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VIA ELECTRONIC MAIL

Alex Thomas
Planning and Programs Manager
Tony Beach
State Airports Manager
Oregon Department of Aviation
Brandy Steffen
JLA

Re: February 25, 2025, Comment Letter on Behalf of TLM Holdings LLC for Aurora State Airport Master Plan – ODAV Updated Refined Proposed Preferred Alternative

Mr. Thomas, Mr. Beach and Ms. Steffen,

This letter is written on behalf of TLM Holdings, LLC and Ted Millar, its managing member ("TLM"). Please include this letter and attachments in the record for the Oregon Department of Aviation's (ODAV) Master Plan. TLM owns real property at the airport (hangars) and undeveloped land that is adjacent to it. TLM's adjacent property (known as the "church" property) while zoned EFU, has been shown on every airport master plan since 1976 as being suitable for airport related development.

Record and Improper Process

ODAV has not placed on the master plan website all submittals from the undersigned and other aeronautical stakeholders for the master plan's record. That failure should not be interpreted as limiting the contents of the record before the agency for this effort. The record must and does include all submittals, including those not on the website. That failure has also made it impossible to know what airport opponents allege, what their evidence is and to provide any reasonable opportunity to respond to evidence and argument presented.

The process that ODAV has used for adopting this master plan is contrary to Statewide Planning Goal 1 (Citizen Involvement), which requires a meaningful opportunity for public engagement, and has proceeded in a manner that is wholly contrary to ODAV's State Agency Coordination Program, Oregon's administrative procedures act and Oregon land use statutes and rules, as well as *Fasano v. Washington County*, 264 Or 574 (1973) for quasi-judicial actions which this master plan likely is. ODAV has made assertions in "PAC" meetings about why it is taking specified actions, claiming there is justification somewhere in the record, but no such justification exists – at least not anywhere that the public including stakeholders have access to. ODAV's process has made it impossible for aeronautical stakeholders including TLM to

meaningfully participate and protect their property rights in their property they own at the airport.

The process ODAV has used is not only contrary to the above authorities and requirements but also is contrary to FAA's rules about master planning which we have cited at length in other submittals and incorporate here for brevity. What OAAV should do is pause this effort and allow meaningful public engagement in a real hearing process where airport, pilot and passenger safety as well as economic development and prosperity are not relegated to afterthoughts and where participants can speak to and with ODAV based upon a transparent record that is timely made available to participants.

The final Master Plan must show the expansion of the airport boundary per ORS 836.616(2), ORS 836.640-642 and ODAV's state agency coordination program

ODAV must include in the master plan a map demonstrating where the airport's land use boundary will be expanded to achieve the Master Plan's objectives.¹ Marion County must then adopt that "map" showing "the location of the airport boundary." OAR 660-013-0040(1). It is *ODAV's responsibility* to show in its master plan the airport land use boundary within which master plan objectives are to be achieved over the 20-year master planning horizon. It is *ODAV's responsibility* to demonstrate its objectives are consistent with applicable County Plan provisions and statewide planning goals as a part of the master plan process. In this regard, ODAV's State Agency Coordination Program ("SAC," Exhibit 1, p 23-24), says that in adopting master plans that ODAV "shall evaluate and write draft findings of compatibility with acknowledged comprehensive plans of affected cities and counties" as well as "findings of compliance" with applicable planning goals and that ODAV "*shall present to the Aviation Board the draft plan, findings of compatibility with the acknowledged comprehensive plans of affecting cities and counties and findings of compliance with applicable statewide planning goals.*"

There are Marion County plan (including in the County's acknowledged TSP/RTSP) provisions that apply that ODAV has ignored, including policies that say that airports in general are a valuable transportation asset to be protected and that the Aurora Airport should be supported to grow to provide its significant economic benefits and safely accommodate all aircraft that use it. There are state planning goals that ostensibly apply that ODAV has ignored that ODAV must either demonstrate compliance with, take an exception to or demonstrate that they do not apply. Yet, ODAV has done exactly **none** of the required planning work, to the significant detriment of all airport stakeholders who require a master plan that is not tied up for years in litigation based upon ODAV failures. For example, ODAV seeks to designate "Aeronautical Reserves" for aeronautical use, that ODAV wishes to acquire using federal money from willing sellers, but that land is not yet zoned for aeronautical use. ODAV seeks to acquire other land – generally in the area of Keil Road -- for aeronautical related uses that is also not zoned for aeronautical use. Moreover, each and every master plan has properly identified

¹ Perhaps that is what ODAV intends by showing all of the various aeronautical use acquisitions and uses on the latest version of the preferred alternative. If that is ODAV's intention, then such should be made clear. Ambiguity helps no one, drives up the cost of airport development and the potential for litigation.

privately owned land at the airport as being suitable for airport development. To realize these objectives, state law (and FAA rules) requires that ODAV show in its airport master plans the airport's land use boundary where aeronautical land uses are expected to occur over the master planning horizon of 20 years, that Marion County can then adopt into its Comprehensive Plan/TSP/RTSP. ODAV has the obligation to demonstrate compliance with applicable Marion County plan provisions and state goals for ODAV's master planning objectives but has failed to make any effort to do so.

Further, ORS 836.640(1) and (5) expect that ODAV will expand the land use airport boundary to include the privately owned through the fence areas to achieve the outcomes listed in ORS 836.642. ODAV cannot achieve the objectives that the legislature requires ODAV to achieve in the absence of expanding the airport's land use boundary.² In the Court of Appeals words, "airport uses" are allowed to "supersede [EFU zone rules]" when they are "[w]ithin airport boundaries." Accordingly, now is the time to adjust the land use boundary for the airport. Now is when the SAC anticipates such will occur, when ORS 836.640-642 expects it to happen and importantly now is when it is efficient and effective to do so - all of the information required by OAR 660-013-0040 is being developed in this process and is easily available.

ODAV's persistence in ignoring its land use related responsibilities for this master plan is nothing short of puzzling. ODAV's SAC p, 5, 6, says that Master Plans affect land use and, at those pages and in others, the SAC establishes that applicable state planning goals are supposed to be addressed in findings supporting ODAV's airport master plan. For example, SAC, p 6 explains that ODAV "can show compliance with the statewide planning goals and the Aviation Facility Planning Requirements, as required by OAR 660-013-0040, through the Airport Master Planning process and the Airport Layout Plans (ALP) approved by the Federal Aviation Administration (FAA)." ODAV's SAC program (p 22), explains that "The focus of the Department's efforts to establish compatibility with acknowledged comprehensive plans will be at the facility planning and project planning stages of an Airport Master Plan or Airport Layout Plan."

This is not ODAV's first master plan rodeo where the legal stakes are high, either. The Court of Appeals remanded the last ODAV master plan and explained that inclusion of land within the airport's land use boundary is necessary in order for ODAV to be able to achieve its goal of putting that land to aeronautical use:

² Private parties can initiate such land use efforts, but it is an astonishing waste of resources for ODAV not to do its job and move the boundary like it is supposed to do in this million dollar master planning effort so to provide a way for ODAV to realize ODAV's objectives, but instead, simply rely upon the private sector to do all the work to expand the boundary in individual land use applications to Marion County.

In this case, it is undisputed that the relevant part of the airport boundary is the edge of the state-owned airport property that is bordered by Keil Road. *See* OAR 660-013-0040 (the airport boundary, for purposes of ORS 836.616(2), is shown on a map “adopted by a local government” pursuant to “comprehensive plan and land use regulation requirements”).¹⁷ As explained above, the provisions of ORS 836.600 to 836.630 allow airport uses and supersede ORS 215.213 and 215.283 “[w]ithin airport boundaries.” ORS 836.616(2); *see also* OAR 660-013-0100 (requiring local governments to “adopt land use regulations for areas within the airport boundaries” that authorize the airport uses enumerated in ORS 836.616).

¹⁷ The map of the Aurora State Airport that has been adopted by Marion County is the 1976 Master Plan ALP, which is part of the Marion County Comprehensive Plan.

¹⁸ *Debra Ann Schaefer and City of Aurora v. Oregon State Land Use Division*

ODAV’s failure to show an adjusted land use airport boundary and adopt findings as required, means that ODAV is making itself and the State of Oregon by extension, ineligible to obtain or spend any FAA grant money on master plan objectives because ODAV cannot truthfully aver that federal grant money will be spent on lawful uses, a required showing for any federal grant.

As the Court of Appeals noted, the airport’s land use boundary has remained static since the land use boundary was first established in the 1976 master plan that was incorporated into the Marion County comprehensive plan. Most of the land at the airport is already subject to goal exceptions as an area that is committed to airport development. Exhibit 3 (Aurora Airport “committed” goal exception). It is time to adjust the airport’s land use boundary to achieve ODAV’s legitimate objectives that are the legislature’s objectives, for the Aurora Airport.

It is undeniable that ODAV should do so as a part of the master planning effort in order to realize the premise of the Updated Preferred Alternative: to support the airport and achieve the now critically needed runway extension.

ODAV should not “remove” HDSE’s Southend drainfield that serves numerous businesses and aircraft hangars

Based upon public input, ODAV modified the Preferred Alternative to remove the planned condemnation of the frontline hangars and removed the service road paralleling the taxiway that was driving ODAV’s condemnation plan. While that was an improvement and we appreciate this adjustment to the Preferred Alternative, it turns out that it was only a symbolic improvement to the master plan. That is because ODAV continues to show a preferred master plan that removes the Southend Drainfield, with no identified alternative. No one can use the

front-line hangars without the septic system that ODAV's Updated Refined Preferred Alternative plans to "remove" with no alternative. Saving the frontline hangars from condemnation is obviously meaningless if ODAV removes the Southend Drainfield. Please understand that the 1500+ jobs and \$150 million in private investment those hangars represent, go away without a septic system, just as surely as if the front-end hangars were condemned by ODAV.

Moreover, ODAV's basis for removing the drainfield lacks evidentiary support – ODAV's claim that the drainfield does not comply with FAA guidance is incorrect. As noted in other submittals, ODAV and FAA expressly approved the drainfield's current location as a part of the HDSE goal exception that Marion County approved. Exhibit 2. The FAA guidance about soil strength in the RSA has been the same for decades. ODAV and FAA knew the soil strength guidance and applied it correctly when they approved the drainfield exactly as it is and where it is. If the HDSE drainfield soils were a sincere issue then ODAV would be showing significant spoil strengthening for the entire RSA which is composed of the same soils. The fact is, this is a made up problem that has no legal or evidentiary support.

Finally, ODAV is bound by ORS 836.640-642, which is a statute it has all but ignored in this process, and was developed by Business Oregon and adopted by the legislature to strongly encourage private investment at the Aurora Airport. The statute commands ODAV to carry out that objective. ORS 836.642 requires ODAV to "Preserve investments [at the Aurora Airport] and the level of service provided by [the Aurora Airport]" and to "promote economic development" at Aurora "by creating family wage jobs, increasing local tax bases" through support of private aviation-related uses so that they may "develop and thrive." ODAV's Updated Refined Preferred Alternative that fails to accommodate the septic system that such economic development depends upon, is in direct contravention of those statutes.

Extend the Runway as a Short Term Project

ODAV must prioritize the critically needed runway extension in this master plan to occur in the short term. To date it is scheduled for the end of the planning horizon and perhaps never to occur since ODAV has placed it after moving Highway 551 and other expensive wholly unnecessary projects. If ODAV cares the least about aircraft, pilot and passenger safety, then it will show the runway extension as a priority for the short term. The runway extension has been needed since 2012. *See* Exhibit 4, 2012 Master Plan approved ALP. Anything less is an abdication of ODAV's responsibilities as the owner of the runway at the airport.

Thank you for your consideration.

Very truly yours,



Wendie L. Kellington

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Exhibit 1 – ODAV SAC Program
Exhibit 2 – HDSE Approval
Exhibit 3 Aurora Airport Committed Goal Exception
Exhibit 3: FAA and ODAV approved Airport Layout Plan

CC: Ted Millar, TLM Holdings LLC