

HDSE Sewer System Owners Association

Bravo Hangar
14355 Keil Road NE
Aurora, OR 97002

February 24, 2025

Delivery by Certified Mail & Email (kenji.sugahara@odav.oregon.gov)

Oregon Department of Aviation
Attention: Kenji Sugahara, Director
3040 25th Street SE
Salem, OR 97302

Re: Comments on Proposed Master Plan for the Aurora State Airport
Notice under Aurora State Airport Lease and Easement

Dear Director Sugahara:

I am writing on behalf of the HDSE Sewer System Owners Association ("**HDSE**"), an Oregon nonprofit corporation which operates a drainfield on property at the south end of the Aurora State Airport pursuant to a certain Non-Commercial Site Lease (the "**Lease**") with the State of Oregon, acting by and through its Oregon Department of Aviation ("**ODAV**"), as well as a certain Aurora State Airport Utility Easement (the "**Easement**") granted to HDSE by ODAV effective September 1, 2019.

Please note that the original Base Term of the Lease was from September 1, 2019 through August 29, 2024; and, in accordance with the terms of the Lease, HDSE exercised its option to renew the Lease for an additional five years. Thus, the current term of the Lease will expire on August 30, 2029, unless HDSE exercises its right to renew the Lease for an additional five years beyond that date. Also please note that, under the Easement, ODAV granted to HDSE a perpetual easement on, over, under and through the portion of the airport which HDSE uses for its drainfield, and such Easement provides rights to HDSE which are in addition to, and not dependent upon, the Lease.

During the February 11, 2025 meeting of the Planning Advisory Committee for the Aurora State Airport Master Plan (the "**Master Plan**"), ODAV provided a presentation which included a plan which is referred to as ODAV's Refined Preferred Alternative. Pages 16 and 17 of that presentation showed maps of the airport which identified the location of HDSE's drainfield, and the map Legends indicated: "DRAINFIELD TO BE REMOVED." Also, Page 24 of the presentation showed a draft Airport Layout Plan which identified the location of HDSE's drainfield, along with a legend titled "NON STANDARD CONDITIONS" which indicated that the planned "disposition" for the drainfield is "TO BE REMOVED."

Please be advised that HDSE strongly objects to ODAV moving forward toward adoption of the Master Plan so long as the document contains language stating that HDSE's drain field must be removed. ODAV should consider this letter to be public input to ODAV with respect to the Master Plan, as well as a Notice to ODAV under the Lease and the Easement.

HDSE understands that ODAV desires to have the Master Plan show a pathway for ODAV to bring the airport into full compliance with all applicable FAA standards over time, and HDSE understands that ODAV currently contends that achieving such compliance will require that HDSE's drainfield be removed from the Runway Safety Area ("**RSA**"). However, there is absolutely no evidence in the record which supports ODAV's contention that removal of the drainfield is the only viable pathway to such compliance, while there is substantial evidence in the record to the contrary.

HDSE is aware that FAA Advisory Circular 150/5300-13B states that the RSA should be:

1. Cleared and graded with no potentially hazardous ruts, humps, depressions, or other surface variations;
2. Drained by grading or storm sewers to prevent water accumulation;
3. Capable, under dry conditions, of supporting snow removal equipment, ARFF equipment, and the occasional passage of aircraft without causing damage to the aircraft; and
4. Graded to the longitudinal and transverse grades in paragraph 3.16.5 (of the Advisory Circular).

Further, HDSE is aware that Paragraph 3.10.1.5 of the Advisory Circular states that the RSA should comply with the compaction criteria in Specification P-152, Excavation Subgrade and Embankment, found in AC 150/5370-10.

As various representatives of HDSE and members of the Planning Advisory Committee have repeatedly informed ODAV, both orally and in writing on numerous occasions, there is nothing in any state or Federal law, or in any FAA or ODAV regulation, which specifically prohibits HDSE's drainfield from remaining exactly where it is now. In fact, the pertinent FAA advisory guidance only calls for the RSA to meet the standards cited above, and based on the analysis and recommendations which HDSE has received from competent professionals, HDSE believes that the drainfield can be modified to ensure that it will indeed meet those standards.

For this reason, the text of the Master Plan and any maps, diagrams and legends contained therein should not say that the HDSE drainfield will be removed, but rather should indicate ODAV's intent to **either**: (a) ensure that the drainfield is modified if necessary to comply with RSA standards, **or** (b) **if the drainfield cannot achieve such compliance in its current location**, then to have the drainfield relocated outside the RSA. A simple and easy change to your map legends which would be acceptable to HDSE would be for the legends to indicate "**DRAINFIELD TO BE REMEDIED**." This proposed modification would make the map legends identify the condition which ODAV currently contends is "non-standard" and also indicate that ODAV intends for that condition to be addressed, without incorrectly (and therefore improperly) suggesting that the condition may be addressed only by removal of the drainfield, which most certainly has not been established as of this date.

HDSE is aware that Sections 16, 17, and 18 of the Lease contain provisions under which ODAV may require HDSE to take steps to modify the drainfield if necessary in order to ensure that the drainfield complies with all applicable laws, ordinances, rules, and regulations; and, **in the event that HDSE were to be unwilling or unable to modify the drainfield so as to achieve such compliance**, then ODAV would have the right to require that the drainfield be removed. However, the Lease and the Easement certainly do not allow for ODAV to unilaterally require that HDSE remove the drainfield, when to HDSE's knowledge there has been no showing to date that the drainfield currently violates any applicable law, ordinance, rule or regulation; and further, even if such a showing of non-compliance could be made, ODAV would have no right to require HDSE to remove the drainfield so long as HDSE is proceeding with reasonable diligence and in good faith to modify the drainfield as necessary in order to remedy such issue as soon as practicable.

Although HDSE does not concede that the drainfield is currently non-compliant, we are nevertheless aware that ODAV has expressed concern that the drainfield may fail to meet the RSA standards specified in the Advisory Circular referenced above, and as the tenant under the Lease and the grantee under the Easement, HDSE wishes to be responsive to ODAV's concerns. Therefore, please be advised that HDSE intends to undertake work to modify the drainfield in order to address the concerns which ODAV has raised.

Accordingly, I am sending along with this letter a Report of Geotechnical Engineering Services, which was prepared for HDSE's architect Aron Faegre and Associates and which has previously been provided to ODAV by others on several prior occasions. That report, which was stamped by professional engineer Brett A. Shipton, P.E., G.E., outlines the approach that HDSE intends to take to modify the drainfield so as to ensure that it meets the FAA's RSA standards. Please be advised that HDSE intends to move forward within the next 30 days to engage qualified professionals to produce the necessary construction plans for this project and, as soon as such plans are complete, we will send to ODAV a Notice of proposed alteration on FAA Form 7460-1 (Notice of Proposed Construction or Alteration), providing additional information concerning the work that HDSE intends to commence, all as required by Section 11 of the Lease.

In the meantime, if ODAV would prefer that HDSE defer the drainfield modifications described above in order to allow time for ODAV and HDSE to collaboratively explore other alternatives for addressing ODAV's concerns, then HDSE would be happy to defer that work and would be open to discussing with ODAV the possibility of relocating the drainfield to another location on the airport. If ODAV is also open to that possibility, then HDSE would urge ODAV to further modify the Master Plan so that the Preferred Alternative and the Airport Layout Plan will show potential locations to which the drainfield could be relocated. HDSE suggests that the most obvious places where the drainfield potentially might be relocated would be the land which ODAV intends to acquire that is adjacent to Keil Road and east of the current airport boundary, or the land already owned by ODAV which is at the far north end of the airport. Note that, if the drainfield were to be relocated to either of those locations, the drainfield then would be completely outside of the RSA, even after completion of the runway extension that is called for in the Master Plan.

In ODAV's consideration of the preceding requests, ODAV certainly should note and take heed of the provisions of Section 3.10.2.1 of AC 150/5300-13B, which address design considerations for Non-Standard RSAs and call for airport sponsors to: (1) Evaluate all practicable alternatives and opportunities to improve a non-standard RSA until it meets all standards for grade, construction, and object fragility, and (2) On the ALP, identify future development necessary to attain a standard RSA.

ODAV's current draft of the Master Plan clearly fails to comply with that FAA guidance, since it unjustifiably precludes compliance with RSA standards by means of the practicable alternative that HDSE now intends to commence, and because it also fails to identify the future development that would be necessary to achieve compliance in the event that at some point in the future ODAV and HDSE ultimately determine that the drainfield should be moved to a new location outside the RSA.

Please be advised that if ODAV continues to move forward toward adoption of the Master Plan with that document including language which asserts that HDSE's drainfield must be removed from the RSA without acknowledging that there is a potential alternative pathway to meeting the FAA's RSA standards, or by asserting that the drainfield must be relocated without providing any alternative location on the airport where the drainfield feasibly could be moved, then that course of conduct by ODAV will cause significant damages to HDSE and its members. If that occurs, regrettably, HDSE will be forced to take appropriate legal action to protect its rights under the Lease and under the Easement.

HDSE sincerely hopes that legal action will not become necessary, as we would greatly prefer to work collaboratively with ODAV in order to achieve a cost-effective resolution of ODAV's concerns about the drainfield. Like ODAV, HDSE wants the airport to be improved, and therefore we hope that you will direct ODAV's staff and consultants to partner with HDSE in efforts to make that happen. We would suggest that a positive step toward establishing such a constructive collaboration would be for ODAV to modify its draft of the Master Plan as suggested above.

I would appreciate it if you would respond to this letter in writing to confirm your receipt.

Sincerely,

A handwritten signature in blue ink, appearing to read 'L. Nickerson', with a long horizontal flourish extending to the right.

Lukas Nickerson
President
HDSE Sewer System Owners Association

CC: Joe Franco – Partner, Holland & Knight LLP
Wendy Kellington – Kellington Law Group, PC

joe.franco@hklaw.com
wk@klgpc.com

Tony Beach – ODAV State Airports Manager
Alex Thomas – ODAV Planning, Policy, & Programs Mgr.
Brandon Pike – ODAV Aviation Planner
Kevin Olsen – ODAV Airport Leasing & Contracts

anthony.beach@odav.oregon.gov
alex.r.thomas@odav.oregon.gov
brandon.pike@odav.oregon.gov
kevin.j.olsen@odav.oregon.gov