Marion County
OREGON

CONDITIONAL USE APPLICATION

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Planning

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Fee: Please check the appropriate box:

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

PROPERTY OWNER(S): TLM Holdings, LLC	ADDRESS, CITY, STATE, AND ZIP: [redacted]
PROPERTY OWNER(S) (if more than one):	ADDRESS, CITY, STATE, AND ZIP
APPLICANT REPRESENTATIVE: Wendie Kellington, Kellington Law Group OC	ADDRESS, CITY, STATE, ZIP [redacted]
DAYTIME PHONE (if staff has questions about this application): [redacted]	E-MAIL (if any): [redacted]
ADDRESS OF SUBJECT PROPERTY: [redacted]	SIZE OF SUBJECT PROPERTY: 16.54 +/- Acres

THE PROPERTY OWNERS OF THE SUBJECT PROPERTY REQUEST TO (summarize here; explain in detail on the "Applicant's Statement"): Request to expand the Aurora Airport boundary and to approve airport uses and development per OAR 660.012.065(3)(N) and MCC 17.136.050(J)(4).

FOR OFFICE USE ONLY:

Township 4S	Range 1W	Section 2D	Application elements submitted:
Tax lot number(s) 800, 900			☒ Title transfer instrument
Zone: EFU			☒ Site plan
Zone map number: 3			☒ Applicant statement
☐ TPA/header			☒ Filing Fee
Case Number: CU/CP 24-038			☐ GeoHazard Peer Review (if applicable)
☐ Urban ☒ Rural			☐ Physician's Certificate (if applicable)
Signs given:			☐ Home Occupation Supplemental (if applicable)
			☐ Agri-Tourism Supplemental (if applicable)
Date determined complete:			Application accepted by: JBS 9/18/24
			Date: JBS 9/19/24

IF THIS IS FOR A CONDITIONAL USE HARDSHIP: Not Applicable WILL THE TEMPORARY DWELLING BE ( ) MANUFACTURED HOME OR ( ) RV? Check one.
IF USING AN RV, DO YOU INTEND TO: ( ) CONNECT TO THE EXISTING SEPTIC SYSTEM OR ( ) USE THE RV HOLDING TANK? Check one.
NAME OF PERSON(S) WITH MEDICAL HARDSHIP:
HE/SHE/THEY WILL RESIDE IN: ( ) PRIMARY DWELLING OR ( ) TEMPORARY DWELLING
NAME OF CAREGIVER:
HE/SHE WILL RESIDE IN: ( ) PRIMARY DWELLING OR ( ) TEMPORARY DWELLING
RELATIONSHIP OF CAREGIVER TO PERSON(S) WITH MEDICAL HARDSHIP:
WHAT TYPE OF ASSISTANCE WILL CAREGIVER PROVIDE: _____ _____
IF THERE ARE OTHER ADULTS THAT RESIDE OR WILL RESIDE IN THE DWELLING WTH THE PERSON(S) NEEDING CARE, PLEASE EXPLAIN WHY HE/SHE CANNOT BE THE CAREGIVER: _____ _____

THE APPLICANT(S) SHALL CERTIFY THAT:

A. If the application is granted the applicant(s) will exercise the rights granted in accordance with the terms and subject to all the conditions and limitations of the approval.

B. I/We hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that all the above information and statements and the statements in the plot plan, attachments and exhibits transmitted herewith are true; and the applicants so acknowledge that any permit issued on the basis of this application may be revoked if it is found that any such statements are false.

C. I/We hereby grant permission for and consent to Marion County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.

D. The applicants have read the entire contents of the application, including the policies and criteria, and understand the requirements for approving or denying the application.

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

[redacted]

Ted Millar

Print Name	Signature	Print Name	Signature
Print Name	Signature	Print Name	Signature

DATED this 10 day of September, 2024

Conditional Use Application - Expand Airport Boundary

Final Audit Report 2024-09-10

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"Conditional Use Application - Expand Airport Boundary" History

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CONDITIONAL USE APPLICATION AND AIRPORT BOUNDARY PLAN MAP AMENDMENT TO EXPAND THE KUAO AIRPORT BOUNDARY TO ALLOW AIRPORT USES ON EFU (EXCLUSIVE FARM USE) ZONED PROPERTY

APPLICATION NARRATIVE
September 18, 2024

I. APPLICATION INFORMATION

Applicant/Owner:
TLM Holdings, LLC
[redacted]

Applicant's Representative:
Wendie Kellington
Kellington Law Group, P.C.
[redacted]

Subject Property Address:
22515 Airport Road NE
Aurora, OR 97002

Legal Description:
TRS Map 04 1W 02D
TL 800/900

Present Zoning:
EFU

Proposal:
Expand the Airport Boundary for the Aurora State Airport and Allow Airport Uses

Application Requirements:
Conditional Use Permit
- MCC 17.136.060 Conditional Use Review Criteria (EFU zone)
- MCC 17.119 Conditional Uses (Procedures)

Compliance with AO zone requirements
- MCC Chapter 17.177 Airport Overlay Zone

Comprehensive Plan Amendment for Airport Boundary Map Adoption
- Statewide Planning Goals
- Comprehensive Plan Policies

OAR Chapter 660 division 13 Airport Planning Rule
OAR 660-012-0065(3)(n)

II. INTRODUCTION

Summary of Proposal

TLM Holdings, LLC ("Applicant") proposes to expand the airport boundary for the Aurora State Airport ("KUAO") to include the subject property and to allow airport uses, as identified at ORS 835.616(2) and OAR 660-013-0100, to be developed within that expanded airport boundary. The proposed airport boundary is shown on Exhibit 1A. The attached site plan, Exhibit 1,[1] shows the proposal's layout of airport uses, facilities and services directed at electric-powered aircraft, both electric vertical take-off and landing ("eVTOL") aircraft (a type of rotorcraft) and electric-powered fixed-wing aircraft, as well as traditional gas-powered rotorcraft (helicopters) and gas-powered fixed-wing aircraft. Following approval by the County and other ODAV processes, the proposed uses and facilities will operate as a through-the-fence ("TTF") operation at the Aurora State Airport. ORS 836.640(5)(b) and ORS 836.642.

Summary of Applications

This consolidated application consists of a conditional use permit for the airport boundary expansion and airport uses, a comprehensive plan amendment to amend the airport boundary map for the Aurora State Airport and to otherwise comply with the requirements of the Airport Planning Rule. Under applicable state statutes, administrative rules and the Marion County Code ("MCC"), the Applicant is not required to take an exception to Goals 3, 4, 11 or 14 to allow the airport boundary to be expanded to include the subject property or to authorize airport uses on the subject property within the airport boundary. *See* OAR 660-012-0065(3)(n).

MCC 17.136.050(J)(4) allows as a conditional use on land zoned exclusive farm use (EFU):

> "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."

MCC 17.136.050(j)(4) implements ORS 215.283(3), which provides:

[1] Exhibit 1B is a table showing the sizes of the proposed buildings and the required number of parking spaces for each of the buildings.

"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."

An expansion of an airport boundary and permitted airport uses are an "other transportation facilities and improvements" not otherwise allowed under the Statute or MCC.

The administrative rules referenced by the above code provision and Statute provide, at 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:

"* * * *

"(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplane[.]"

Because the proposed expansion and alterations to the airport do not permit service to a larger class of airplane but rather will accommodate aircraft that use the airport,[2] the proposal can be approved as a conditional use without taking an exception to Goals 3, 4, 11 and 14 because the administrative rule provides such expansions and alterations comply with the requirements of those goals. The proposal must, however, demonstrate compliance with ORS 215.296, the farm impacts test.

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[2] The Oregon Court of Appeals in *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 345, *aff'd on recon*, 313 Or App 725 (2021) (Exhibit 4) interpreted OAR 660-012-0065(3)(n) and held:

"Thus, an "expansion[ ] or alteration[ ] of a public use airport that do[es] not permit service to a larger class of airplane" is an expansion or alteration that does not authorize the airport, by increasing design standards or otherwise, to serve a group of fixed-wing aircraft with a greater variety of approach speeds, a greater variety of MTOWs, or a greater variety of wingspans or tail heights."

Note that the term "expansions" means expanded pursuant to OAR Chapter 660, division 13 by a local government adopting a map showing an airport boundary that includes a larger area than the boundary shown on the previously adopted map of the airport. *See, Schaefer v. Marion County*, 318 Or App 617, 619-20, 509 P3d 718 (2022) (Exhibit 3) (interpreting OAR 660-012-0065(3)(n)). The term "alterations" as used in the rule means changes or modifications to the development and uses permitted within an airport boundary, whether they are uses and development within an existing airport boundary or those allowed within an expanded airport boundary. Consequently, OAR 660-012-0065(3)(n)'s "consistent with Goals 3, 4, 11, and 14" provision applies both to the expanded airport boundary and to the airport uses and related development permitted within that airport boundary.

As demonstrated below, the proposal does not require an exception to any Statewide Planning Goals.

Within the expanded airport boundary, the Applicant requests authorization only for "airport uses" as they are expressly defined by statute and administrative rule. *See*, ORS 836.616(2) and OAR 660-013-0100. As discussed above, these proposed airport uses represent "alterations" of the public use Aurora State Airport and, pursuant to OAR 660-012-0065(3)(n) are considered consistent with Goals 3, 4, 11 and 14. These uses, and their related development, are permitted on EFU zoned land because ORS 826.625(1) provides:

> "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."

ORS 836.616(2) and OAR 660-013-0100 provides a list of airport uses and activities that "shall" be authorized within airport boundaries. Once a property is within an airport boundary, those listed uses must be allowed by the County. As discussed in detail below, each of the proposed airport uses and supporting development fall into one or more of the airport uses identified by the statute and rule. By comparison, ORS 836.616(3) and OAR 660-013-0110 address uses that "may" be allowed by the County within an airport boundary. None of the uses proposed in this application fall into the list of ORS 836.616(3) or OAR 660-013-0110 uses.

As part of the conditional use application, Applicant will demonstrate compliance with the AO airport overlay zone standards because the property is within an existing AO overlay zone area.

A comprehensive plan map amendment is also submitted because the County must adopt a map showing the location of the new airport boundary for the Aurora State Airport as part of the comprehensive plan and to otherwise comply with the aviation facility planning requirements set forth by OAR 660-013-0040. The proposed

expanded airport boundary is consistent with the airport planning for the Aurora State Airport over the past 50 years.

Subject Property and Airport Planning Background

The subject property has previously been used as a retreat facility for well more than 40 years, first as a Methodist Church Camp and then as the Beyond the Reef Theological Center. While the subject property is zoned exclusive farm use (EFU), the property has not been in resource use since before the retreat facility use began.

Ever since the County's adoption of the first Aurora State Airport Master Plan ("AMP") in 1976, which includes the 1976 Airport Layout Plan ("ALP") as part of the acknowledged Marion County Comprehensive Plan (as an element of the Transportation System Plan), the subject property has been designated for development with aviation uses under the caption: "THIS AREA ACCEPTABLE FOR AIRPORT RELATED DEVELOPMENT UNDER PRIVATE OWNERSHIP." *See*, e.g., Exhibit 5, (which is the 1976 Aurora Airport Master Plan Airport Layout Plan or "ALP"); *see also*, Exhibit 6, p 40, 1976 Aurora State Airport Master Plan.

Since the mid-1970's, development of the area west of Airport Road has occurred consistent with the acknowledged 1976 AMP and ALP. Presently, the subject property is the only undeveloped property envisioned for aviation related uses in the County Plan, among those shown on the 1976 ALP. The subject property is vacant. Recent Oregon Department of Aviation ("ODAV") efforts to update the Aurora State Airport Master Plan have shown the subject property to be the only undeveloped property identified as being part of the Southern TTF Area. *See*, Exhibit 7, Aurora State Airport Draft Airport Master Plan (November 2023 (Updated)) ("Draft AMP"), Figure 2-16.[3] The Oregon Court of Appeals described the present airport boundary, depicted in the 1976 ALP as "the ultimate airport property," as including state-owned airport property and some privately owned property developed for airport-related uses, now zoned "P". *Schaefer v. Marion County*, 318 Or App 617, 620-21 (2022) (Exhibit 3). That airport boundary abuts the north and west property lines of the subject property.

Following the closure of the retreat facility, the property owner/Applicant, sought to put the Subject Property to productive aeronautical use consistent with the designation for it in the adopted and acknowledged 1976 Aurora State Airport Master Plan. A proposal to locate aviation-related uses on the subject property was submitted in 2019. The 2019 application, among other things, requested a plan

[3] The Aurora State Airport Draft Master Plan is a work in progress. Exhibit 7 is Chapters 1 through 3 of the Draft AMP. Exhibit 8 is Chapter 4 of the Aurora State Airport Draft Master Plan, Exhibit 9 is the Preliminary Alternatives Summary from the Draft Master Plan planning process, and Exhibit 10 is the Slide Deck from the July 30, 2024 working session for the Aurora State Airport Master Plan Project Planning Advisory Committee.

designation change from Primary Agriculture to Public and Semi-Public and a zone change from EFU to Public (P) and requested authorization to develop airport and airport-related commercial and industrial uses on the property. The County approved that application, but opponent appeals of that decision bounced back and forth at LUBA and the Court of Appeals. *See*, e.g., Exhibits 3, 11, 11, 12, 13, 14 (LUBA and Court of Appeals decisions). Ultimately, the Oregon Court of Appeals decided that approval of that proposed use required expansion of the Aurora State Airport boundary, which had not been requested or approved, and the County's approval of that use was reversed by LUBA because the Applicant had not applied for an expansion of the airport boundary.

This application seeks expansion of the Aurora State Airport boundary to allow only airport uses on the property and is consistent with all court and LUBA decisions concerning the Aurora State Airport.

Applicable Standards

Several Marion County Code ("MCC") standards apply to this application. As discussed above, the proposed airport expansion uses are an allowed conditional use on EFU land. MCC 17.136.050(J)(4)[4] authorizes, as a conditional use on EFU land, other transportation facilities and improvements not otherwise allowed on EFU land under certain circumstances. OAR 660-012-0065(3)(n) allows expansions of airport uses that do not permit a larger class of airplane as is the case with this proposal, to be approved as consistent with Goals 3, 4, 11 and 14 without taking a goal exception. Consequently, Applicant is submitting this Conditional Use Permit application subject to the criteria set forth under MCC 17.136.060 and the procedures set forth under MCC 17.119 to expand the airport boundary and to allow airport uses on the property. Because OAR 660-012-0065(3)(n) applies to expansions of public use airports, Applicant is not requesting an exception to Goals 3, 4, 11 and 14 because the rule states the uses are consistent with those Goals.

Also, because the subject property is within the Airport Overlay (AO) zone, the applicable MCC Chapter 17.177 AO standards are addressed as part of the conditional use application.

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[4] To reiterate, MCC 17.136.050 provides, in relevant part,

> "The following uses may be permitted in an EFU zone subject to obtaining a conditional use permit and satisfying the criteria in MCC 17.136.060(A), and any additional criteria, requirements, and standards specified for the use:
> * * * *
> "J. The following transportation uses:
> * * * *
> "4. Roads, highways, and other transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12."

Finally, because OAR Chapter 660, division 13, the Airport Planning Rule, requires that a map showing the airport boundary expansion be adopted and, among other things, incorporated into the comprehensive plan, Applicant is also applying for a Comprehensive Plan Amendment that will adopt the updated Aurora Airport Boundary into the County's Comprehensive Plan. This application will require that the County's decision adopt findings of compliance with Comprehensive Plan Policies, any applicable Statewide Planning Goals and the Airport Planning Rule. The proposal does not seek to change the plan designation or the zoning for the subject property. This is because the proposed use is an allowed conditional use under the subject property's current EFU zoning.

Ultimately, implementation of the proposed airport boundary expansion and airport uses requires approvals from several different bodies. The focus here is on the required land use approval from the County, which will also issue building permit approvals. Applicant will also need to obtain various other approvals from ODAV, the Federal Aviation Administration ("FAA"), and the Oregon Department of Environmental Quality ("DEQ") prior to any construction or operations. Consequently, the findings below address each how the proposal complies with each of the relevant land use standards and also demonstrate that it is feasible to obtain all necessary ODAV, FAA and DEQ permits. Furthermore, the findings below recommend conditions of approval to ensure the required permits are obtained before the proposed uses are developed and becomes operational.

Proposed Airport Uses Within the Airport Boundary

Each of the proposed uses and related development fall within the list of airport uses permitted at the Aurora State Airport, considered under the relevant laws to be a "non-towered airport",[5] which local governments are required to allow within the airport boundary. ORS 836.616(2); OAR 660-013-0100. *See also*, ORS 836.616(3) and OAR 660-013-0110 (listing other uses within an airport boundary that a local government "may" authorize if consistent with applicable regulations).

ORS 836.616(2) provides:

> "Within airport boundaries established pursuant to commission rules, local government land use regulations shall authorize the following uses and activities:

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[5] OAR 660-013-0030 provides "(4)'Non-Towered Airport' means an airport without an existing or approved control tower on June 5, 1995." *See also*, ORS 836.616(4) (provisions of ORS 836.616(1) - (3) do not apply to airports with an existing or approved control tower on June 5, 1995). While the Aurora State Airport currently has an air traffic control tower ("ACTC"), the ACTC was constructed in 2015. Consequently, for statutory and administrative rule purposes, the Aurora State Airport is a non-towered airport. *See also, Schaefer*, 318 Or App at 625 n 8 (concluding, "For purposes of the rule, the Aurora State Airport is a non-towered airport.").

(a) Customary and usual aviation-related activities including but not limited to takeoffs, landings, aircraft hangars, tie-downs, construction and maintenance of airport facilities, fixed-base operator facilities and other activities incidental to the normal operation of an airport;
(b) Emergency medical flight services;
(c) Law enforcement and firefighting activities;
(d) Flight instruction;
(e) Aircraft service, maintenance and training;
(f) Crop dusting and other agricultural activities;
(g) Air passenger and air freight services at levels consistent with the classification and needs identified in the State Aviation System Plan;
(h) Aircraft rental;
(i) Aircraft sales and sale of aviation equipment and supplies; and
(j) Aviation recreational and sporting activities."

OAR 660-013-0100 reiterates the above list, expanding on what each use means, what types are excluded from the identified uses, and the development that is authorized for the identified uses. *See*, Exhibit 15 (OAR Chapter 660, division 13). The administrative rule also adds an additional permitted use. OAR 660-013-0100(10) authorizes:

> "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."

The Applicant proposes to develop within the expanded airport boundary only airport uses as defined by the above statute and administrative rule. As shown in the site plan (Exhibit 1), and discussed herein, the proposal is to develop: landing pads for rotorcraft takeoffs and landings, rotorcraft, fixed-wing airplane tiedown areas, electric charging stations,[6] fueling facilities, hangars for rotorcraft and fixed-wing aircraft, maintenance and repair facilities for those aircraft, operations areas that include sleeping bunks, meal preparation and rest areas for shift-work pilots, and small offices to manage the aeronautical operations on the property. The application also requests approval of accessory support facilities to handle electrical peak-load periods and power supply during natural disasters and other emergency situations as well as accessory facilities such as water, stormwater, and wastewater facilities. Despite demonstrating that the proposal can develop an on-site wastewater system, Applicant is also requesting that the County approve connecting to the

[6] Charging stations are necessary for electric rotorcraft and electric aircraft, and for surface vehicles that provide transportation to the subject property. Under DEQ's rules – OAR 340-257-0030 - by 2035, all new passenger cars, SUVs, and light-duty pickup trucks must either be battery electric or plug-in hybrid electric vehicles. Therefore, having charging facilities for the steady uptake of electric terrestrial vehicles leading to that transition, is essential.

existing HDSE sewer system or the Columbia Helicopters drain field should either of those systems be approved for such connection through a separate land use approval.

The types of uses that will take place on the subject property include the movement of people and goods, either directly from the subject property or via taxi lanes to the KUAO runway for such things as firefighting and utility facility repair operations (serving, for example, the needs of Columbia Helicopters), emergency medical evacuation (Medevac) flights (serving, for example, Life Flight Network), medical transport (to include air ambulance and organ transport for transplants), business flights, and itinerant operations. The site will enable the charging and maintenance of eVTOL and electric-powered fixed-wing aircraft, to include itinerant aircraft. Approval of the applications will make Aurora State Airport one of the first (or the first) airports in the state capable of serving this new generation of electric aircraft and will make Marion County a leader in providing transportation facilities for renewable energy-based vehicles.

Each of the above uses, elaborated in more detail below, falls within one or more of the airport uses identified under ORS 836.616(2), which are identified following the description of the use:

- Use of the site for all types of rotorcraft and fixed-wing aircraft to include, but not limited to: emergency medical, firefighting and natural disaster response operations; support to commercial natural resource sector and oil industries, and forest and stream restoration efforts; forestry and agricultural related activities; aerial construction, infrastructure, repair and heavy lift operations; aerial transport of persons, aerial transport of goods to include shipping and receiving of parts and supplies for repair of aircraft and operational needs; electronic news gathering and motion pictures support; engineering and technical support services; rotorcraft and fixed-wing aircraft maintenance, overhaul and repair services; itinerant and facility-based rotorcraft and fixed-wing aircraft use; flight instruction; accessory uses such as fueling of rotorcraft and aircraft, storage of maintenance parts, and uses related to the development proposed below. ORS 836.616(2)(a), (b), (c), (d), (e), (f), (g), (j).

- Landing pads for rotorcraft to use for landing and taking off. While on the landing pad, people and goods are loaded onto or removed from the vehicle. ORS 836.616(2)(a).

- Taxi ways for fixed wing aircraft to move around the site and to access taxi ways to the Aurora State Airport runway. ORS 836.616(2)(a).

- Tiedown areas where rotorcraft and fixed wing aircraft can be temporarily "parked," ready for next use. ORS 836.616(2)(a).

- Hangar space where rotorcraft and fixed-wing aircraft can be temporarily parked in a covered, protected location, ready for next use. ORS 836.616(2)(a).

- Maintenance and repair facilities for rotorcraft and fixed-wing aircraft. ORS 836.616(2)(a), (e).

- Refueling and energy facilities to provide both aviation fuel for turbine or piston engine rotorcraft and electrical recharging stations for all-electric rotorcraft and fixed wing aircraft. This will include peaking/resilience systems for peak power load draws or disaster response such as large battery storage systems, and an on-site hydrogen storage tank, filled by truck deliveries, and a standby generator that can run on hydrogen fuel. Note, Applicant is not requesting approval for an energy generating facility to produce the hydrogen that will be stored and used on the site; rather hydrogen will be trucked to the site in the same way that petroleum is trucked to sites to provide petroleum-based vehicle fuels. ORS 836.616(2)(a).

- Electric charging stations for electric cars that transport people and goods to the facility. ORS 836.616(2)(a).

- Small offices to manage traffic and operations on the subject property. ORS 836.616(2)(a).

- Operations areas, sleeping bunks and break areas for shift-work rotorcraft pilots and for emergency operations. ORS 836.616(2)(a), (b), (c).

- Rotorcraft and fixed wing flight training. ORS 836.616(2)(d).

- Related accessory structures and incidental uses. ORS 836.616(2)(a).

- Related accessory uses include development of on-site water, wastewater and stormwater facilities, with authorization to connect to the HDSE wastewater system should that operator receive land use approval to serve additional parcels or to utilize the Columbia Helicopter drain field if a similar land use approval is obtained from the operator, as well as the extension to the subject property of existing and available electrical, gas, internet and telecommunications and other existing services necessary for the proposed use. ORS 836.616(2)(a).

The Applicant is not requesting authorization for any uses not listed as an airport use or identified under the administrative rule as not constituting an airport use such as commercial, industrial or manufacturing uses not provided by the rule, instruction for flight attendants or ticketing agents, or manufacturing of aircraft for sale to the public. *See*, e.g., OAR 660-013-0100(1), (4), (5) (identifying such uses as not airport uses under the statue and rule).

The decision should contain a condition of approval that limits uses permitted on the subject property within the expanded airport boundary to those airport uses permitted pursuant to ORS 836.616(2) and OAR 660-013-0100.

III. SUBJECT PROPERTY

The subject property is located at 22515 Airport Road NE in Aurora Oregon. The property is a single parcel that consists of two tax lots, identified on Marion County Assessor's Map as Tax Lots 800 and 900 on TRS map 04 1W 02D. Attached as Exhibit 16 is a copy of the Assessor's Map and as Exhibit 17 is the legal description for the property. The subject property is 16.54 acres in size. As discussed below, the subject property is designated Primary Agriculture and zoned Exclusive Farm Use (EFU), with an Airport Overlay (AO) Zone. *See* Exhibit 18 (area plan designations); Exhibit 19 (area zoning); Exhibit 20 (AO zone).

The subject property lies on the west side of Airport Road, approximately 1,365 feet north of the intersection of Keil Road and Airport Road. The Marion County Rural Transportation System Plan ("TSP") classifies Airport Road a major collector. The northern edge of the subject property abuts Stenbock Way NE. The TSP classifies Stenbock Way NE as a private road. The subject property has access from both roads. *See* Exhibit 1 (Site Plan), Exhibit 39 (2024 TIA).

The subject property is roughly level and is presently undeveloped. Structures from the previous use have been removed. An internal roadway for the former use was graveled and partially remains. The subject property has metered electricity and is connected to a gas main from when the property was used as a church camp and then a retreat. Moreover, hydrogen is increasingly available in the state and is available as a source of electricity either to provide power during peak periods or as a replacement to the electrical grid. *See* Exhibit 21 (PGE / hydrogen feasibility letter); Exhibit 11 (LUBA opinion describing camp facilities). There is running water provided by a well, which is situated within a pumphouse and there are 2 water storage tanks located near the pumphouse. Exhibit 23 (Edge Analytical, water availability).

Due to the subject property's proximity to the Aurora State Airport, the property is within the Horizontal Surface District of the Aurora State Airport.

Consequently, the property is subject to the AO zone's use and development restrictions. *See*, Exhibit 20. The subject property has a taxilane easement to the Aurora Airport's runway and rights to access the runway over a strip of property that TLM sold to ODAV several years ago. Exhibit 62. The Airport also holds a Flight Strip Easement over portions of the subject property, which grants the United States and the State of Oregon ("Grantees") use of the easement area for aircraft use and further provides the Grantees the right to limit, control, and remove obstructions extending into the space above the subject property. *See* Exhibit 24. The southwest corner of the subject property touches upon an airport access way that allows for through-the-fence (TTF) operations as envisioned by Aurora State Airport master planning, including the 1976 master plan that is an acknowledged part of the County's Comprehensive Plan (Exhibit 6, p 31, 44, 50, 55); and see Exhibit 1 (Site Plan); Exhibit 62 (Taxilane Easements); Exhibit 7, page 46 of 98 (Draft Airport Master Plan, Figure 2-13, Existing Conditions). Also, the subject property is located within the airport's Annual Average Day-Night (Ldn) 55-65 dBA noise contours, meaning aircraft noise already now impacts the site based upon DEQ standards. *See* Exhibit 25 (2012 Aurora State Airport Masterplan Update, Noise Contours Map); *and see* Exhibit 35, p 9.

IV. SURROUNDING PROPERTIES

In summary, properties to the north, west and south of the subject property are designated Public and Semi-Public, zoned P, and are approved for and are developed with airport-related uses. None of the immediately adjacent properties are owned by ODAV, although properties to the north and west are authorized TTF operations and have direct access to the airport. Those properties are part of the KUAO Southern TTF Area. *See* Exhibit 7, page 55 of 98, (Aurora State Airport Draft Airport Master Plan (November 2023 (Updated), (Figure 2-16)). Generally, portions of the Aurora State Airport are located to the north, west and southwest of the subject property. To the immediate south lies the Helicopter Transport Services (HTS) property, which does not have direct access to the Airport's runway. The properties to the east, across Airport Road NE, are designated Primary Agriculture, have EFU zoning and are in hay/grass seed agricultural use.

Bordering the property directly to the north is a 3.71-acre parcel, identified as tax lot 041W02D040000, zoned P, owned by Roger Stenbock, John Chlopek, and Peter La Franchise. This property has six buildings that are each in aviation related use. Five of the buildings house twelve hangars that offer storage options to private aircraft owners and have direct access to the Airport and runway. Consequently, they are identified as aviation related TTF operations as shown in the Draft AMP. *See*, Exhibit 7, page 46 of 98 (Figure 2-13 Existing Conditions). Each hangar is individually owned, and each possesses a unique tax lot number on the Marion County assessor Map No. 04-1W-02d. The sixth building houses Pacific Coast Avionics Corporation, which sells, installs and services avionic equipment for private

aircraft. Farther north are multiple parcels owned by private parties and the Oregon Department of Aviation that are within the airport boundary. The ODAV parcel contains the airport's air traffic control tower, taxiways, and aircraft parking. The private parcels are generally in hangar use, but also includes the clubhouse for the Columbia Aviation Association, a private organization devoted to aviation with approximately 175 members.

Farther north is a 21.42-acre parcel owned by ODAV that also lies within the Aurora State Airport boundary. This ODAV property has airport hangars, offices, and a tarmac, and is identified as tax lot 041W02D000100. Beyond that are additional aviation related uses identified as TTF operations. *See*, Exhibit 7 (Draft AMP, p. 2-35, Figure 2-13 Existing Conditions). Last, at the intersection of Airport Road NE and Arndt Road is Columbia Helicopters, a helicopter charter business that provides heavy lift, firefighting, and other transportation and helicopter repair services. Columbia Helicopters is not within the Aurora State Airport boundary and has no direct access to taxiways or runways. *See*, Exhibit 7 (Draft AMP, p. 2-35, Figure 2-13 Existing Conditions). Columbia Helicopters is one of the entities seeking to potentially utilize the subject property should the airport expansion and proposed use be approved. Exhibit 26.

To the west of the subject property is tax lot 041W02D30000 owned by the Southend Corporate Airpark Condominium Owners Association. That property contains large buildings with multiple separately owned hangars. All of the other buildings to the west and southwest of the subject property are also in aviation related TTF operations. The southwest properties are also part of the Southend Corporate Airpark and include a number of hangars, offices, maintenance, repair, engineering and design facilities for various aviation related businesses and several Fixed Base Operators ("FBO"). One of those operators is Life Flight Networks, which is interested in expanding to use the subject property if the applications are approved. Exhibit 27. All of these properties are part of the Southern TTF Area. Farther to the west is the Aurora State Airport runway.

The property adjacent to the south of the subject property is identified as tax lot 041W11A000100. It is 27.47 acres in size and is owned by US Leaseco, Inc. The property is the site of Helicopter Transport Services ("HTS"), which charters heavy lift and fire suppression helicopters and has repair and training facilities on-site. Like Columbia Helicopters, HTS is not within the Aurora State Airport boundary and does not have TTF access to the Aurora State Airport. *See,* Exhibit 28 (Vicinity Map); Exhibit 7 (Draft AMP, p. 2-35, Figure 2-13 Existing Conditions).

To the east of the subject property, on the other side of Airport Road NE, are parcels zoned EFU. They generally consist of smaller parcels ranging from 78.99 acres to 12.77 acres and are farmed for hay or grass seed. *See* Exhibit 19 (Area Zoning).

The subject property is within Marion County. The closest urban areas are the City of Aurora's UGB that is approximately 1/2 mile to the southeast, Charbonneau (part of Wilsonville) that is approximately 3 miles to the north, and the City of Canby is approximately 3 miles east. To the immediate west of the airport is Hwy. 551 and I-5 is approximately 1 mile farther west. Exhibit 29 (Greater Area Map).

In the greater surrounding area, the County and Federal agencies have mapped a number of different hazards and resources, particularly to the east towards the Pudding River. The County and FEMA have identified floodplain areas (Exhibit 30), geohazard locations (Exhibit 31) and wetlands (Exhibit 32) in the area, but none of them are located on the Subject Property.

V. PRIOR LAND USE ACTIONS FOR THE SUBJECT PROPERTY

The County originally zoned the subject property Residential Agriculture (RA) via Ordinance 149, adopted on December 6, 1967, and Ordinance 176 adopted on July 31, 1968. The County changed the zoning for the subject property from RA to Exclusive Farm Use (EFU) in 1976 via Ordinance 448. Sometime after 1976, Marion County adopted the 1976 Aurora Airport Master Plan as a transportation element to the County's acknowledged Marion County Comprehensive Plan (MCCP). As noted earlier, that acknowledged plan designates the subject property as "ACCEPTABLE FOR AIRPORT RELATED DEVELOPMENT UNDER PRIVATE OWNERSHIP." Exhibit 5, Exhibit 6, p 40. The subject property is also designated Primary Agriculture (PA) in the MCCP and zoned EFU in the Marion County Code (MCC) with the Aurora State Airport Overlay Zone. *See* Exhibit 18 (Plan Map excerpt) and Exhibit 19 (Zoning Map excerpt).

The subject property was first developed as a Methodist Church Camp and then was re-developed in 1977 and operated by Beyond the Reef Theological Center (a type of retreat center) for the next 40 years +/-. In the 1970's, the subject property received two land use approvals. The first, the 1973 Conditional Use Case 73-37, approved an application to construct a restroom at the retreat facility. *See* Exhibit 33. The second, the 1977 Special Exception Case No. 77-37, approved a partition for the subject property. *See* Exhibit 34; *see also* Exhibit 11, pages 4-5 of 27, fn 2 (LUBA decision describing camp uses and facilities). The improvements associated with the retreat included meeting and office buildings, cabins, two dwellings, a well, multiple septic systems, gas and electric infrastructure and an internal road system. Those uses have ceased and most of the structures and infrastructure has been removed.

Recently, in 2019, Applicant applied for a Comprehensive Plan Change, Zone Change, and Conditional Use application to amend the Comprehensive Plan Designation from PA to Public (P) and Semi-Public, to change the zoning from EFU to Public (P) and to authorize airport-related industrial uses on the subject property.

That consolidated application was designated Case No. ZC/CP/CU19-002. On October 21, 2020, the Marion County Board of Commissioners adopted Ordinance No. 1424, approving the applications with conditions, and adopting findings that address alternative grounds for approving the applications. Opponents appealed that decision.

On appeal, the Land Use Board of Appeals ("LUBA") remanded the decision, affirming the decision in parts, but sustaining in part several assignments of error and not addressing challenges to the findings' alternative reasoning. *Schaefer v. Marion County*, __ Or LUBA __ (LUBA No. 2020-108, Oct. 12, 2021) (Exhibit 11). Opponents appealed that decision to the Oregon Court of Appeals. The court agreed with opponents that LUBA erred in affirming the County's determination that the proposal constituted an expansion of a public use airport that was consistent with Goals 3, 4, 11 and 14 because the proposal did not request expansion of the airport boundary and the County did not adopt a map showing an expanded airport boundary; the court reversed and remanded the decision. *Schaefer v. Marion County*, 318 Or App 617, 509 P3d 718 (2022) (Exhibit 3). On remand, LUBA considered the County's alternative reasoning for approval that if a Goal 3 exception were required, an exception was justified based on the presence of the Aurora State Airport. *Schaefer v. Marion County*, __ Or LUBA __ (LUBA No. 2020-108, July 7, 2022) (Exhibit 12). Opponents appealed that decision to the court. The court again agreed with Petitioners, holding that OAR 660-012-0060(5) prohibited the County from basing a Goal 3 exception on the presence of an airport because that airport was a "transportation facility," and reversed and remanded LUBA's decision. *Schaefer v. Marion County*, 323 Or App 390, 392, 523 P3d 1142 (2022) (Exhibit 13). On remand again from the Court of Appeals, LUBA sustained the first assignment of error because the County had not identified any reason for the exception that was independent of the airport and OAR 660-012-0060(5) prohibited a Goal 3 exception based on access to the airport and reversed the County's decision. *Schaefer v. Marion County*, __ Or LUBA __ (LUBA No. 2020-108, March 14, 2023) (Exhibit 14).

Holdings from those proceedings guide this application.

VI. APPLICANT'S PROPOSED FINDINGS

The proposed findings below address the approval standards necessary to authorize the proposed expansion of the airport boundary and proposed airport uses.

First, these findings address the MCC Chapter 17.136 standards for conditional uses. MCC 17.136.050 identifies uses that may be permitted subject to obtaining a conditional use permit and, as discussed below, the proposal is authorized as a conditional use under MCC 17.136.050(J)(4). The findings also address the procedural requirements for conditional use applications under MCC Chapter 17.119.

Second, because of the subject property's location adjacent to the Aurora State Airport, the proposed findings demonstrate consistency with applicable MCC Chapter 17.177 Airport Overlay Zone standards.

Third, because the proposal requires a comprehensive plan amendment to expand the airport boundary, the findings address consistency with any applicable Statewide Planning goals to including explaining why OAR 660-012-0065(3)(n) applies that deems the proposal to be consistent with Goals 3, 4, 11 and 14.

Fourth, the amendment to the Comprehensive Plan also requires a demonstration of consistency with applicable Marion County Comprehensive Plan Policies, which the findings address.

Fifth, because the proposal includes expansion of the airport boundary for the Aurora State Airport, the findings address the requirements of OAR Chapter 660, division 13, the Airport Planning Rule.

Finally, it is worth noting what the application is <u>not requesting</u> and so what the findings do not address. First, the Applicant is not requesting a change to the subject property's comprehensive plan designation or zoning. The proposed expansion to the airport boundary and the proposed airport uses are permitted conditional uses in the EFU zone. Second, the Applicant is not proposing an expansion of the County's present AO Airport Overlay Zone because any AO overlay zone for rotorcraft and fixed-wing aircraft uses on the property fall within the existing AO overlay zone for the Aurora State Airport's fixed wing aircraft runway. No new properties will be encumbered by the AO zone if this application is approved. As Exhibit 20 demonstrates, the existing AO zone established for the Aurora State Airport is already extensive and exceeds what is required for the proposed airport uses. *Compare*, e.g., FAR 77.23 Heliport Imaginary Surfaces with FAR 77.19 Civil Airport Imaginary Surfaces. Exhibit 59 (14 CFR Part 77). *See also*, Exhibit 60 (Aurora State Airport FAR Part 77 Airspace Diagram) and Exhibit 61 (Exhibits for OAR Chapter 660 division 13 Airport Zone Standards) (showing required distances for approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces; and heliport standards less than public use airport standards). Consequently, no expansion of the overlay zone is required for the proposed use to comply with FAR 77 and other applicable federal and state laws. Third, while other applications in the area have requested a LU (Limited Use Overlay) zone be applied to plan designation changes and rezones of properties to limit allowed uses under the new designation and zoning, this application <u>does not</u> request a LU overlay zone be applied since the uses will be limited to airport uses as provided under ORS 836.616(2) and OAR 660-013-0100 and development as requested by this application.

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

designation and zoning, which would allow a broad range of commercial and industrial uses unless limited by an overlay zone. The application here seeks approval only of airport uses, as defined under ORS 836.616(2) and OAR 660-013-0100, which are permitted within airport boundaries and are conditional uses under the existing EFU plan designation and zoning. The proposal does not request the broader range of commercial or industrial uses that are permitted under P zoning. Furthermore, any future substantive expansion of the proposed development will require a modification to the requested conditional use approval. Consequently, the LU overlay zone is not requested, and the LU zone standards are not addressed below.

A. Conditional Use Standards

The findings below first address whether the use is one identified in MCC 17.136.050 as a conditional use, then address the applicable conditional use criteria under MCC 17.136.060 and then address the procedural requirements for conditional uses generally provided under MCC Chapter 17.119 Conditional Uses.

MCC Chapter 17.136 EFU (Exclusive Farm Use) zone allows conditional uses in the EFU zone. MCC 17.136.050(J) allows certain transportation uses, to include:

(4) [O]ther transportation facilities and improvements not otherwise allowed in this chapter, when an exception to statewide Goal 3 and any other applicable statewide planning goal with which the facility or improvement does not comply, and subject to OAR Chapter 660, Division 12.

Proposed Finding: This standard implements ORS 215.283(3), quoted above, and must be interpreted consistent with the statute. *Wetherell v. Douglas County*, 209 Or App 1, 3 fn 1 (2006). The standard allows transportation facilities and transportation improvements not otherwise allowed under the code (or statute) to be approved if certain requirements are met. Here, an expansion of an airport boundary (an airport is a transportation facility) is a transportation facility and/or improvement not otherwise allowed under the code.

The standard provides that an 'other transportation facility or improvement' is subject to OAR Chapter 660, Division 12 and, if necessary, an exception to applicable goals. Here OAR 660-012-0065(3)(n) allows

> "(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplane[.]"

Here, the proposal does not permit service to a larger class of airplane as that phrase has been defined by the Court of Appeals. See Exhibit 4 (*Schaefer v. Oregon Aviation Board*, 312 Or App at 345 (discussing what is meant by different class of

airplane)). All the rotorcraft and fixed-wing aircraft that would use the proposed facility are craft that have permitted service at the airport – the proposed facility does not permit the airport to service to any different aircraft than are otherwise permitted at the airport. The facility simply serves aircraft that are already at the airport. Furthermore, the taxiway access to the property is limited to 82 feet in width due to existing structures, which precludes larger aircraft than those already permitted at the airport to access the subject property – the largest fixed-wing aircraft that could utilize the subject property's taxilane access to the taxiway and runway under the proposal would be those with wingspans no larger than 75 feet which generally describe Class B-II aircraft. Last, nothing about the proposal requires the airport to implement any design standards to permit a larger class of airplane to use the Airport

The rule also provides that an expansion or alteration of a public use airport is deemed to be consistent with Goals 3, 4, 11 and 14. Consequently, an exception to statewide Goal 3 is not required and, as explained below in the section addressing the Statewide Planning Goals, no exceptions to any other goals are required either.

Furthermore, ORS 836.625(1)[7] states that the limitations on uses in EFU zones described in ORS 215.283 do not apply regarding airport uses within airport boundaries. Consequently, the airport uses described in ORS 836.616(2) are allowed conditional uses within an airport boundary in the EFU zone.

The proposed expansion of the KUAO airport boundary and proposed airport uses are permitted conditional uses under MCC 17.136.0050.

MCC 17.136.060 Conditional use review criteria.

> *"The uses identified in MCC 17.136.050 shall satisfy criteria in the applicable subsections below:"*

Proposed Finding: The proposed airport expansion and airport uses and activities are allowed under MCC 17.136.050(J)(4). The MCC 17.136.060 conditional use review criteria apply to the proposal.

A. The following criteria apply to all conditional uses in the EFU zone:

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.

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[7] OS 836.625 provides, in relevant part:

> "(1) 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."