

BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON

In the Matter of the)	Case No. CP 03-4
)	
Application of:)	Clerk's File No. 4968
)	
RICHARD VAN GRUNSVEN)	COMPREHENSIVE
OF HD AVIATION, TED MILLAR)	PLAN AMENDMENT
OF SOUTH END AVIATION,)	
AND JACK HOGAN)	AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1205

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This Ordinance is enacted pursuant to the authority granted to general law counties in the State of Oregon by ORS Chapters 197, 203, and 215 to implement the Marion County Comprehensive Land Use Plan. This ordinance amends the Marion County Comprehensive Plan by taking exceptions to Statewide Land Use Planning Goals 11—Public Facilities and Services and 14—Urbanization for certain properties to share a septic system at the Aurora State Airport. (T4S; R1W; Section 11A; Tax lots 200, 201, 203, and 400) and (T4S; R1W; Section 02D; Tax lots 1100 and 1600).

SECTION II. Procedural History

The Marion County Board of Commissioners held a public hearing on September 22, 2004, for which proper public notice and advertisement was given. The purpose of the hearing was to consider proposed amendments to the Marion County Comprehensive Plan to take exceptions to Statewide Land Use Planning Goals 11—Public Facilities and Services and 14—Urbanization for certain properties to share a septic system at the Aurora State Airport. All persons present during the public hearing were given the opportunity to speak or present written statements.

SECTION III. Adoption of Findings and Conclusion

The Board has reviewed the evidence and testimony in the record. The amendments to the Marion County Comprehensive Plan made hereunder are based on consideration and analysis of existing Marion County Comprehensive plan goals and policies and zoning regulations and the provision of ORS Chapters 197 and 215, Oregon Administrative Rules 660 Divisions 4, 11, 14, 8, and 33, and the State Land Use Planning Goals.

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Facts and Findings contained in Exhibit A, attached hereto, and by this reference incorporated herein. The properties which are granted goal exceptions are shown on the map attached as Exhibit B, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The exceptions to Goals 11 and 14 to permit six parcels at the Aurora Airport to share an existing septic disposal system are **GRANTED**.

SECTION VI. Severability

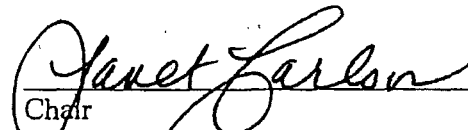
Should any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or any policy, provision, findings, statement, conclusion, or designation to a particular land use or area of land, or any other portion, segment or element of this Ordinance or of any amendments thereto and adopted hereunder, be declared invalid for any reason, such declaration shall not affect the validity and continued application of any other portion or element of this Ordinance or amendments to the Comprehensive Plan; and if this Ordinance or any portion thereof should be held to be invalid on one ground, but valid on another, it shall be construed that the valid ground is the one upon which this Ordinance of any portion thereof was enacted.

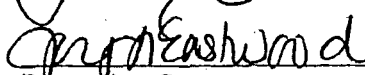
SECTION VII. Effective Date

Pursuant to Ordinance 669, this is an administrative Ordinance and shall take effect 21 days after the adoption and signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 13 day of October, 2004 at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes (ORS) Chapter 197.830 provides that land use decisions may be reviewed by the Land Use Board of Appeals (LUBA) by filing a notice of intent to appeal within 21 days from the date this ordinance becomes final.

Exhibit A

**Facts and Findings:
Exceptions to Goals 11 and 14**

BACKGROUND:

In 1999, the applicants received approval from the Oregon Department of Environmental Quality (DEQ) to construct a recirculating gravel filter septic disposal system which was intended to serve six parcels at the southern end of the Aurora. After constructing the system, the applicants were informed by DEQ that Goal 11 forbids the extension of septic lines across property lines and an exception to Goal 11 would have to be taken in order to connect and operate the system.

In June 2003, the applicants applied for a comprehensive plan change to take an exception to Goal 11 to permit shared septic facilities. Staff from the Department of Land Conservation and Development commented that the Goal 11 exception would have to be accompanied with either an exception to Goal 14, because the Public zone at that time did not comply with Goal 14 requirements, or amendments to the Public zone that would bring it into compliance with Goal 14 requirements for rural uses outside of rural communities.

The county was involved in a periodic review task to amend the rural zoning ordinance to comply with Goal 14 and the applicants agreed to place their application on hold until the Goal 14 issues were resolved regarding the Public zone. On July 28, 2004, the Marion County Board of Commissioners adopted amendments to the Marion County Rural Zoning Ordinance which brought the code into compliance with Goal 14 requirements. Subsequently, this application was taken off hold and the applicants requested that the Board call-up the request and hold the first evidentiary hearing. Notice of public hearing was mailed on September 1, 2004 to property owners within 500 feet of the subject parcels. Notice was also published in the Statesman-Journal.

On September 22, 2004, the Board held a public hearing to consider amendments to the Marion County Comprehensive Plan taking exceptions to Goals 11 and 14 for an existing shared septic system for six parcels at the southern end of the Aurora Airport. The Board closed the hearing and directed staff to prepare an ordinance taking those exceptions.

FACTS:

1. The subject properties are designated Public in the Marion County Comprehensive Plan and are correspondingly zoned P (PUBLIC) under the Marion County Rural Zoning Ordinance (MCRZO). The purpose of the Public designation and zone is to provide regulations governing the development of land appropriate for specific public and semi-public uses.

2. The properties are located on the north side of Keil Road NE, approximately 1,700 feet west of the intersection of Airport Road NE and Keil Road. The parcels contain aircraft related facilities and are proposed for additional development in the future.
3. Adjacent properties to the southwest, west, east, and north are zoned P and contain the Aurora Airport and airport related uses and businesses. Properties to the south are zoned EFU (EXCLUSIVE FARM USE) and are devoted to farm use.
4. The airport facility was constructed at this site in 1943 to provide an emergency alternate field for carrier aircraft. It has been in operation as an airport, and zoned public, since that time. Since before 1968, additional land east of the runway and north of Keil Road has also been zoned public and closely associated with the airport. Between 1968 and 1981, properties to the south of Arndt Road and east of the runway were rezoned to public and developed with airport uses. In 1981, the airport facility, and surrounding airport related uses in the public zone, were acknowledged as exceptions in the Marion County Comprehensive Plan.
5. The 1976 Airport Master Plan was adopted by Marion County as part of its comprehensive plan. The adoption included a committed exception area to Statewide Planning Goal 3 of approximately 250 acres at the Aurora State Airport. In 1994, an exception for an additional 1.86 acres was taken and acknowledged to add land to the southwest of the airport. The County's Airport Overlay Zone, Marion County Rural Zoning Ordinance (MCRZO) Chapter 177 has been applied to both the 1981 exception area and the area added in 1994.
6. In Legislative Amendment 03-3, which amended the Marion County Rural Zoning Ordinance to comply with Goal 14 requirements for rural exception areas, an exception to Goal 14 for size of use was approved for airport related uses at the Aurora State Airport due to its being developed with a use that is urban in nature and requiring urban styled development to support the existing uses.

COMMENTS:

7. Marion County Building Inspection commented that based on the information submitted in the attached site plan, Building Inspection cannot make a determination on the permit requirements.
8. The FAA commented, "on-airport development requires submittal to FAA of FAA Form 7460-1, off-airport development requires submittal of separate form 7860-1, concurrence of Oregon Dept. of Aviation required for on-airport development; recommended for off-airport development."
9. All other contacted agencies stated that they had no objections or had not commented at the time the staff report was prepared. All comprehensive plan changes are subject to review by the State Department of Land Conservation and Development (DLCD).

DLCD's comments are contained in the file and explained in the background section of this report.

ANALYSIS:

10. Goal 11—Public Facilities and Services states: “Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries....” The Goal defines “extension of a sewer or water system” as “the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer or water system in order to provide service to a use that was not served by the system on the applicable date of this rule....”

Goal 14—Urbanization prohibits the establishment of urban services on rural lands and the shared septic facility constitutes a urban level of service as defined by Goal 11. Because of this, an exception to Goal 14 will have to be taken along with an exception to Goal 11.

11. The exception requirements for land physically developed to uses other than those allowed by the applicable goal is set forth in OAR 660-004-0025:

(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

(2) Whether land has been physically developed with uses not allowed by an applicable Goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

12. It was determined previously in Legislative Amendment Case No. 03-3 that the existing airport-related development at the airport exceeds the size limitations for commercial and industrial uses allowed by Goal 14 and the Unincorporated Communities Rule and an exception was taken to permit continued development to occur at a level consistent with existing development at the airport. The Land Use Board of Appeals (LUBA) recognized that the level of development at the airport would likely require exceptions to Goals 11 and 14, referring to the Aurora State Airport as an “urban public facility” and commenting that the text of an exception “probably could be very similar to that required for the proposed exception to Goal 3,” an exception which was subsequently acknowledged by LCDC. *Murray et al. v. Marion County*, 23 Or LUBA 268 (1992).

13. OAR 660-014-0040 sets forth the criteria for taking an exception to Goal 11—Public Facilities and Goal 14—Urbanization:
- (1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4, but *not* developed at urban density or committed to urban level development.
 - (2) A county can justify an exception to Goal 14 to allow incorporation of a new city or establishment of new urban development on undeveloped rural land. Reasons which can justify why the policies in Goals 3, 4, 11, and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity which is dependent upon an adjacent or nearby natural resource.
 - (3) To approve an exception under this rule, a county must also show:
 - (a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development at existing rural centers;
 - (b) That Goal 2, Part II(c)(3) is met by showing the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:
 - (A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and
 - (B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.
 - (c) That Goal 2, Part II(c)(4) is met by showing the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:
 - (A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

- (B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.
 - (d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner;
 - (e) That incorporation of a new city or establishment or new urban development of undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for incorporation.
14. The Aurora Airport has been in place since 1943 and airport related uses have been associated with the airport since before 1968. The airport consists of properties in multiple ownerships providing a wide range of aviation-related and support services such as aircraft instruction, rental, maintenance, charter, sales, avionics sale and repair, aircraft construction, storage, fueling, helicopter maintenance and fueling, aerial photography, and others. This airport provides necessary air transportation services to businesses and individuals in Marion, Clackamas, Washington and Multnomah counties, enhancing the economy of the region and the state. The airport facility depends on its location, and the commercial, industrial and population centers and growth in the area, for its viability and necessity. This state airport facility is uniquely able to provide services to the surrounding rural area and nearby communities, as well as a connection to other urban airports because of its proximity to the Interstate 5 corridor and Highway 99E, the county roadway system, Clackamas County and the south Metro area. In addition, the need for airport transportation facilities is recognized in the Marion County Comprehensive Plan (MCCP).
- The Aurora State Airport is needed to serve the economic and air transportation needs of the surrounding community which is dependent upon the existing location of the airport. The criteria in 13(1) and 13(2) are met.
15. The nearest UGB is that of the City of Aurora, approximately 1500 feet to the southeast of the airport. The land between the existing UGB and the airport boundary is resource land. The City of Aurora originally proposed that the airport be included in the UGB when it was going through acknowledgement; however, this was not approved by LCDC and the UGB was reduced to the present area. It continues to be unreasonable to extend the UGB this distance due to the amount of intervening resource land at this time. There are also no rural centers which could encompass the proposed exception area. The closest rural center, Fargo Interchange, is over 9,000 feet west of the airport. The criterion in 13(3)(a) is met.
16. The criteria in 13(3)(b) require that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site not be significantly more adverse than would result from the same proposal being located on

other undeveloped rural lands. Because the Aurora Airport is already developed with airport and airport-related uses, and because of its demonstrated need to be located where it currently is, as explained in #14, there are no alternative locations being considered requiring the use of undeveloped land.

Additionally, information provided by the applicant demonstrates that developing the properties with septic or holding tanks would be much more expensive than using a shared septic system.

Also there are environmental concerns developing with septic systems on the subject properties. The soils on the subject properties are not optimum soils for septic systems and can be difficult to locate a system on an individual property. A shared septic also provides the opportunity to process the effluent in a more complete manner that can be certified to meet Leadership in Energy and Environmental Design (LEED) standards.

Considering the lack of alternatives locations for the airport, as well as the benefits economically and environmentally and the potential for positive affects on the air, water, energy and land resources of properties and surrounding area, the criteria in 13(3)(a) and (b) are met.

17. Public facilities are not provided by any of the surrounding cities or service districts. The airport has existed surrounded by resource land and uses since 1943. During that time there has been no evidence that the airport has reduced the potential for continued resource management of land surrounding the airport. Aside from a runway extension, no expansion of airport facilities has occurred historically and no expansion of facilities is proposed in the airport master plan. There is no evidence that a shared septic system for the subject properties will adversely impact surrounding property uses. The criterion in 13(3)(c) is met.
18. The airport has established an Aurora Airport Water Control District to provide a fire suppression water system. Development on the subject properties would still be limited to the capacity of systems in place, including holding tanks, which would serve the uses. Although the City of Aurora sewer system became operational in 2001, there are no plans to extend the system to the airport, at this time, nor has any determination been made of the capacity of the city system to serve the airport. The criterion in 13(3)(d) is met.
19. No incorporation of a new city or establishment is proposed. Any new urban development of undeveloped rural land will be coordinated with the comprehensive plans of affected jurisdictions and applicable zoning. The criterion in 13(3)(e) is met.
20. OAR 660-004-0018 states that for "physically developed" and "irrevocably committed" exceptions to goals, plan, and zone designations shall authorize a single numeric minimum lot size and shall limit uses, density, and public facilities and services to those:
 - (a) Which are the same as the existing land uses on the exception site; or

- (b) Which meet the following requirements:
 - (A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals and are consistent with all other applicable Goal requirements; and
 - (B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028; and
 - (c) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses.
21. The proposal does not change the allowable commercial or industrial uses at the airport. The purpose of the exception is to allow a shared septic system to serve six parcels at the airport, consistent with the existing urban level of development already existing at the airport. There is no evidence that an exception to permit a shared septic will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-004-0028. The proposal satisfies the criterion in 20(a) and (b).
 22. The airport has a history of being compatible with adjacent and nearby resources uses since its inception over sixty years ago. There is no evidence that allowing the subject properties to share a septic system will be incompatible with surrounding resource uses. The shared septic will be located on the properties where the septic is shared and will not commit surrounding land to nonresource uses. The surrounding resource uses have also been compatible with airport uses. The master planning process, which the Oregon Department of Aviation recently completed for the airport in 2000, requires consideration of National Environmental Protection Act (NEPA) requirements as well as compatibility with surrounding uses. The proposal satisfies the criterion in 20(c).
 23. In addition to providing procedures, the MCCP provides guidelines and policies to ensure compatibility with the adopted comprehensive plan and consistency in the planning process. The first guideline is that the proposal should comply with the Statewide Planning Goals that apply in a particular situation. This proposal must be consistent with all applicable Statewide Planning Goals except Goals 3, 11 and 14 for which exceptions have been taken.
 24. The proposal is consistent with Statewide Planning Goal 1—Citizen Involvement, which provides for citizen involvement in the planning process. Notice was sent of the request for goal exceptions. A public hearing will were be held before the Board of Commissioners where concerned citizens will have the opportunity to provide comment and make suggestions.

The application is consistent with Goal 2—Land Use Planning since the proposal is consistent with the County's acknowledged comprehensive plan. Moreover, appropriate analysis of the exception provisions have been provided with regard to Goals 11 and 14.

Goals 3—Agricultural Lands, 4—Forest Lands and 5—Open Spaces, Scenic and Historic Areas, and Natural Resources are not applicable to this proposal.

Because the airport and related uses already exist, and the proposal seeks to maintain development at the existing level of uses and sizes, there is no evidence that the proposal will impact air, water or land resource quality over any impacts of the existing airport. Development within the public zone is subject to standards that address and seek to minimize adverse impacts to surrounding uses and resources. The proposal is consistent with Goal 6—Air, Water and Land Resources Quality.

The airport is not in an area subject to natural disasters; the proposal is consistent with Goal 7—Areas Subject to Natural Disasters and Hazards.

Goal 8—Recreational Needs is not applicable to this proposal.

The proposal is consistent with Goal 9—Economic Development. The subject properties are needed to serve commercial, industrial, and public uses in the surrounding community. Allowing development to continue at sizes commensurate with existing development will sustain the economic viability of the airport. The airport and associated uses provide employment to the area and in the state. Employment at the airport should also increase as use of the airport continues to increase as described in the Aurora State Airport Master Plan.

Goal 10—Housing is not applicable to this proposal.

The proposal is consistent with Goal 12—Transportation because the airport is necessary to serve the aviation needs of users at the airport and the surrounding communities. The location of this airport has also been demonstrated to be necessary because neighboring cities and communities do not provide public airport facilities. In addition, the airport is either bordered by or in close proximity to major road facilities, the Interstate 5 corridor, Hubbard Cutoff Road, Highway 99E, Arndt Road, Keil Road, and Airport Road, which provide the traveling public access to and from the airport for both persons and freight.

Goals 13—Energy Conservation, 15—Willamette River Greenway, 16—Estuarine Resources, 17—Coastal Shorelands, 18—Beaches and Dunes and 19—Ocean Resources do not apply to this proposal.

Overall, the proposal is in compliance with the Statewide Planning Goals or an appropriate exception has been taken.

25. The proposal must also conform to the relevant policies in the comprehensive plan. In discussing this requirement, only relevant comprehensive plan policies will be mentioned.

Rural Services Policy #1: The impact on existing services and the potential for additional facilities should be evaluated when rural development is proposed.

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

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

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

Any new development on the subject properties will be airport-related and similar to, and no more intensive than, existing development. There is no evidence that the existence of the airport since 1943 has increased the need for urban services or that the development at the airport has impacted the density or character of the rural area. The shared septic facility reflects the urban nature of uses at the airport while not committing the parcels to a fully urban level of development. The parcels would still be able to be developed with urban facilities once those became available. The proposal complies with the rural development policies.

Transportation Policy #8: Airports and airstrips shall be located in areas that are safe for air operations and compatible with surrounding uses.

The existing location of the airport has demonstrated it is in a safe location for air operations. There have been concerns from neighboring residential areas regarding noise at the airport. Efforts have been made over the years to reduce the level of noise associated with airport operations. This proposal will not have an impact on airport operations and, so, will not affect the level of noise produced at the airport. The fact that many of the surrounding lands are in resource zones helps to mitigate the impact of noise from the airport on those lands and surrounding urbanized uses. The proposal complies with applicable transportation policies.

CONCLUSION:

The Board finds that the proposed exceptions meet the applicable criteria in the Oregon Administrative Rules, Oregon Revised Statutes, Statewide Planning Goals, and the Marion County Comprehensive Plan that physically developed and reasons exceptions to Goals 11 and 14 are justified for the subject properties to be able to share a septic system at the Aurora State Airport.

Exhibit B

Goal Exception Properties
Aurora Airport

Marion County
Public Works

