

SUPPLEMENTAL MATERIAL *WJ 14. a.*

**SUPPLEMENTAL MEMO**

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**DATE:** November 27, 2007 (Date of Memo)  
December 5, 2007 (Second Reading/Public Hearing)

**TO:** **LANE COUNTY BOARD OF COMMISSIONERS**

**FROM:** Public Works Department/Land Management Division

**PRESENTED BY:** Keir Miller, Associate Planner

**AGENDA ITEM TITLE:**

1) ORDINANCE NO PA1245 - IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN (RCP) BY REVISING GOAL-2, POLICY 25; TO ESTABLISH PROVISIONS FOR A PRIVATE USE AIRPORT OVERLAY ZONE; BY ADOPTING AN OFFICIAL PRIVATE USE AIRPORT OVERLAY ZONE MAP; BY APPLYING THE OVERLAY ZONE TO FIVE PRIVATE USE AIRPORTS AND SURROUNDING PROPERTIES AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES.

2) ORDINANCE 15-07 - IN THE MATTER OF AMENDING CHAPTER 16 OF LANE CODE TO ESTABLISH A NEW ZONE CLASSIFICATION FOR PRIVATE USE AIRPORTS (LC16.012, LC16.296)

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The attached information supplements a staff report dated October 31, 2007, concerning Ordinances PA1245 and 15-07. These proposed ordinances would implement changes to the Rural Comprehensive Plan (RCP) to recognize and protect private use airports in Lane County.

**BACKGROUND**

This proposal was originally discussed with the Planning Commission at a work session on July 10, 2007. An additional LCPC work session and public hearing on the item was held on October 16, 2007. Minutes for the October 16 meeting were not available when the original staff report was drafted but they are included here, as Attachment "A".

The October 16 public hearing was continued until November 20, 2007, to provide staff and the Planning Commission an opportunity to review challenges raised by an attorney representing Lloyd and Edna Amundson, a party in opposition. The challenges that were raised are included as Attachment "B". Staff reviewed the challenges and modified the proposed amendments to address identified issues. These modifications were included in the original packet submitted to the Board of Commissioners on October 31. A summary of the modifications can be found in the November 20<sup>th</sup> LCPC staff report,

included as Attachment "C".

At the November 20 public hearing, council representing the Admundsons voiced support for the modifications made by staff and submitted additional comments for consideration. These comments are included as Attachment "D". After reviewing these additional comments, staff recommended a few minor modifications to the proposed ordinance. The Planning Commission concurred with the suggested modifications of staff and forwarded a unanimous recommendation to the Board that the proposed ordinance be adopted with following modifications:

- LC 16.296(5)(c) would be modified to clarify that maintenance, not construction, of airport facilities would be considered an ongoing existing use.
- Additional language would be added to LC 16.296(5)(q) to clarify the requirements for drop zones related to parachuting businesses as described in OAR 660-013-0100(8).
- LC 16.296(12) would be renamed from "Nonconforming Uses" to "Nonconforming Structures".
- Additional language would be added to LC 16.296(12). This language would clarify that structures for which permits have already been applied for are except from the safety overlay zone requirements.

These modifications are identified in legislative format and included as Attachment "E".

In addition to these changes, staff modified the proposed Official Private Use Airport Safety Overlay Zone Map. The map change applies to the Strauch Field Airport. The change shortens the recognized length of the airport runway by approximately 270 feet and reduces the distance that the safety overlay extends onto an adjoining property by the same distance. This change was needed after it was discovered that the Strauch Field runway bisected an undeveloped portion of Culver Lane, a public right of way. Attachment "F" reflects this change.

### **RECOMMENDATION**

These modifications constitute a significant change to the ordinances as read on November 20, 2007. Staff recommends that the Board open the hearing and accept testimony but postpone taking final action on the item until January 2, 2008 to allow for the required 2 week public notice period between readings of the revised ordinances.

### **ATTACHMENTS**

- A. LCPC Meeting minutes for 10/16/07 Work Session and Public Hearing.
- B. Comments in opposition submitted at 10/16/07 Public Hearing
- C. Supplemental staff report to LCPC for continued Public Hearing on 11/20/07
- D. Additional Comments submitted at continued LCPC Public Hearing on 11/20/07
- E. LC16.296 as revised from 1<sup>st</sup> Reading (revisions shown in legislative format)
- F. Revised Official Private Use Airport Safety Overlay Zone Map

## MINUTES

Lane County Planning Commission  
Board of Commissioners Conference Room—125 East 8th Avenue  
Eugene, Oregon

October 16, 2007  
5:30 p.m.

PRESENT: Ed Becker, Chair; John Sullivan, Vice Chair; Lisa Arkin, Steve Dignam, Todd Johnston, Nancy Nichols, Jozef Siekiel-Zdzienicki, Lane County Planning Commissioners; Kent Howe, Keir Miller, Lane County Land Management Division.

ABSENT: Howard Shapiro, Jim Carmichael, Lane County Planning Commissioner.

Mr. Becker called the meeting to order and reviewed the agenda. He noted that a public hearing would be conducted at 7 p.m. following the work session.

### WORK SESSION

#### 1. Adoption July 10 and August 7, 2007 Minutes

Mr. Dignam, seconded by Mr. Sullivan, moved to approve the July 10 and August 7, 2007, minutes. The motion passed, 5:0; Ms. Arkin and Mr. Johnston abstaining.

#### 2. Continuation of discussion concerning the proposed adoption of LC 16.296 and LC 16.297, to identify privately-owned airports, to establish base zone designations and boundaries where private use airports operate and to establish aviation safety overlay zones in rural Lane County.

Associate Planner Keir Miller distributed an updated agenda that included the public hearing format. He said the work session would review the information presented at a July 10, 2007, work session regarding private airport planning in Lane County. He said that Lane County, consistent with the State's Airport Protection Act, was embarking on an effort to recognize private use airports and provide safety standards for those airports. He said the act required counties to take the following actions regarding airports that were recognized in 1994 as having three or more aircraft:

- recognize the location of private airports in the comprehensive plan,
- not impose any limitations on uses that existed in 1996,
- allow new aviation related uses subject to certain criteria, and
- adopt safety overlay zones.

Mr. Miller explained that County was proposing a base zone that would allow for certain uses in the private airports and a safety overlay zone; those were reflected in Lane Code 16.296 and 16.297. He said those zones would apply to four private use airports and one private use heliport—Crow-Mag Airport, Strauch Field Airport, Meadowview Heliport, Jasper Ridge Airport, Walker Airport—and illustrated their locations on a map. He said the base zone would allow continuation of current uses, with some increase in intensity possible under a special use permit, and new uses might be permitted but would require a public hearing; the safety overlay established a buffer around the airports based on take off and landing zones. He used a diagram to illustrate the dimensions of an overlay zone.

Mr. Becker noted that policy language in the agenda materials seemed to suggest that airport sponsors could grant a height variance for structures in the overlay zone, but other materials indicated that was a decision that had to be made jointly by the sponsor and the Department of Aviation. He asked staff to clarify that in the code.

In response to questions from commissioners, Mr. Miller said a height variance question had to be raised by the property owner with the sponsor and Department of Aviation. He said the safety overlay zone was exempt from Measure 37 claims. He said another policy issue of some concern was the requirement that a property owner in the overlay zone would be required to grant a navigation easement to the airport before construction of a habitable structure.

Mr. Miller reviewed the recommended motions to establish the base and safety overlay zones and to redesignate the properties. He said that questions had been raised about the public hearing notice and he would address that at the hearing; the County's legal counsel had advised continuing the hearing until a November 20, 2007, time certain so it could be renoticed.

Mr. Sullivan commented that the subject seemed to include both land use and regulatory issues. He asked if staff would provide any guidance on matters that were outside the commission's purview, but might be raised during the public hearing. Mr. Miller said the boundaries of the safety overlay zone were established by federal and state aviation agencies, although the height of things within the zones was tied to land use. As follow-up to a question from an earlier meeting, he said that there were no federal plans to enact Homeland Security requirements for private use airports.

Ms. Nichols asked if the County had any discretion on the height of safety overlay zones. Mr. Miller said the County could impose more stringent requirements, but that could raise Measure 37 issues.

In response to a question from Mr. Siekiel-Zdzienicki, Mr. Miller explained that the zoning maps still showed M1, M2 and M3 designations, those had been changed to RI (rural industrial) by legislative action in the mid-1990s; the code was updated but because of the extent of effort required to update the maps, a notation was made on them to indicate the changes. He said that updated maps would soon be available.

Mr. Sullivan remarked that there were currently no privately owned, public use airports in the County and asked what would be involved if someone wished to develop one. Mr. Miller replied that the code would not apply, but the airport sponsor could petition the State to be placed on the

County list and if that request was approved, the County would need to amend its code to add that airport.

Ms. Arkin asked if the adopting the safety overlay zone map would devalue the properties subject to it. Mr. Miller said it would impose some regularly not current in effect, but it was difficult to say if that would devalue the property.

Mr. Dignam observed that an airport sponsor could impose restrictions on a neighboring property and asked why the Board of County Commissioners had made the issue a priority. Mr. Miller said a consortium of interests, not just one individual, had brought the issue to the State in the mid-1990s. Planning Director Kent Howe added that the Department of Aviation regarded the smaller airports as part of a larger system that merited protection. He said an individual had asked the County to make implementation of the State law a priority, which was why it became part of the work program.

Mr. Johnston asked if airport sponsors would acquire additional rights under the new code and whether the commission could allow for fewer new permitted uses. Mr. Miller said some restrictions under the current zoning, such as on building new hangers, would not exist under the new zoning, but the code was based on a template from the State and reflected Oregon Revised Statutes (ORS).

Mr. Becker asked why the Meadowview Heliport overlay zone was larger than the zones for fixed wing airports. Mr. Miller said the zones were established by the Department of Aviation, based on diagrams provided by airport sponsors.

Mr. Siekiel-Zdzienicki asked if the determination of an existing use would be based solely on a review of materials without a site inspection to confirm the information. Mr. Miller said a site visit might not be useful in confirming how long a use had been in existence; the public hearing would allow neighboring property owners to dispute any information from sponsors regarding uses they did not feel was accurate. He said that aerial photographs could also be used.

In response to comments from Mr. Johnston and Mr. Sullivan, Mr. Miller said that an airport could increase the number of flights without going through a review process if the new code was adopted.

Ms. Arkin asked if language could be added restricting increases in the number of flights. Mr. Miller said there would need to be a finding that such a restriction met State requirements.

Mr. Dignam asked how the code would address ultralight and kit aircraft or situations in which an individual flew a plane from his own property. Mr. Miller replied that the code excluded ultralights from the definition of aircraft and the code would apply only to the five identified airports.

In response to question from Mr. Dignam and Ms. Arkin, Mr. Miller said the code was silent with respect to paving dirt land strips or installation of lighting and navigational aids. He indicated that paving could be subject to permitting and many of the airports were day use only. He would research the question of lighting, including whether any restrictions could be imposed.

Mr. Sullivan asked about a situation in which an airport increased skydiving activity, which impacted adjacent private use property because more people would be landing there. Mr. Miller replied that the code would only apply to expansion of existing uses on the property under control of the airport owner within the base zone.

### 3. Work Program Update

Mr. Becker invited Mr. Howe to provide an update on recent land use planning activities and what issues the commission might expect to see in the future, as well as the impact of Measure 37.

Mr. Howe noted that the American Planning Association, Oregon Chapter (OAPA) was offering planning commission training online and hoped that commissioners were able to take advantage of it. He said the Board was considering revising how commissioners were appointed and favored appointing a member from each district, with one member at large to be appointed by the Planning Commission. He said the details were still under discussion.

Mr. Howe stated that loss of staff to process land use applications had resulted in an extremely large backlog and that afforded little time for long-term planning activities unless they were identified as high priority. He reviewed a number of issues that would impact the work program, including:

- elimination of the Lane County Local Government Boundary Commission and transfer of annexation responsibilities to local jurisdictions,
- metropolitan area planning as a consequence of separating the Eugene and Springfield urban growth boundaries,
- a court decision related to property line adjustments that affected all cities and would require clarification by the legislature,
- denial of 36 Measure 37 claims, and
- a Multnomah County court decision that determined partitions in subdivisions were not land uses and could affect Measure 37 claims if upheld.

Mr. Howe distributed a document entitled *Lane County Planning Commission Recommendations* and reviewed the County's appeals record. He noted that County decisions were generally not appealed or were upheld on appeal. He briefly reviewed potential agenda items for future commission meetings.

With no further business, the meeting adjourned at 6:55 p.m.

(Recorded by Lynn Taylor)

# MINUTES

Lane County Planning Commission  
Board of Commissioners Conference Room—125 East 8th Avenue  
Eugene, Oregon

October 16, 2007  
7:00 p.m.

PRESENT: Ed Becker, Chair; John Sullivan, Vice Chair; Lisa Arkin, Steve Dignam, Todd Johnston, Nancy Nichols, Jozef Siekiel-Zdzienicki, Lane County Planning Commissioners; Kent Howe, Keir Miller, Lane County Land Management Division.

ABSENT: Howard Shapiro, Jim Carmichael, Lane County Planning Commissioner.

Mr. Becker convened the meeting of the Lane County Planning Commission. He reviewed the procedures for testifying during the public hearing. He stated that the hearing and the record would remain open until November 20, 2007.

Mr. Becker polled commissioners for conflicts of interest or *ex parte* contacts. None were declared.

**PUBLIC HEARING: Proposed adoption of Lane Code (LC) 16.296 and LC 16.297, to identify privately owned airports, to establish base zone designations and boundaries where private use airports operate and to establish aviation safety overlay zones in rural Lane County.**

Mr. Becker opened the public hearing and called for the staff report.

Associate Planner Keir Miller stated that the hearing concerned proposed amendments to the Lane County Rural Comprehensive Plan regarding private airport planning in Lane County, stemming from the Airport Protection Act of 1995. He said counties were mandated to take several actions to protect privately owned airports in existence in 1994 and housing at least three aircraft. He said the proposed new ordinances addressed that requirement by establishing standards for two new zone designations: LC 16.296, base zone and LC 16.297, safety overlay zone. He said staff had also drafted plan amendments that would change the plan designation and zoning for the five private use airports subject to the provisions of the Air Protection Act. He said the hearing and record would remain open to allow the commission an opportunity to review recently received new information and to address potential notice concerns. He distributed a letter from Zack Mittge, on behalf of Lloyd and Edna Amundson, and submitted a copy for the record.

Mr. Becker noted that there would be additional opportunities for public comment and written testimony at the November 20, 2007, public hearing. He called for testimony from those present.

**Bob Palmer**, 4905 Donald Street, Eugene, said he had contacted the State in April regarding some problems at Strauch Field and was informed that the counties were authorized in 1995 to adopt airport protection measures. He said he had asked the County to move forward with those measures. He stated that Strauch Field had been in existence since 1967 and was registered in 1987. He supported protection for Strauch Field.

**Con Magnuson**, 24003 Butte Road, Veneta, stated he had owned Crow-Mag Airport since 1974. He said the site was originally zoned as an airport and through some type of oversight that designation was changed. He supported implementation of the provisions of the Airport Protection Act. He commented that as of January 1, 2008, ultralights would be considered sport aircraft and require a pilot's license and registration.

Ms. Arkin asked if the airport was day use only. Mr. Magnuson replied that use was not limited to the daytime. He said navigation lights were installed in 1976. He described the type of lights that were used, but said nighttime use was limited. He said there was a flight school at the airport and the runway was 50 feet wide and 3,000 feet long.

Mr. Siekiel-Zdzienicki asked if there were any issues with neighbors. Mr. Magnuson said there had been no concerns expressed by neighbors since 1996.

Ms. Arkin asked if the runway was paved. Mr. Magnuson said the runway was a dirt underlay with a gravel overlay and grass planted on that. He said that type of surface provided better drainage and stabilized the ground.

Ms. Arkin asked if the other privately owned airports in the County were similar. Mr. Magnuson was not certain that other airports could be used at night.

**Zach Mittge**, 777 High Street, Eugene, attorney, referenced his letter to the commission dated October 16, 2007, which had been distributed by Mr. Miller. He said he represented Lloyd and Edna Amundson, owners of property adjacent to Strauch Field. He said he had raised the concern with notice procedures for the hearing and understood the County would renotice for the November 20, 2007, hearing. He said the initial notice identified properties subject to the airport base zone, but not the safety overlay zone. He felt that property owners within the safety zone did not receive enough information to understand the potential impacts.

Mr. Mittge questioned why the County could not simply establish the safety overlay zones instead of rezoning and redesignating the airport properties as airports, which would eliminate their existing zoning and prevent the property from being used for other purposes if the owner was no longer interested in having an airport. He said that went beyond what the State required.

Mr. Mittge said under the current proposed airport boundaries the EFU zone on a portion of the Amundson's land would be eliminated but they would derive no benefit from that. He cited a portion of the proposed new code that would require all uses, activities, facilities, vegetation and structures allowed in private use airport zone shall comply with the requirements of the private use airport safety overlay zone. He said the State only addressed structures and vegetation in take off and landing areas; the language related to all uses, activities and facilities was added by the County. He said the proposed zone would allow uses such as search and rescue and parachutes businesses that were not specified by the State.

Mr. Mittge said there could be a number of goal exceptions based on the fact the County was barring existing uses of property and there were inconsistencies with the Lane Code with regard to particular agricultural provisions that would apply to the Amundson property, which was identified as farm property with high value agricultural soils. He said the proposed code would negate those uses on the property.

Mr. Siekiel-Zdzienicki asked how that could occur if the property was in the safety overlay zone. Mr. Mittge said that it would not be a problem if the Amundson's property was outside of the private use



airport zone, but he questioned whether there would be problems for other property owners with EFU designation.

Mr. Mittge said he had difficulty identifying which properties would be affected and that meant owners could have difficulty determining financial impacts. He questioned when the zones would be delineated. He characterized the avigational easement required of adjacent property owners under LC 16.297(9) as government taking.

Mr. Becker asked if accurate maps of zones and parcels were available. Mr. Miller said there were maps that clearly identified parcels affected by overlay zones. He said a misreading of the Strauch Field site plan resulted in a small portion of tax lot 503 being included in the base zone; that could be easily remedied.

Mr. Mittge recommended that the notice of the next hearing include mapping if possible so people could determine the location of their properties relative to the proposed zoning.

**Mary Crabaugh**, 81120 Mill Road, Creswell, stated that her family used to own Walker Airport. She currently owned property to the north and west of the airstrip and wanted to know how she would be affected by the proposed zoning.

Mr. Becker asked Ms. Crabaugh to meet with Mr. Miller, who could provide all of the relevant information, and then return to testify at the public hearing on November 20 if she had concerns or comments after reviewing the material.

**Tom Urban**, 86166 Panorama Road, Springfield, stated he was one of the Jasper Ridge Airport sponsors. He said the airport had a grass over gravel landing strip similar to Crow-Mag Airport and had been in existence and registered since 1981. He said the airport was day use only and neighbors had not expressed any concerns. He asked if there were tax implications to the new zoning. He was concerned that the safety overlay zone would jeopardize forestland deferrals. Mr. Miller said he was referring tax inquiries to the County's Department of Assessment and Taxation. He said the safety overlay zone would not affect the underlying zoning.

Mr. Siekiel-Zdzienicki asked if there would be problems with trees on the land. Mr. Urban said that he kept the area on his property clear and had an agreement with the owner of adjacent property to trim any trees that posed a hazard.

Ms. Arkin asked if Mr. Urban regarding the avigational easement as government taking. Mr. Urban replied that existing uses would not be affected; limitations were only imposed on construction of new structures. He said his neighbors did not regard the easement as a taking.

In response to a question from Ms. Nichols, Mr. Miller said the code as drafted did not specify who was responsible for the cost of topping vegetation that intruded into the overlay zone.

Mr. Palmer remarked that 18 counties had already adopted private use airport regulations. He said the overlay zone was sloped up as it got farther from the landing strip and only trees would be an issue; there were no trees in the proposed overlay zones for any of the five airports.

Mr. Magnuson added cited federal requirements for airport safety zones. He said that federal airport registration required that the entries be clearly defined to assure adequate safety margins.

**Randy Stout**, 86277 Panorama Road, Springfield, said his property was at the end of the Jasper Ridge airstrip. He said the issue of taking was important and emphasized that the State of Oregon had established its authority to take some airspace for safety, just as it could take road easements. He felt that the safety overlay zone, particularly because of the upward slope, had minimal impact on property.

Mr. Miller indicated he would present information in response to the public testimony at the next hearing.

Mr. Dignam asked staff to conduct additional research on the issue of takings to assure that the code was in compliance with State and federal law. Mr. Miller said he would provide a written response to the issues raised during public testimony and in Mr. Mittge's written testimony.

Mr. Becker stated that the hearing would be continued to November 20, 2007, and the record would remain open until that time.

The meeting adjourned at 7:55 p.m.

(Recorded by Lynn Taylor)



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October 16, 2007

Lane County Planning Commission  
c/o Keir Miller, Associate Planner  
Lane County Land Management  
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125 E. 8<sup>th</sup> Ave  
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Via E-mail [keir.miller@co.lane.or.us](mailto:keir.miller@co.lane.or.us), Hand Delivery and First Class Mail

Re: Lane Use Hearing on October 16, 2007  
Our Clients: Lloyd and Edna Amundson  
Our File No.: 10607

Dear Planning Commission Members:

Our firm represents Lloyd and Edna Amundson, property owners who will be adversely affected by the proposed Private Use Airport and Private Use Airport Safety Overlay zones. We write to oppose the proposed adoption of the Private Use Airport and Private Use Airport Safety Overlay zones, because the proposed zones are contrary to both state and local law.

Please include this letter in the record of these proceedings, and provide us with notices of all future activity in this case, including hearings, decisions, and appeal.

**A. Defects in the Notice.**

As a preliminary matter, the notice of the proposed hearing contained numerous defects. In particular, as set forth in prior correspondence to County staff (incorporated herein by this reference), the proposed notice does not conform to the applicable requirements of ORS 215.503. That statute requires:

ORS 215.503

1. Individual notice that "describe[s] in detail how the proposed ordinance would affect the use of the property." ORS 215.503(5)
2. It also requires a heading in bold-face type that:

**"This is to notify you that (governing body of the county) has proposed a land use regulation that may affect the permissible uses of your property and other properties." *Id.***

3. As well as a statement in the body of the notice that:  
"The (governing body) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property." *Id.*

None of these requirements were met in this case.

This is not merely a technical violation of the statute. The notice at issue did not identify all properties that would be subject to the proposed zone changes. In particular, none of the properties that are proposed to be subject to the Private Use Airport Safety Overlay Zone are identified as subject to the Overlay Zone in the notice.

Hence, property owners that the County would burden with the additional limitations on use, and exact avigational easements from, have not been told that the proposed rezoning affects their property, much less how it would affect or burden their property. This is not only a violation of the statute, but of Statewide Planning Goal 2 and the owners' right to due process.

This violation may have serious repercussions. In particular, where a "local government makes a land use decision that is different from the proposal to such a degree that the notice of the proposed action does not reasonably describe the local government's final actions," a party's right to appeal the decision does not terminate within 21 days of the final decision (ORS 197.830(3) nor is that party's appeal limited to issues raised at the public hearing before the local government. ORS 197.835(4)(b). Indeed, the requirements of ORS 215.503 are directly linked to the requirements of ORS 215.060 and 215.223, which provide that a county's actions will have "no legal effect" if they are not properly noticed.

#### Lane Code

Moreover, the County's notice also fails to conform to the requirements of the Lane Code in that it fails to conform with one or more of the requirements of LC 14.070(2). For example, properties are not identified by street address, LC 14.070(1)(b), nor does the notice include:

"A statement that failure of an issue to be raised in a hearing, in person or by writing, or failure to provide statements or evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals." LC 14.070(2)(f).

Again, these technical violations may have serious repercussions for Lane County and substantially interfere with the participation by interested members of the public.

**B. The Private Use Airport Zone Is Not Authorized By Law.**

As County staff notes, Oregon's airport planning requirements only require local governments to:

(1) "recognize in [their] planning documents **the location of private-use airports**...if the airport was the base for three or more aircraft as shown in the records of the Department of Transportation, on December 31, 1994." ORS 836.608(2) (Emphasis added).

(2) "**not impose limitations** on the continued operation" of specified airport uses at these private-use airports. ORS 836.608(3)(a) (Emphasis added).

(3) And "**authorize the establishment** of a new" airport use or uses at these private-use airports under certain circumstances. ORS 836.608(3)(b) (Emphasis added).

Unfortunately, the propose Private Use Airport Zone goes beyond merely identifying existing private use airports, and providing for the continuation of these airport uses, and for expansion in certain circumstances. It bars otherwise permitted uses on both airport and non-airport properties, and in a way that conflicts with the Lane County Comprehensive Plan and Statewide Planning Goals. Accordingly, the Planning Commission should not recommend the approval of this zone.

*The Private Use Airport Zone includes property that it should not.*

First, the boundaries of the proposed Private Use Airport Zone include non-airport property in violation of state law.

The County is required to locate private-use airports by setting:

"a boundary showing areas in airport ownership, or subject to long-term lease that are developed or committed to airport uses."

The boundary proposed for adoption before the County includes properties that are not owned or subject to long-term lease by an airport.

In particular, the County appears to identify "Strauch Field" as encompassing "portions of tax lots 503 and 900" as subject to the Private Use Airport zone. See Notice Item 8. Lot 503 is not owned or subject to long-term lease by the owners of "Strauch Field." As reflected in Lane County tax records (attached), Lloyd and Edna Amundson are the sole owners of lot 503. Accordingly, no portion of lot 503 should be included in the PUA zone, nor should it be designated to accommodate such zoning.

*The Private Use Airport Zone bars uses that it should not.*

The proposed Private Use Airport Zone bars existing uses on the airport properties that are permitted by the existing zoning. The zone bars uses in two fashions:

1. It includes a list of permitted and conditionally permitted uses that is substantially more restrictive than the current zoning on the property; and
2. It purports to make all uses and activities within the Private Use Airport Zone subject to the restrictions of the Safety Overlay Zone.

With regard to the first issue, state law does require that the County not limit specified airport uses on airport properties, and to permit growth of these uses in certain circumstances. It does not require the County to bar all permitted, non-airport uses of airport properties.

On the one hand, these permitted uses have already been adopted by Lane County and have been acknowledged as being in compliance with both the comprehensive plan and the Statewide Planning Goals, so it is not unlawful to permit these uses to continue. On the other, barring existing uses on these properties would invite potential Measure 37 claims.

This problem is magnified by the difficulties the County has had in accurately identifying the boundaries of this zone. For example, under the current state of the proposed zone, the County could unwittingly bar uses which are expressly permitted on the Amundson's EFU land, and turn others into nonconforming uses subject to the stringent limitations of the County's nonconforming use provisions. This problem could be carried forward on other properties that have been improperly mapped or designated.

State law does not require the County to bar all underlying uses of the airport properties. Indeed, as acknowledged by ODA, state law does not even require a base zone to be adopted. Thus, while the County might want to use a Private Use Airport Zone (or overlay) to identify and locate private-use airports and to permit the specified airport uses to continue (and expand under appropriate circumstances) on these properties, it should not make these provisions exclusive, or bar existing conditional or approved uses on the subject properties.

The second issue, is codified at the proposed LC 16.296(8). Although captioned "Limitations on Height of Structures" this provision states:

"All uses, activities, facilities, vegetation and structures allowed in the Private Use Airport zone shall comply with the requirements of the Private Use Airport Safety Overlay Zone, LC 16.297."

This provision may be designed to address the required protection for approach zones set forth at ORS 836.608(8). However, this proposed provision exceeds the authority set by statute.

ORS 836.608(8) only imposes restrictions on the "height of structures" and not on "uses, activities [or] facilities."<sup>1</sup> Hence, the proposed limitations on uses, activities or facilities are not authorized by statute, and the proposed zone should be revised so as not to impose any height limitation of uses, activities or facilities that are not considered structures.

The proposed zone bars uses that it should permit, and it should not be adopted by Lane County.

*The Private Use Airport Zone permits uses that it should not.*

In addition to barring existing activities on airport properties, the proposed list of permitted uses would permit additional activities on airport properties that it should not. OAR 660-013-0155 requires local governments to use the list of uses for non-towered airports "in conjunction with ORS

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<sup>1</sup> In interpreting this rule, DLCD included "trees and other objects of natural growth" in its prohibitions on approach areas. 660-013-0070(1). Although it is highly questionable that trees might be considered "structures" under the statute, we do not dispute the propriety of the County adhering to the DLCD rule. However, for the sake of consistency with the statute, the County should identify the structural height limitations as applying only to structures and "trees and other objects of natural growth."

836.608 to determine the appropriate types of uses authorized" for private-use airports.

The proposed zone is not based on the required analysis. The staff report does not reflect any consideration of whether the uses proposed are "appropriate types of uses" under ORS 836.608. As the required analysis has apparently not been undertaken, the proposed zone should not be adopted.

For example, the zone includes "search and rescue" operations. LC 16.296(5)(j). This is a use that is not identified by either ORS 836.608 or OAR 660-013-0100. Thus, it cannot be on the list of approved uses under OAR 660-013-0155.

Likewise, the proposed zone would appear to permit parachute businesses (LC 16.296(5)(q), without imposing the requirement set forth in OAR 660-013-0155(8) that such businesses have secured a "drop zone" at least 10 acres in size.

Furthermore, proposed LC 16.296(4) appears to permit additional uses. It provides:

"Operation of the existing uses may be continued at their current levels as of the effective date of this ordinance (\_\_\_\_\_, 2007) upon a determination that the use existed at the airport at any time during 1996."

This provision is problematic for two reasons: (1) it does not identify what "existing uses" may be continued to operate on airport properties. This provision may be intended to implement 836.608(2) that provides for the continuation of specified airport uses. However, as written it encompasses any "existing us[e]" of the subject property that occurred at any time in 1996. (2) It appears that these "existing uses" "may be continued at their current levels as of the effective date of the ordinance" for an unspecified period of time until a determination occurs.

In 2004, the Land Use Board of Appeals struck a similar provision from the City of Cottage Grove's Mixed-Use Master Plan ordinance that would have permitted existing levels of use on a property to continue until such time as an MUM application was approved. In so doing, the Land Use Board of Appeals held that the provisions authorized the continuation of existing uses that were unlawful or in violation of applicable land use laws, and that Cottage Grove could not legalize the existing uses in this fashion. *Okray v. City of Cottage Grove*, 47 Or LUBA 297, 302-303 (2004). Since, the proposed



language would appear to do the same thing, the County should not approve this ordinance.

Hence, as the proposed zone is not based on the required analysis and includes uses that are forbidden, it should not be approved by the County.

*The Private Use Airport Zone requires one or more Goal Exceptions that have not been taken.*

The proposed Private Use Airport Zone would bar existing uses permitted by the underlying zone. In fact, the proposal calls not just for the creation of an overlay (which might permit additional uses and impose additional restrictions on a property without fundamentally altering the underlying zone), but for the complete rezoning and redesignation in the plan of all properties that are identified as Private Use Airports. This could violate a number of statewide planning goals including resource protection goals (Goal 3 and 4), housing (Goal 10) and urbanization (Goal 14).

For example, "Strauch Field" would be designated and rezoned from Agricultural and EFU-30, respectively, to Airport and Private Use Airport. This violates Goal 3. Goal 3 provides:

"Agricultural land shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space."

"Farm use," under Goal 3, includes both farm and non-farm uses set forth in ORS 215.213. However, as set forth above, the proposed list of permitted uses would bar most of these farm and non-farm "farm use[s]" and remove this agricultural land from farm use. Accordingly, this proposal violates Goal 3, and, without a Goal Exception, cannot be approved. *See also* LC 16.400(2) (requiring consistency between the comprehensive plan and Statewide Planning Goals).

*The Private Use Airport Zone is inconsistent with the unamended portions of the Lane County Rural Comprehensive Plan.*

Consistent with Goal 3, Lane County's Rural Comprehensive Plan states that the County shall:

"Encourage agricultural activities by preserving and maintaining agricultural lands through the use of an exclusive agricultural zone which is consistent with ORS 215."

"Reserve the use of the best agricultural soils exclusively for agricultural purposes."

Again, the proposed "Strauch Field" would be located on property that is designated as agricultural land, and on land that is comprised of good agricultural soils (for example, the Amundson property is 77% class II soils). Hence, the proposal is inconsistent with the unamended portions of the rural comprehensive plan, and should not be approved. *See* LC 16.252(2) & 16.400

For each of the foregoing reasons, the Planning Commission should recommend denial of the proposed Private Use Airport zone.

**C. The Private Use Airport Safety Overlay Is Not Authorized By Law.**

In addition to the problems with the primary zone, the proposed Safety Overlay is inconsistent with state and local law and should not be approved.

*The Private Use Airport Safety Overlay is unclear.*

As set forth above, the notice of this hearing does not identify any property as being subject to the proposed Private Use Safety Overlay (PUASO). Moreover, the County's records contain only a substantially reduced version of the proposed map, the scale of which precludes any meaningful opportunity to review where the overlay is proposed to be located.

County staff may point out that property owners received notice that an Overlay Zone would be applied as part of this legislative action. However, this notice is substantially undermined because notices were sent to property owners that would be subject to proposed Private Use Airport Zone, the Public Use Airport Overlay Zone as well as adjoining property owners. This would only add to the confusion of these property owners, as to whether their property (identified only by map and tax lot number in the notice), was one of the identified properties subject to the proposed Private Use Airport Zone, the unidentified properties subject to the proposed Private Use Airport Zone overlay, or an unidentified adjoining property. The notice does not locate the overlay zone, or even state what those impacts would. Therefore, property owners' interest and ability to appear and defend has been substantially undermined in this case.

Additionally muddying the waters is LC 16.297(4) which provides that "imaginary surface delineation" (which is the basis of the overlay zone) "shall

be delineated." This appears to indicate that the Overlay Zone would be adopted before its boundaries are set.

This lack of clarity prior to adoption of the zoning runs counter to applicable provisions of the Lane Code. For example, Lane Code provides:

"The Planning Commission, during consideration of a Rural Comprehensive Plan component or an amendment to such a Plan component shall consult and advise with...citizens generally to the end that maximum coordination of Plans may be secured." LC 16.400(6)(c)(ii).

That coordination has not been served and has been substantially undermined by the lack of fixed and identifiable zone boundaries for the overlay in this process. Indeed, property owners cannot even presently identify those structures that would be considered "nonconforming uses" under the proposed LC 16.297(8). Given this lack of clarity, the County should not approve the proposed Overlay.

The Private Use Safety Overlay appears to impose restrictions on uses which are not authorized or required by law.

Similar to LC 16.296(8), discussed above, the proposed LC 16.297(6) states:

"All uses permitted by the underlying zone shall comply with the height limitations in LC 16.297(6)(a) and (b) below." (Emphasis added)

This creates an inconsistency with LC 16.297(6)(a) which, according to its terms, expressly refers only to "structure[s], tree[s] or other object[s] of natural growth." These provisions are internally consistent, and the reference to "[a]ll uses" is inconsistent with the provisions of OAR 660-013-0070(1) as set forth above. Accordingly, this zone should not be adopted.

The Private Use Safety Overlay would exact an unlawful avigational easement from surrounding property owners.

In addition to the structural height limitation required by law, the proposed LC 16.297(9) requires that adjacent property owners to the identified private airports dedicate an "avigational easement" to their neighbors in a "form acceptable to the airport sponsor" which "shall allow unobstructed passage for aircraft" upon application for land use permits or land use decisions. This goes beyond the requirements of state law and is unlawful taking on these property owner's interests.

As set forth above, the only restriction on uses that is provided for by state statute is to prohibit structures, trees and other objects of natural growth from penetrating the approach zone for an airport. This protection is embodied in LC 16.297(6). Hence, there is neither need nor authorization under state law for the County to exact an avigational easement from surrounding property owners.

Additionally, such an exaction would constitute an unlawful taking of private property by the governing body without just compensation. An unlawful taking because there is no legitimate public interest to be served by requiring a conveyance of a private easement between parties; and because, even if there were, there is not the required nexus connecting neighbors applications for land use decisions or building permits on adjoining properties with dedicating an easement for air traffic above their property whose terms can be dictated by the airport owner. As this provision is both unnecessary and unlawful, the County should not adopt the proposed Safety Overlay.

### Conclusion

For all the foregoing reasons, the Lane County Planning Commission should recommend denial of both the proposed Private Use Airport Zone and Private Use Airport Safety Overlay.

Very Truly Yours,

HUTCHINSON, COX, COONS,  
DUPRIEST, ORR & SHERLOCK, P.C.



Zack P. Mittge

ZPM/arc

Enclosure: RLID Report for Map & Tax Lot #16-04-08-00-00503

cc: Clients (w/Enc.)

**AGENDA COVER MEMO (SUPPLEMENTAL)**

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**DATE:** November 5, 2007 (Date of Memo)  
October 16, 2007 (Date of Original Public Hearing)  
November 20, 2007 (Date of Continued Public Hearing)

**TO:** **LANE COUNTY PLANNING COMMISSION**

**FROM:** Public Works Department/Land Management Division

**PRESENTED BY:** Keir Miller, Associate Planner

**AGENDA ITEM TITLE:** 1) ORDINANCE NO PA1245 – IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN (RCP) BY REVISING GOAL-2, POLICY 25; TO ESTABLISH PROVISIONS FOR A PRIVATE USE AIRPORT OVERLAY ZONE; BY ADOPTING AN OFFICIAL PRIVATE USE AIRPORT OVERLAY ZONE MAP; BY APPLYING THE OVERLAY ZONE TO FIVE PRIVATE USE AIRPORTS AND SURROUNDING PROPERTIES AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES.

2) ORDINANCE \_\_-07- IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN (RCP) AND LANE CODE CHAPTER 16 TO ESTABLISH A PRIVATE USE AIRPORT OVERLAY ZONE. (LC16.012, LC16.296)

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**I. REQUESTED MOTION**

**A. Motion 1**

The Lane County Planning Commission recommends that the Board of County Commissioners approve Ordinance No. PA 1245. This motion would:

- a. Amend The Rural Comprehensive Plan, Goal 2, Policy 25 to include provisions for a private use airport overlay zone.
- b. Adopt an Official Private Use Airport Overlay Zone Map
- c. Apply the Private Use Airport Overlay zone to the properties or portions of properties listed in Section 3 of Attachment "A".

**B. Motion 2**

The Lane County Planning Commission recommends that the Board of County Commissioners approve Ordinance No. \_\_-07. This motion would:

- a. Amend Lane Code Chapter 16.012 (Zone Classifications) to include the Private Use Airport Overlay Zone (PUAO-RCP) into the list of established zones.
- b. Amend Lane Code Chapter 16 to include section .296 (Private Use Airport Overlay Zone)

**II. AGENDA ITEM SUMMARY**

The Planning Commission is being asked to recommend to the Board of Commissioners amendments to the Rural Comprehensive Plan that will bring Lane County into compliance with state laws pertaining to private airport planning and protection. The proposed amendments would establish a private use airport overlay zone ordinance and an official zoning map and would apply the zone to four existing private use airports and one existing private use heliport and surrounding properties.

**III. BACKGROUND/ PREVIOUS PLANNING COMMISSION HISTORY**

This item was originally discussed with the Planning Commission at a work session on July 10, 2007. An additional work session and public hearing on the proposed amendments was held on October 16, 2007. The October 16 public hearing was continued until November 20, 2007, to provide staff and the Planning Commission an opportunity to review challenges raised by an attorney representing Lloyd and Edna Amundson, a party in opposition to the proposed amendments.

**IV. ANALYSIS**

**A. Challenges**

Several challenges to the proposed amendments were submitted into the record. The substantive challenges can be categorized as follows:

- Issues with notice
- Problems with application of a base zone
- Problems with the identified boundaries of the airport base zone
- Uses prohibited within the base zone
- Uses allowed within the base zone
- Required Goal exceptions have not been taken
- Base zone is inconsistent with the Rural Comprehensive Plan
- Private use airport safety overlay zone is unclear
- Aviation easement unlawful

Staff has made a number of modifications that clarify and improve the original proposal and address the challenges that have been raised. A synopsis of the applicable modifications follows each challenge, below.

#### Issues with notice

A re-notice of the continued public hearing was mailed on October 29, 2007. The notice (included as Attachment "C") meets all requirements of state and local law.

#### Application of a base zone

A change of the base zoning for each private use airport is no longer being proposed. The requirements of state law can be met without rezoning the base zones of each airport. Staff has researched successful private use airport overlay zones in use by other counties and has drafted a similar ordinance. The new ordinance (LC 16.296, Private Use Airport Overlay Zone /PUAO-RCP) combines provisions of the previously proposed LC 16.296 (base zone) and LC16.297 (safety overlay) and is included as Exhibit "A" to Attachment "B" of this memo.

#### Problems with the identified boundaries of the airport base zone

The correct boundaries of the private use airports have been clearly identified by the airport sponsors. A reduced scale copy of the new proposed Official Private Use Airport Overlay Zone map is included as Exhibit "B" to Attachment "A". Larger scale maps are also included in the re-notice materials provided as Attachment "C".

#### Uses prohibited within the base zone

The new Private Use Airport Overlay zone will not prohibit any of the underlying uses permitted within the base zones of properties to which it is applied.

#### Uses allowed within the base zone

All uses permitted within the proposed Private Use Airport Overlay zone are appropriate types of uses at private airports. These uses are identified within the statutes, administrative rules and the language of SB 1113. Staff has added language to the description of permitted "aeronautic recreational and sporting activities" to clarify additional requirements of state law related to parachutes businesses.

#### Required Goal exceptions have not been taken

The modified proposal will not alter the base zoning of any properties; therefore no Goal exceptions are required.

#### Base zone is inconsistent with the Rural Comprehensive Plan

A base zone is no longer being proposed; therefore this challenge is no longer applicable.

#### Private use airport safety overlay zone is unclear

As discussed above, the boundaries of the new Private Use Airport Overlay zone have been clearly mapped. The properties to which the zone will be applied were included in the re-notice that was mailed on October 29, 2007 and are included in the proposed adopting ordinance language included as Attachment "A".

#### Avigation easement unlawful

While it is unclear if the application of an avigation easement requirement is actually unlawful, it is not a requirement of state law. The avigation easement provision has been removed from the proposed ordinance.

## B. Clarifications

During the October 16 work session, Commissioners Arkin and Dignam asked staff to provide clarification concerning lighting requirements, or lack thereof, under the proposed ordinances. Chair Becker asked staff to clarify which parties or agencies would need to approve height variance requests.

### Lighting

Navigational aids, including lighting, are not regulated by the proposed private use airport overlay zone. Placing limitations on use of navigational lighting would run counter to the purposes of the proposed overlay zone. The intent of the zone is to provide for the continued operation and vitality of private use airports and to provide for the safety of those using them and living nearby. Limits on navigational lighting would prohibit use of the airfields during low light conditions and their absence would potentially create a greater risk to pilots and neighboring residents. Furthermore, it appears unlikely that any navigational lighting employed at the private use airports in Lane County would create a major nuisance to neighboring property owners. Navigational lighting is generally low intensity and oriented in such a way as to be seen from the sky.

### Variance Requirements

LC 16.296 (10) (b) states:

*Height variances may be permitted when supported in writing by the airport sponsor and the Department of Aviation. Applications for height variances shall comply with LC 16.256(1) and (2), and shall be subject to such conditions and terms as recommended by the Department of Aviation.*

A literal reading of the code is appropriate. Under the proposed ordinance individuals seeking a height variance would need to submit supporting statements from **both** the airport sponsor and the Oregon Department of Aviation. This requirement is intended to ensure that any structures permitted in excess of the ordinance standards have been considered by both state agency staff and by a user of the airport who is knowledgeable of the terrain, conditions, typical flight patterns, activities and routines at the airport or heliport in question.

## C. Other Issues

The following language was added to the ordinance to address concerns raised John Henderson, airport sponsor for the Meadowview Heliport:

LC 16.296 (2) (c)

*If any airport or heliport to which this overlay zone has been applied is removed from the State's list of airports in a manner described in ORS 836.610, the county will no longer apply and enforce the safety overlay zone that corresponds to the removed airport or heliport.*

This language will automatically terminate the application of the overlay zone to any properties that are removed from the State's official inventory. Adding this language will alleviate the need for property owners to apply for a zone change to remove the overlay zone should airport or heliport operation cease to exist on site.



**V. ACTION**

**A. Alternatives/Options**

**Option 1:** Recommend that the Board adopt Ordinance Number PA 1245 and Ordinance No \_\_-04

**Option 2:** Recommend that the board not adopt Ordinance Number PA 1245 and Ordinance No \_\_-04

**B. Recommendation**

Staff recommends Option 1.

**C. Follow Up**

Staff will forward the recommendation of the Planning Commission to the Board of Commissioners.

**VI. ATTACHMENTS**

**A. Ordinance PA 1245**

Exhibit A: Proposed Amendments to RCP Goal 2, Policy 25

Exhibit B: Official Private Use Airport Safety Overlay Zone Map (scale reduced)

Exhibit C: Findings in Support of Ordinance PA 1245

**B. Ordinance No. No. \_\_-07**

Exhibit A: Lane Code 16.296 Private Use Airport Overlay Zone (/PUAO - RCP)

Exhibit B: Proposed Amendments to Lane Code 16.012

**C. Legal notices mailed for continued LCPC hearing on November 20, 2007 and BCC public hearing on December 5, 2007.**

November 19, 2007

Lane County Planning Commission  
c/o Keir Miller, Associate Planner  
Lane County Land Management  
Public Service Building  
125 E. 8<sup>th</sup> Ave  
Eugene, OR 97401-2926

Via E-mail [keir.miller@co.lane.or.us](mailto:keir.miller@co.lane.or.us), Hand Delivery and First Class Mail

Re: Private Use Airport Overlay  
Our Clients: Lloyd and Edna Amundson  
Our File No.: 10607

Dear Planning Commission Members:

Our firm represents Lloyd and Edna Amundson, neighbors of the property designated as "Strauch Field" and owners of property that would be subject to the proposed safety overlay.

We applaud the planning staff's flexibility in making modifications to proposed code provisions that more closely conform to the state requirements. We write to support most of the revisions to the proposed overlay recommended by County Planning staff, and to propose some limited additional clarifications to the proposed zoning.

### 1. Airport Overlay.

The revised County overlay eliminates the proposed private use airport base zone and appears to replace it with a combined "Private Use Airport Overlay Zone." However, the nature of the "overlay" zone remains unclear from the proposed text. In particular, although designated as an "overlay" zone, the "applicability" statement refers to both a "private use airport operation district and a safety overlay zone." See *proposed* LC 16.296(2).

The purpose of the combined overlay is to "not prohibit any of the underlying uses permitted within the base zones of properties to which it is applied" and thereby eliminate the need for exceptions to the Statewide Planning Goals. See Staff Report, p. 3. For the sake of clarity and consistency with this purpose, it would be useful to include a statement in LC 16.296(1) and/or (2) that:

"The provisions of the overlay zone supplement those of the applicable base zone. Where the overlay zone and base zone conflict, the more restrictive requirement applies."

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This should remove any doubt that the proposed overlay does not bar uses permitted by the base zone, except to the extent of the height restrictions imposed by the overlay.

## 2. Permitted Uses

The revised LC 16.296(5)(j) refers to "[s]earch and rescue operations." As discussed in our prior submittal, ORS 836.616(2) is the exclusive list of uses that may be approved for private use airports. See OAR 660-013-0155(8). "Search and rescue operations" are not among these uses.

It appears that, as planning staff notes, "[s]earch and rescue" operations were originally included in Senate Bill 1113 in 1995. However, the current version of statute does not recognize these uses as being permitted for private use airports.

It may be that "[s]earch and rescue operations" were omitted when the law was amended in 1997, for some unknown reason. In any case it is not on the list of approved uses under the state statute, and Lane County should not include it on its list until such time as the legislature modifies the statute.

The revised LC 16.296(5)(q) does make reference to the drop zone requirements for parachute businesses set forth in OAR 660-013-0100(8). However, we would recommend that this provision be revised to include the express requirement in the administrative rule that:

"Parachuting businesses may be allowed only where they have secured approval to use a drop zone that is at least 10 contiguous acres. A local government may establish a larger size for the required drop zone where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land."

This will make the revised provision more easily accessible for Lane Code users, who will not need to refer to the administrative rules to ensure compliance with the Code.

It will also eliminate any risk associated with typographical errors or renumbering of the Oregon Administrative Rule. This need is highlighted by the fact that the current draft omits a zero and refers to this provision as "OAR 660-013-010(8)." Thus, in its current form the

provision would refer users to an administrative rule provision that does not exist. Inserting the text would largely eliminate this risk in future drafts.

### 3. Nonconforming Structures.

Again, County staff has done an effective job in the proposed revisions of removing references to limitations on "uses, activities [or] facilities" that are not structures restricted by ORS 836.608(8). However, LC 16.296(12) still refers to nonconforming structures as "Nonconforming Uses" both in its caption and in subsection (c) which refers to "a nonconforming use or structure."

ORS 836.608(8) and OAR 660-013-0070(1) refer only to structures and "trees and other object of natural growth." Thus, to clarify what is required, LC 16.296(12) should be modified to refer to "Nonconforming Structures."

### 4. Property Development Standards

The "Private Use Airport Zone" discussed at the public hearing in October included property development standards for new or expanded airport uses in the proposed airport based zone. These included provisions related to setbacks, riparian setbacks, maintenance and removal of riparian vegetation, signage and parking requirements. These provisions were not challenged before the County, but were nevertheless removed by planning staff. These are reasonable provisions that should apply to new uses and expanded airport uses under LC 16.296(6) and (7).

### 5. Delineation of the Safety Overlay.

The County planning staff has provided a clearer and much more effective notice to neighboring property owners regarding the size and extent of the proposed safety overlay on their property, and what portions of the property are considered to be in the private airport "district" portion of the overlay. As is apparent from this delineation, the district portion of the "Strauch Field" overlay has been removed from the Amundson property.

However, one aspect of the safety overlay that remains unclear is the extent of the primary surface area. The safety overlay is defined by the "airport imaginary surface" – including the "primary surface" and the "approach surface." The primary surface is effectively a 200-foot wide area that is centered on the runway and "ends at each end of the runway." The "Approach surface" begins where the "primary surface" ends (the ends of the runway), and extends up at a slope of 20:1, and out to 450 feet at a distance of

2,500 feet. *See* 16.296(3). As the end of the runway signifies the end of the primary surface and the beginning of the approach area, it is also the point where the elevation of the safety overlay increases.

With regard to Strauch Field, the primary surface should not extend beyond the south side of Culver Lane. As one can see from the attached materials, a corridor of real property extending from Prairie Road between the Strauch (lot 510) and Palmer (lot 900) properties has been dedicated to the use of the public for road purposes. The initial dedication predates Mr. Strauch's ownership of his property, and the registration of "Strauch Field" by Robert Palmer in 1987. Accordingly, County staff have prudently removed Culver Lane from the area identified as a private airport district.

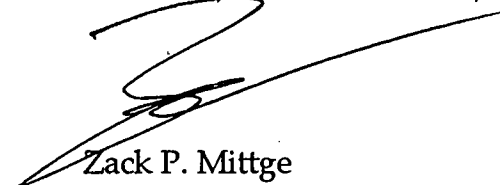
Although it is unclear, due to the scale of the map, at what point the County's Overlay zone changes from the "primary surface" to the "approach surface," airplanes taxiing across the dedicated Culver Lane would be a substantial interference with the public easement. Accordingly, County staff in consultation with the surveyors office (who have confirmed the existence and extent of the public road easement) have confirmed that they are recommending the termination of the primary surface south of Culver Lane. We respectfully request that the County adopt its staff recommendations and hold that the primary surface ends south of Culver Lane to avoid an unreasonable interference with the public right-of-way.

### Conclusion

For all of the foregoing reasons, we support the staff's recommended changes and request that County adopt the proposed airport overlay zone with the recommended modifications set forth herein.

Very Truly Yours,

HUTCHINSON, COX, COONS,  
DUPRIEST, ORR & SHERLOCK, P.C.



Zack P. Mittge

ZPM/arc  
Enclosure  
cc: Clients (w/Enc.)

PRIVATE USE AIRPORT OVERLAY ZONE (/PUAO, RCP)  
RURAL COMPREHENSIVE PLAN

**16.296 Private Use Airport Overlay Zone (/PUAO, RCP).**

(1) Purpose. The purpose of the Private Use Airport Overlay Zone is to recognize the locations of certain private use airports and heliports and to provide for their continued operation and vitality consistent with state law. It also provides for standards to promote air navigational safety at these airports, and to reduce the potential safety hazards to persons living, working or recreating on lands near such airports.

(2) Applicability. The Private Use Airport Overlay Zone consists of two elements: a private use airport operation district and a safety overlay zone.

(a) The private use airport operation district applies to private use airports and heliports in rural Lane County that were the base for three or more aircraft on December 31, 1994, as shown in the records of the Oregon Department of Transportation. The boundaries of the private use airport operation district are delineated on the Official Private Use Airport Overlay Zone Map. The identified private use airports and heliports in Lane County include:

- (i) Crow-Mag Airport;
- (ii) Jasper Ridge Airport;
- (iii) Meadowview Heliport;
- (iv) Strauch Field Airport; and
- (v) Walker Airport.

(b) The safety overlay zone applies to those lands encompassed by the airport and heliport surfaces set forth and defined in LC 16.296(3), delineated in LC 16.296(8) and diagramed LC 16.296(13).

(c) If any airport or heliport to which this overlay zone has been applied is removed from the State's list of airports in a manner described in ORS 836.610, the county will no longer apply and enforce the safety overlay zone that corresponds to the removed airport or heliport.

(3) Definitions.

Aircraft. Includes airplanes and helicopters, but not hot air balloons or ultralights.

Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses.

Airport Elevation. The highest point of an airports' usable runway, measured in feet above mean sea level.

Airport Imaginary Surface. Imaginary areas in space or on the ground that are established in relation to the airport and its runways. Imaginary areas for private use airports are defined by the primary surface and approach surface.

Airport Sponsor. The owner, manager, or other person or entity designated to represent the interests of an airport or heliport.

Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of a runway. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to the width of 450 feet for that end of a private use airport with only visual approaches. The approach surface extends for a horizontal distance of 2,500 feet at a slope of 20 feet outward for one foot forward.

Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.

Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level.

Heliport. An area of land, water, or structure designated for the landing and take-off of helicopters or other rotorcraft.

(h) Emergency medical flight services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. Emergency medical flight services include search and rescue operations but do not include hospitals, medical labs, medical equipment sales, and other similar uses.

(i) Law enforcement and firefighting activities, including aircraft and ground-based activities, facilities and accessory structures necessary to support federal, state or local law enforcement or land management agencies engaged in law enforcement or firefighting activities. Law enforcement and firefighting activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.

(j) Search and rescue operations, including aircraft and ground based activities that promote the orderly and efficient conduct of search or rescue related activities.

(k) Flight instruction, including activities, facilities, and non-residential accessory structures located at airport sites that provide education and training directly related to aeronautical activities. Flight instruction includes ground training and aeronautic skills training, but does not include schools for flight attendants, ticket agents or similar personnel.

(l) Aircraft service, maintenance and training, including activities, facilities and accessory structures provided to teach aircraft service and maintenance skills and to maintain, service, refuel or repair aircraft or aircraft components. "Aircraft service, maintenance and training" includes the construction and assembly of aircraft and aircraft components for personnel use, but does not include activities, structures or facilities for the manufacturing of aircraft or aircraft-related products for sale to the public.

(m) Aircraft rental, including activities, facilities and accessory structures that support the provision of aircraft for rent or lease to the public.

(n) Aircraft sales and the sale of aeronautic equipment and supplies, including activities, facilities and accessory structures for the storage, display, demonstration and sales of aircraft and aeronautic equipment and supplies to the public but not including activities, facilities or structures for the manufacturing of aircraft or aircraft-related products for sale to the public.

(o) Crop dusting activities, including activities, facilities and structures accessory to crop dusting operations. Crop dusting activities include but are not limited to, aerial application of chemicals, seed, fertilizer, defoliant and other chemicals or products used in a commercial agriculture, forestry or rangeland management setting.

(p) 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 30.390.

(q) Aeronautic recreational and sporting activities, including activities, facilities and accessory structures at airports that support recreational usage of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight, are permitted subject to the acceptance of the airport sponsor. Aeronautic recreation and sporting activities include, but are not limited to, fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft, aeronautic flight skills contests; gyrocopter flights; flights carrying parachutists; and parachute drops onto an airport. As used herein, parachuting and parachute drops include all forms of skydiving. Parachuting businesses may only be allowed where the business has secured a drop zone in accordance with the requirements of OAR 660-013-0100(8) approval to use a drop zone that is at least 10 contiguous acres in size. A larger drop zone may be required where evidence of missed landings and dropped equipment supports the need for the larger area. The configuration of 10 acre minimum drop zone shall roughly approximate a square or circle and may contain structures, trees, or other obstacles if the remainder of the drop zone provides adequate areas for parachutists to safely land.

drop zone in accordance with the requirements of OAR 660-013-0100(8).

(b) Height variances may be permitted when supported in writing by the airport sponsor and the Department of Aviation. Applications for height variances shall comply with LC 16.256(1) and (2), and shall be subject to such conditions and terms as recommended by the Department of Aviation.

(11) Procedures. An applicant seeking a land use or administrative approval in an area within this overlay zone shall provide the following information in addition to any other information required in the permit application:

(a) A map or drawing showing the location of the property in relation to the airport or heliport imaginary surfaces. The Director shall provide the applicant with appropriate base maps upon which to locate the property.

(b) Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level.

(c) If a height variance is requested, letters of support from the airport sponsor and the Department of Aviation.

(12) Nonconforming Uses Structures.

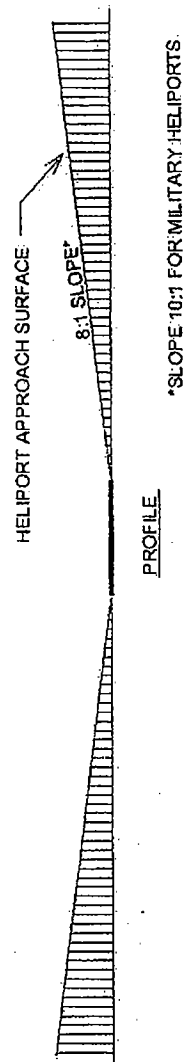
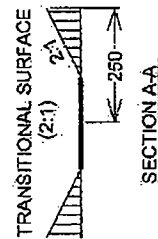
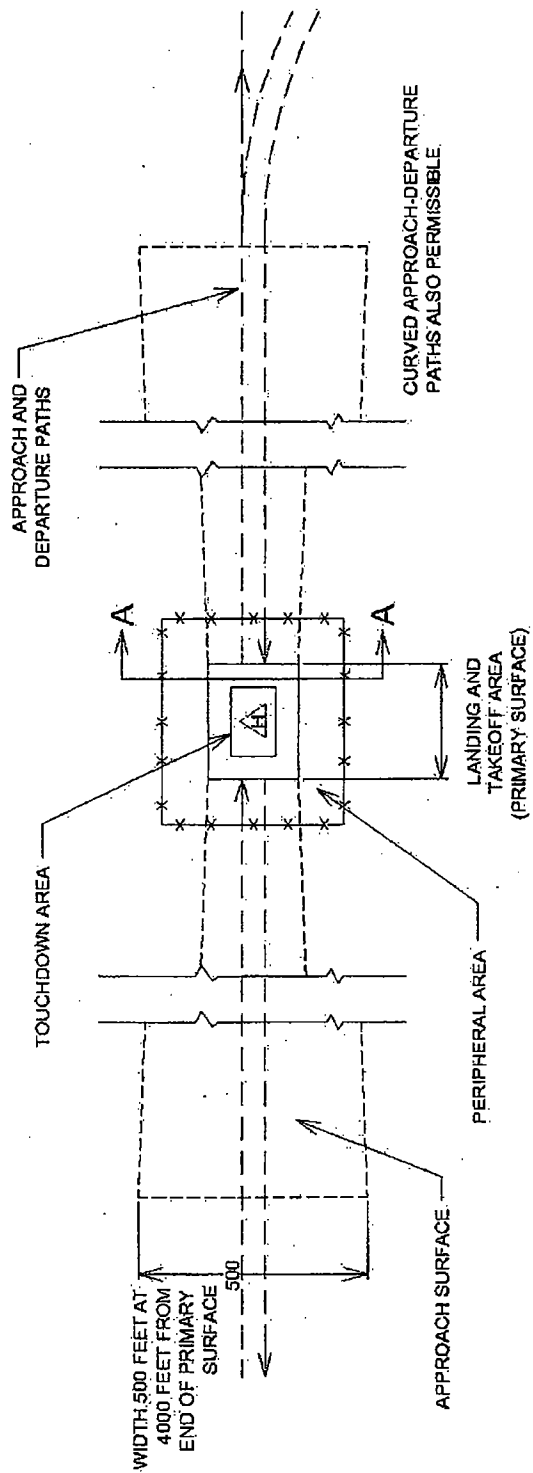
(a) These regulations do not require the removal, lowering or alteration of any structure not conforming to these regulations. These regulations do not require any change in the construction, alteration or intended use of any structure for which construction was begun or land use permits were been applied for ~~or the construction or alteration of which was begun~~ prior to the effective date of this overlay zone.

(b) Notwithstanding LC 16.296(12)(a), the owner of any existing structure that has an adverse effect on air navigational safety as determined by the Department of Aviation shall install or allow the installation of obstruction markers as deemed necessary by the Department of Aviation, so that the structures become more visible to pilots.

(c) No land use decision, administrative approval or other permit shall be granted that would allow a nonconforming ~~use or~~ structure to become a greater hazard to air navigation than it was on January 1, 2008.

(13) Surfaces Diagramed. The airport surfaces delineated in LC 16.296(8), above are as diagramed in Figure 1.1, below. The heliport surfaces delineated in LC 16.296(8) above are as diagramed in Figure 1.2, below. In addition to the diagrams below, these surfaces have been mapped on the Official Private Use Airport Overlay zone map.

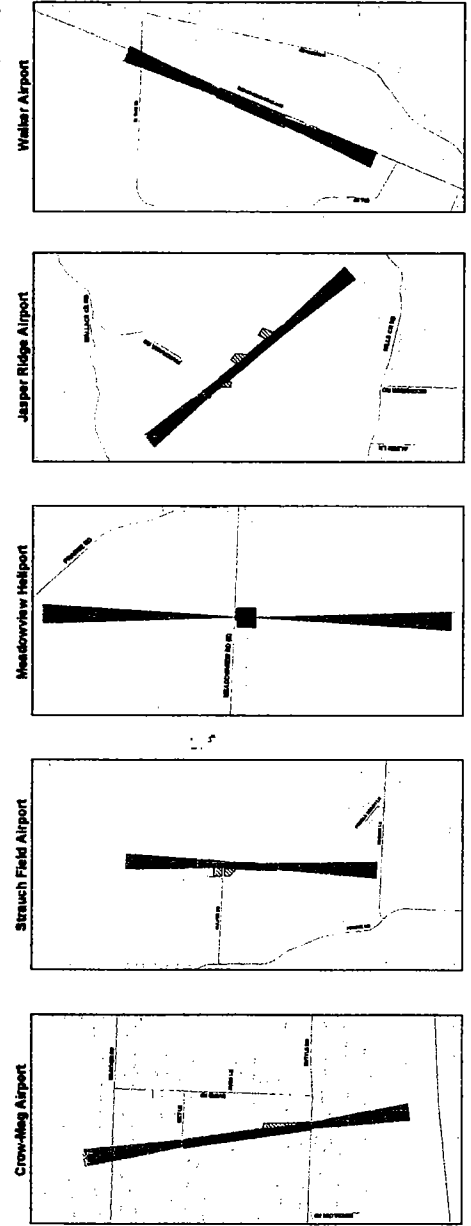
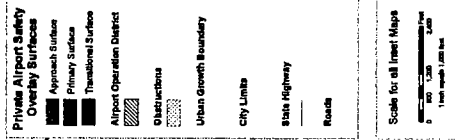
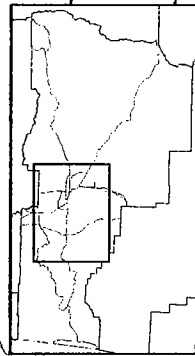




\*SLOPE 10:1 FOR MILITARY HELIPORTS.

LC 16.296 (13) Figure 1.2: Heliport Surfaces

# Official Private Use Airport Overlay Zone Map



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