and lighting demonstrate that Airport Rd lacks capacity for the various transportation modes that are customarily provided for large scale urban uses.

The trip generation of the proposed urban use, in combination with adjacent urban uses at the airport, is not consistent with the levels of travel or access planned for Airport Rd given its current functional classification as a rural major collector. Because the application is not consistent with the functional classification of Airport Rd, that classification must be upgraded and appropriate urban facilities provided.

The trip generation will also degrade the performance of the intersections of several county roads and state highways 551 and 99E which already do not meet the performance standards identified in the city and county TSPs. See OAR 660-012-0060(1)(c)(C) and the Intersection Operations summary on page 2 of the applicant's traffic study. The project will add at least 631 more daily trips than were estimated in the applicant's traffic report, causing further degradation of these intersections.

Subsection (1) of the TPR is not satisfied.

Subsection (2) requires that:

If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule.

The applicant concedes there is a significant effect, even though it vastly underestimates that effect. The county has not examined the reasonable worst case scenario, which is a high school; nor does it consider other educational organizations, such as Aurora Career Technical Education. Nor has the county considered limiting the land use on the site. In other words, none of the options listed in subsections (a) through (e) have been proposed to limit the allowed land uses to be consistent with the limited capacity of this rural collector and surrounding intersections. Those options remain available for consideration, and will not be reviewed in this memo because for the time being they are not being considered.

Subsection (2) of the TPR is not satisfied.

Subsection (3) allows projects to be approved even without satisfying subsections (1) and (2) when other benefits to the transportation system are provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

Subsection (a) applies because regardless of this project, area intersections exceed performance standards identified in the relevant TSPs. The application does not meet the requirements of subsection (b) because there is no information to support an

assertion that further degradation will not occur. Again, the reasonable worst case scenario of the property being developed for a school; or other educational organization such as Aurora Career Technical Education has not been considered. The applicant's traffic report and the county's acceptance thereof deduct assumed existing trips based on a long abandoned former religious use that operated on a much smaller scale than assumed in those reports, so those reports lack an adequate factual base because the assessor's records, the religious group's own records, and the site and aerial photographs all demonstrate there has never been 100,000 square feet of church buildings that operate year round consistent with ITE Land Use Code 560. Until correct trip generation figures are provided, there is no substantial information to support a finding that the no further degradation standard is satisfied.

Subsection (c) does not apply because this site is not in an interchange area. A report from ODOT on subsection (d) is not available at this writing, and is necessary to demonstrate compliance with the TPR. With or without a report from ODOT, subsections (a) and (b) are not satisfied.

Subsection (3) of the TPR is not satisfied.

Subsection (4) explains what planned but unbuilt transportation facilities may be relied on when performing the analyses required by subsections (1) through (3); however even with the benefit of future capacity upgrades that are planned, the application still does not satisfy subsections (1) through (3). The subsection includes several requirements.

(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

The first requirement is coordination with other affected local governments. The City of Aurora is an affected local government as a substantial percentage of trips pass through the city. The applicant's traffic study was not coordinated with the city, and the county's memo of March 6, 2019, correctly notes this deficiency. The

coordination requirement is not satisfied, and the City of Aurora is prejudiced by this omission because it has not had sufficient opportunity to analyze the effect of the proposed zone change and plan amendment on its transportation facilities.

The application does not satisfy subsection (b) because it does not explain the funding plans or mechanisms for the proposed improvements to the intersections of Airport Rd and Arndt Rd, Airport Rd and Ehlen Rd, and Arndt Rd and Highway 551. The applicant's traffic report did not analyze the intersection of Ehlen Rd and Highway 99E, which will be further degraded by the application, nor does it describe a funding plan for capacity upgrades for that intersection. As of this writing, there are not statements from ODOT, Clackamas County or the City of Aurora that improvements to facilities in their jurisdictions are likely to be funded by the end of the planning period as required by subsections (b)(D) and (E). Subsection (e) clarifies that without these statements, the county "can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)–(C) to determine whether there is a significant effect that requires application of the remedies in section (2)."

Subsection 4 is not satisfied.

In conclusion, the rural transportation facilities that surround the site are insufficient to support the proposed expansion of urban development at the Aurora Airport. The applicant and the county freely acknowledge the urban uses both existing and proposed, yet insist that substandard rural transportation facilities are sufficient. Fortunately the TPR anticipates this situation, and assures that the development cannot be approved in the absence of numerous upgrades. Until accurate trip generation estimates are provided, the extent of the significant effects on state and local transportation facilities is unknown.

The TPR is not satisfied.