Outlook

RE: City of Aurora comments re: Airport Master Plan/Layout Plan

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From MORRIS Alexis <Alexis.MORRIS@odav.oregon.gov>
Date Wed 10/28/2026 2:32 PM
To David James Robinson <david@davidjamesrobinson.com>

Hello David,

Thank you for submitting public comment to the State Aviation Board. Your comment will be forwarded to the board for their review, and I will add them to our website under the December 3rd board meeting after the public comment period deadline.

Thank you,
Alexis Morris
Communications & Administrative Specialist
State Aviation Board Administrator
Alexis.morris@odav.oregon.gov

From: David James Robinson <david@davidjamesrobinson.com>
Sent: Tuesday, October 27, 2026 11:55 AM
To: Oregon Department of Aviation <mail.aviation@ODAV.oregon.gov>
Subject: City of Aurora comments re: Airport Master Plan/Layout Plan

You don't often get email from david@davidjamesrobinson.com. Learn why this is important

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

On behalf of the City Aurora, attached are comments to the Aurora Airport proposed Master Plan and Layout Plan.

Please confirm receipt.

Thank you.

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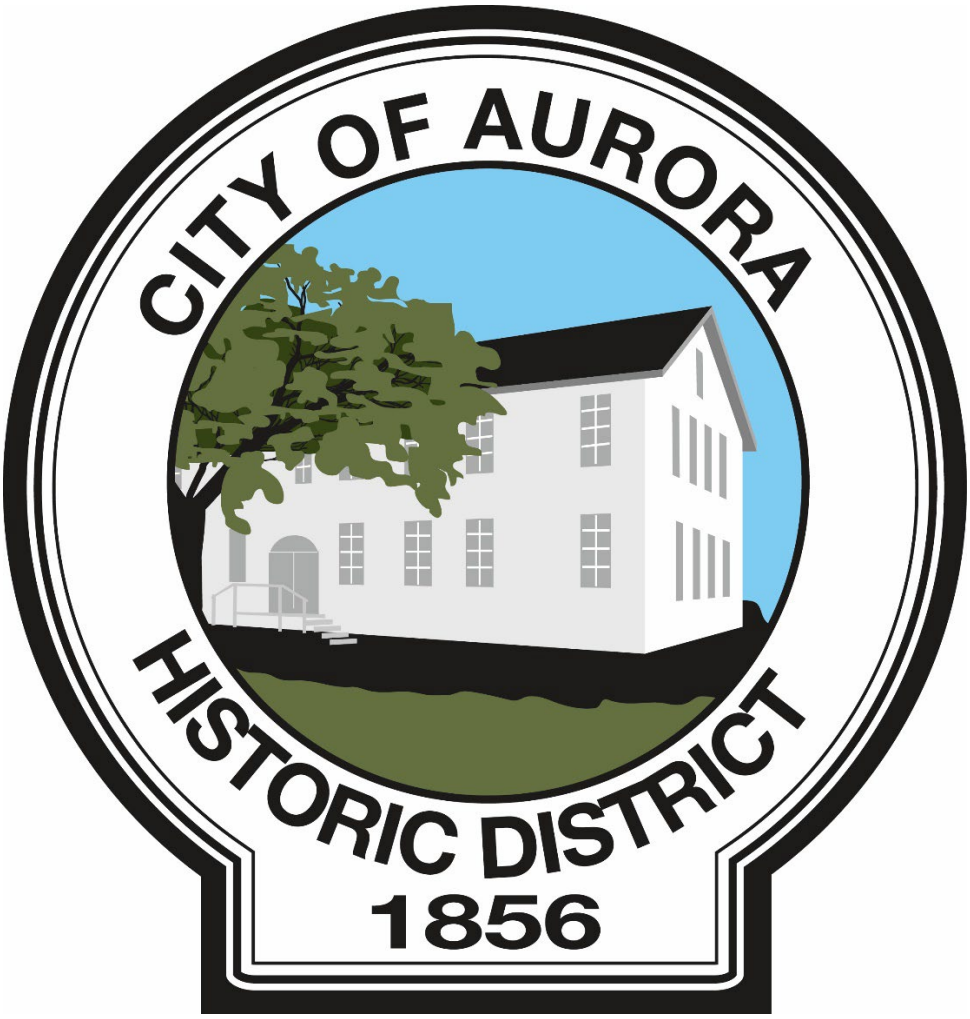
Sent with Proton Mail secure email.



Comments on the

Aurora State Airport Master Plan and the Airport Layout Plan

October 27, 2026

Introduction

Thank you for inviting comments for the Oregon Aviation Board's consideration as it reviews the 2026 Aurora State Airport Master Plan (the "2026 Master Plan"). The City of Aurora promotes sound land use planning for urban development at the airport and the efficient development of public facilities to serve the community. It's acknowledged comprehensive plan policy is that new urban development at the airport and its surrounding lands can only occur within the City, and therefore that additional development of the airport must be preceded by annexation. The City cannot support the 2026 Master Plan as it is drafted, although it could support the plan if it were revised consistent with the City's comprehensive plan, Marion County's comprehensive plan, and the statewide planning goals. The City looks forward to working with the Department of Aviation and Marion County to bring the airport into the City in accordance with that applicable state and local land use regulations that direct urban land uses to areas within urban growth boundaries.

These comments follow up on the City's prior comments presented by Mayor Asher in the PAC meetings. Please confirm receipt of this memorandum and the attached documents, add them to the record, and ensure all materials submitted by all participants are placed before the Oregon Aviation Board.

Preliminary issues will be reviewed first, followed by the review of the numerous substantive criteria and their application to the 2026 Master Plan and the Airport Layout Plan within Chapter 6. There is an unusually large number of applicable provisions because the 2026 Master Plan would further expand an already large urban public facility onto agricultural land that is outside an urban growth boundary. Urban uses are generally prohibited on agricultural land, and thus the 2026 Master Plan and its Airport Layout Plan compel review of the many state and local land use regulations that conflict with the plan.

Annexation into Aurora would redesignate the land from agricultural to urban, and thereby resolve most of the identified land use conflicts and deliver the needed public facilities and services to the airport. Aurora looks forward to working together with the Department of Aviation to expeditiously accomplish the annexation.

A. Legislative Policy for State Agency Coordination

All local governments and state agencies have had statutory comprehensive land use planning responsibilities since 1973. (1973 c.80 §1, 2). In the ensuing decades, those responsibilities were not always carried out successfully. To address this deficiency, the Oregon legislature reinitiated those responsibilities in 2009, when it found and declared that:

> (1) Improving coordination and consistency between the duties and actions of state agencies that affect land use and the duties and actions of local governments under comprehensive plans and land use regulations is required to ensure that the actions of state agencies complement both state and local land use planning objectives.
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> (2) Improved coordination is necessary to streamline state and local permitting procedures.
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> (3) The Department of Land Conservation and Development has not engaged in a formal and concerted effort to update state agency land use coordination programs since 1989, and that state agency rules, plans and programs affecting land use and local government comprehensive plans and land use regulations have changed substantially since that time.
>
> (4) Rules of the Land Conservation and Development Commission regarding state agency land use coordination and state permit compliance and compatibility should be:
>
> > (a) Reviewed to eliminate unclear or conflicting provisions and to ensure that local land use decisions authorizing a use generally precede state agency decisions on permits for the use or for aspects of the use; and
> >
> > (b) Updated regularly to maintain a high level of coordination between state agencies and local governments in reviewing authorizations for a use of property. (2009 c.606 §1).

As applicable to the 2026 Master Plan, the two key provisions are subsections (1) and (3). Subsection (3) is significant because it informs the question whether the 1990 ODOT SAC, which has not been updated in more than 30 years, can be the basis for finding that the 2026 Master Plan complies with state agency coordination requirements. This renewed emphasis on

updating state agency coordination since 2009 prioritizes compliance with the current state and local land use regulations. ODAV has previously argued the 1990 ODOT SAC governs. That position is contrary to this statute.

The 2026 Master Plan is a state agency action that must "complement both state and local land use planning objectives." ORS 197.173(1). This statute is implemented through ORS 197.180(1), which requires:

> "state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:
>
> (a) In compliance with the goals, rules implementing the goals and rules implementing this section; and
>
> (b) In a manner compatible with acknowledged comprehensive plans and land use regulations."

Note that subsection (1)(a) uses the plural form, "goals". Moreover, because ODAV's state agency program has not been certified by LCDC under ORS 197.180(4) – (9), the ORS 197.180(10) requires OAB to adopt findings on the goals and the acknowledged comprehensive plans when adopting this new master plan.

2013 Department of Aviation Coordination Program

It is not clear whether the Department of Aviation's SAC dated November 1, 2013 was ever presented by the department to, or approved by, the Oregon Aviation Board. Nor is the City aware whether this SAC was ever presented to DLCD, or certified by LCDC, as may be required. ORS 197.180(7); OAR 660-030-0055.

The Department of Aviation letter of April 24, 2019 describes the status of the 2017 SAC, without reference to the prior 2013 SAC. This omission of any reference to the 2013 SAC in that letter, and its absence from DLCD's list of approved programs, suggest that the 2013 SAC was not in effect in 2017, and is therefore not currently in effect.

The LCDC administrative rule does provide that in the event an agency submits a coordination program to DLCD and does not receive a response, the agency "may deem that [DLCD] finds the new or amended rule or program to have satisfied ORS 197.180 and OAR chapter 660, division 30." OAR 660-030-0075(5). It is possible the 2013 SAC was submitted to DLCD and that no response was forthcoming. It is possible the 2013 SAC was certified by

LCDC but inadvertently was not added to the list of approved programs on the DLCD web page. It is also possible the 2013 SAC is in effect and governs the Master Plan.

2017 Department of Aviation Coordination Program

The Department of Aviation letter of April 24, 2019 explains that the SAC dated March 7, 2017 was adopted by the Oregon Aviation Board in 2017 and sent to DLCD for review and then certification by LCDC. The letter is consistent with state agency obligations under ORS 197.180(4) and OAR 660-030-0045(1).

However, the 2017 SAC has not been formally reviewed by DLCD pursuant to ORS 197.180(5), OAR 660-030-0045(2) and OAR 660-030-0075(3)(b). The April 24, 2019 ODAV letter neither indicates when the 2017 SAC was sent to DLCD, nor articulates the current status of that review. Review of LCDC agendas from 2017 to the present does not reveal any indication that the 2017 SAC was presented to the Commission for certification, or for any other purpose.

Again, the rule provides that if an agency submits a coordination program to DLCD and does not receive a response, the agency "may deem that [DLCD] finds the new or amended rule or program to have satisfied ORS 197.180 and OAR chapter 660, division 30." OAR 660-030-00075(5). Therefore, it is possible that the March 7, 2017 SAC program is in effect – which is not to say it is compliant with ORS 197.180 and OAR 660-030 – because it was submitted to DLCD and the Department of Aviation has not received a response. Regardless, OAB must adopt findings of compliance with the statewide goals and acknowledged comprehensive plans. ORS 197.180(10).

Analysis of State Agency Coordination Issues

If the 2017 SAC is in effect, significant complications ensue because that SAC replaced key provisions of the 2013 SAC with new provisions that do not comply with ORS 197.180(1) or OAR 738-130-0055(6). Further, they unilaterally postpone land use compliance for airport master plans that affect land use, which violates Goal 2 and ORS 197.180(1) and (10) because they require state agency plans to be consistent with the comprehensive plans, upon adoption.

Consistent with Goal 2, SACs are designed to ensure agency compliance with the goals and their administrative rules, and the LCDC agency coordination

rules in OAR 660-030, as well as to ensure compatibility with local comprehensive plans and land use regulations. See ORS 197.180(1)(a-b). That the 2026 Master Plan is funded by the FAA and written to FAA specifications does not mean that the plan does not also serve as ODA's document and procedure for compliance with ORS 197.180(1). *Witham Parts and Equipment v. ODOT*, 41 Or LUBA 588, 597 (2002).

Compliance and compatibility are required during the development of a state agency program that affects land use, and cannot be postponed until a later stage of a program or of a project being implemented under that adopted program. If the 2026 Master Plan is not compatible with a local comprehensive plan, any goal exceptions, comprehensive plan amendments and zone changes that are necessary to make the project compatible must be adopted before the 2026 Master Plan is adopted. *Witham Parts and Equipment v. ODOT*, 42 Or LUBA 435, 442 (2002); *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 330 (2021).

Chapter 4 of the 2013 SAC describes the Department of Aviation's coordination procedures for adopting a final airport master plan. Section 2 explains that if land use compatibility issues are identified, then three "means of resolving them" are specified. First, the draft master plan can be changed "to eliminate the conflicts". In this instance, revising the 2026 Master Plan to require annexation before additional development or airport expansion onto EFU land would eliminate the conflicts. Second, the local government comprehensive plans can be amended to eliminate the conflicts. Third, the Department of Aviation can commit to resolving the conflicts prior to adoption of the Master Plan. The 2026 Master Plan does not specify which if any of these three means will be utilized by the Department of Aviation to resolve the identified conflicts and bridge the gap between the existing rural zoning and future urban zoning that is needed for the airport-related development recommended in the Master Plan.

There is a substantial change between the 2013 SAC and 2017 SAC regarding the approval of an airport master plan. Section 3 of Chapter 4 of the 2017 SAC includes the coordination procedures for an airport master plan, which is remarkably consistent with ODOT's administrative rule on Coordination Procedures for Adopting Final Facility Plans. OAR 731-015-0065(3). Neither the ODOT rule nor the Department Aviation administrative rule in OAR 738-130 were adopted by LCDC. The rule procedures similarly describe identification of land use conflicts and three means of resolving them. The second means (working with local governments to amend their plans to eliminate the conflict) is unchanged; although the first and third means are materially different.

The first means of resolving land use conflicts in the 2013 SAC is changing the draft airport master plan to eliminate the conflicts; whereas the 2017 SAC describes this as "changing the draft facility plan". The document at issue in this appeal is the 2026 Master Plan, which cannot legitimately be rebranded as a "draft facility plan", because it far exceeds the areas that are within the Department of Aviation's current ownership. As long as the geographic area that is governed by the 2026 Master Plan and the Airport Layout Plan extend well beyond the transportation facility onto EFU land, this provision in the 2017 SAC should not apply.

The third means of resolving conflicts in the 2013 SAC is committing the Department of Aviation to "resolving the conflicts prior to the conclusion of the Airport Master Plan[.]" The third means in the 2017 SAC is: "Identifying the conflicts in the draft facility plan and including policies that commit the Department to resolving the conflicts prior to the conclusion of the transportation planning program for the affected portions of the transportation facility." The operative term "[T]ransportation planning program" is not defined in either the 2017 SAC or the ODOT rule. Other than the heading, there is no reference to an airport master plan, here or elsewhere in the 2017 SAC text of the coordination procedures—as if the adoption of an airport master plan was not subject to these procedures.

The 2026 Master Plan and Airport Layout Plan are not merely a draft facility plan that is subject to something less than full compliance with the statewide planning goals and local comprehensive plans and land use regulations prior to final adoption. The uncertified 2017 SAC does not comply with the state law on agency coordination because it allows the Department of Aviation to postpone indefinitely the resolution of the land use conflicts. This includes the conflicts identified in the 2026 Master Plan, and the land use conflicts described in letters from the cities of Wilsonville (October 13, 2025) and Aurora (October 6, 2025), and Marion County (September 19, 2025). ORS 197.180 does not allow any such postponement. Nor does that statute or ORS 836.608, or ORS 836.610 or any LCDC implementing rule compel a local government to allow expansion of this urban airport into non-urban zoning districts where it is not allowed. Local governments retain the authority and discretion to adopt local zoning around airports for non-airport uses, so long as they do not unreasonably interfere with an airport. OAR 660-013-0040(5)(c) requires adequate types and levels of public facilities and services and transportation facilities or systems authorized by applicable statewide planning goals, and Goals 11, 12. and 14 do not allow urban scale airports which lack public potable water, public sewer, and urban transportation facilities in rural zones. *Gisler v. Deschutes County*, 149 Or App 528, 535, 945

P2d 1051 (1997). Goal 11 requires these services to be public, and therefore private utility services are not a lawful substitute for servicing urban development on rural land. And OAR 660-013-0040(5)(e)(B) requires the 2026 Master Plan to be "consistent with applicable provisions of the acknowledged comprehensive plan [and] land use regulations" of Marion County which clearly stated that expansion onto land zoned EFU is not consistent with that zone, and, therefore, "[i]f airport uses or structures are proposed to be placed on land currently zoned Exclusive farm Use, it will be necessary to obtain a zone change to Public[.]" A proposed use which requires a zone change is not consistent with the current land use regulations.

The Court of Appeals confirmed that the correct method for expanding the airport for the additional development shown in the 2026 Master Plan is through the OAR 660-013 procedure. *Schaefer v. Marion County*, 318 Or App 617, 624-38 (2022). ODAV has not even initiated that procedure. OAR 660-013-0030(2) does not require local governments to change their comprehensive plan and land use regulations to allow urban airport uses on EFU land. Rather, it requires them to support the continued operation and vitality of airports. That does not mean an airport is exempt from land use laws, including Marion county's EFU zone. ORS 836.600 through ORS 836.630 only apply to airports as defined in ORS 836.605(2) which is limited to the 1994 statutory boundary. There is no authority for the proposition that this urban scale airport must be allowed to expand onto EFU land, and several Court of Appeals opinions in recent years reject that proposition.

The draft finding that "Marion County, Clackamas County, City of Aurora, City of Barlow and City of Wilsonville will all require comprehensive plan updates to remain compliant with state land use laws" puts the cart before the horse because the 2026 Master Plan must comply with local government land use regulations when it is adopted. ORS 197.180(1)(b). That statute supersedes any contrary administrative rule. ODAV lacks authority to adopt its preferred master plan and then command local governments to change their regulations accordingly. There is no indication that the current local government land use regulations are not in compliance with OAR 660-013. If ODAV desires changes to local government land use regulations, it can apply for amendments like any other applicant.

The draft findings violate ORS 174.020(2) because the particular airport planning provisions in OAR 660-013-0040 *Aviation Facility Planning Requirements*, and OAR 738-014-0050 *Standards and Guidelines for Through the Fence Operations*, control over the general and inconsistent provisions in

OAR 660-012-0065 *Transportation Improvements on Rural Lands*. OAR 660-012-0065(3)(n) does not apply because the particular airport planning provisions in OAR 660-013-0040(5)(c) and (7) *Aviation Facility Planning Requirements*, OAR 738-005-0010(20) *Airport Layout Plan*, and the particular through the fence provisions in OAR 738-014-0050 *Standards and Guidelines for Through the Fence Operations*, apply statewide planning Goal 11 and Goal 12 and thus are inconsistent with the general and inconsistent OAR 660-012-0065, *Transportation Improvements on Rural Lands*, which purportedly exempts this private use airport on privately owned land within the EFU zone from compliance with Goal 11 and Goal 14. In addition, OAR 660-012-0065(3)(n) does not apply because the 2026 Master Plan permits service to a larger class of airplanes; that is, the ARC C-II and D-II airplanes which the longer runway will permit service to. For land use purposes, the current airport master plan designation is B-II: "the last time the Master Plan was updated, in 2000, that planned ARC for the airport was B-II[.]" *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 342 (2021). Since that case was decided there have been no material changes made to the airfield, no revised Airport Layout Plan approved by OAB, or a land use decision which changed the airport classification from B-II. Marion County classified the airport as B-II. Because the 2026 Master Plan permits service to B-II, C-II, and D-II airplanes, it permits service to airplanes with a greater variety of approach speeds, a greater variety of MTOWs, and a greater variety of wingspans or tail heights. *Id*, at 341. Therefore, the 2026 Master Plan permits service to a larger class of airplanes so OAR 660-012-0065(3)(n) does not apply.

Furthermore, the 2026 Master Plan itself does not even attempt to comply with Coordination Procedure 3 of the 2017 SAC because conflicts with the statewide goals and comprehensive plan were identified; however, the Master Plan does not describe the necessary meetings with local government which identified conflicts. Nor does the plan explain how the conflicts will be resolved. OAR 738-130-0055(3)(a-c).

OAR 738-130-0005 explains that OAR 738-130-0055 implements ORS 197.180. ORS 197.180(1)(a) requires compliance with the rules which implement it. Therefore, failure to resolve conflicts under OAR 738-130-0055(3) violates ORS 197.180(1)(a).

OAR 738-130-0055(3) requires ODAV to meet with local governments to discuss ways to resolve conflicts with the goals and comprehensive plans. The 2026 Master Plan violates this rule and thus violates ORS 197.180(1)(a) because ODAV failed to meet with the City of Aurora to discuss ways to resolve conflicts identified in Aurora's October 6, 2025 letter. Aurora's letter expressly states that the "draft plan is not compatible with the City's acknowledged

comprehensive plan." The findings fail to acknowledge the incompatibility. The required OAR 738-130-0055(3) meeting never occurred. Therefore, the plan violates Goal 2 and OAR 738-130-0055(3) because it is not adequately coordinated with the City of Aurora. Under OAR 738-130-0055(0115) ODAV "shall request that the Land Conservation and Development Commission make a compatibility determination in accordance with 660-030-0070(7) through (12)." The 2026 Master Plan violates OAR 738-130-0055(0115) because ODAV fails to request that LCDC make the compatibility determination.

The 2026 Master Plan and Airport Layout Plan do not include any changes that were made to the draft facility plan to eliminate land use conflicts, such as removing the expansion onto EFU land. Therefore, the OAR 738-130-0055(3)(a) method for resolving conflicts by "Changing the facility plan to eliminate the conflicts" was not utilized.

The 2026 Master Plan does not include any information that ODAV applied to Marion County or the City of Aurora to amend their local comprehensive plans to eliminate the land use conflicts. For example, the Department has not applied to Marion County to expand the airport boundary pursuant to OAR 660-013, nor has it applied for statewide goal exceptions and comprehensive plan and map amendments needed to change the expansion areas from Primary Agriculture to Public. Therefore, the OAR 738-130-0055(3)(b) method for resolving conflicts by "Working with the local governments to amend the local comprehensive plans to eliminate the conflicts" was not utilized.

The Aurora Comprehensive Plan is at issue regarding noise, because the record shows a substantial number of aircraft do not follow the designated flight paths, and, therefore, the noise contour maps are based on the false assumption that airplanes and helicopters uniformly follow the flight path.

Second, the Aurora Comprehensive Plan states "The City's policy is that any airport expansion beyond the 1994 boundary established by ORS 836.605(2) should be preceded by annexation and connection to city water and sewer services." This was explained in Aurora's comment letter of October 6, 2025, which was submitted under OAR 738-130-0055(2). The failure to address this incompatibility in the findings, or to meet with Aurora to discuss the incompatibility as required by OAR 738-130-0055(3), means the master plan violates the coordination requirements of Goal 2 and OAR 738-130-0055(3). Aurora is prejudiced by this violation because the city is an affected local government and the master plan is contrary to the acknowledged comprehensive plan.

The 2026 Master Plan fails to identify the land use conflicts in the text of the plan, as required by OAR 738-130-0055(3)(c) which explains that one method to resolving conflicts is "Identifying the conflicts in the draft facility plan and including policies that commit the Department to resolving the conflicts prior to the conclusion of the transportation planning program for the affected portions of the transportation facility." The 2026 Master Plan neither identifies the land use conflicts in the draft facility plan nor includes any policies that commit ODAV to resolving the land use conflicts caused by the development of urban land uses in the EFU zone before the transportation planning program for the runway extension and other airport improvements is complete, or at any other time. Adoption of mere findings is not sufficient, because the OAR 738-130-0055(3)(c) expressly requires the facility plan itself to identify the conflicts and include the policies.

The text of ORS 197.180(1) is clear and unambiguous. Because the 2026 Master Plan and the Airport Layout Plan are a Department of Aviation program that affects land use, they must always be in compliance with the statewide land use goals, both when they are first adopted and throughout the life cycle of the program. Compliance with the goals at an unspecified point in the future is not sufficient, as the Court of Appeals explained in *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 330 (2021). The third method for resolving conflicts was not utilized. OAR 738-130-0055(3)(c). Even if it had been utilized, this rule was never certified by LCDC and conflicts with state law.

Because the 2026 Master Plan text and Airport Layout Plan drawings and findings omit any serious discussion of land use conflicts, and because there have been no attempts to resolve the conflicts, there is not an adequate factual base as required by Goal 2 to support a finding that the coordination procedures in the 1990 ODOT SAC, OAR 731-015-0065, the 2017 SAC, or OAR 738-130-0055(3) were utilized or satisfied. The land use conflicts remain unresolved and the 2026 Master Plan and Airport Layout Plan conflict with Goal 2, and local comprehensive plans and land use regulations.

The OAR 738-130-0055(3) list of procedures for resolving conflicts is not exclusive; however, the 2026 Master Plan ignores ODAV's own rule regarding the procedure to resolve them. OAR 738-130-0115, Referral of Compatibility Disputes to the Land Conservation and Development Commission, states:

> "If a compatibility conflict persists after pursuing the compatibility procedures listed in OAR 738-130-0045 through 738-130-0115, the Department shall request that the Land Conservation and Development Commission make a compatibility determination in

accordance with [OAR] 660-030-0070(7) through (12)."

"Shall" means mandatory. ODAV fails to acknowledge the identified compatibility conflicts, and fails to request that LCDC make the determination. The Oregon Aviation Board must refuse to adopt the 2026 Master Plan and request LCDC to step in. Until that occurs, the plan violates OAR 738-130-0115 and ORS 197.180(1).

In addition, federal law parallels ORS 197.173(4)(a) and ORS 197.180(1) by requiring the 2026 Master Plan to be consistent with local zoning plans. 49 US Code Section 47106(a)(1) only allows FAA grants for projects "consistent with the plans (existing when FAA approves the project) of public agencies authorized by the state to plan for development of the area surrounding the airport."

The Airport Layout Plan violates ORS 836.608(2) and OAR 660-013-0040 because it shows airport expansion onto EFU land outside the existing airport boundary in the acknowledged comprehensive plan, including for the TLM property for which the recent boundary expansion is not acknowledged because it was appealed to LUBA and remanded to Marion County. See ORS 197.625(1). "ORS 836.608(2) requires local governments to establish an airport 'boundary' that has the effect of determining the geographic extent of the 'airport,' based on areas that are developed or committed to airport uses. * * * * By implication, areas outside the boundary are not reasonably expected to be devoted to airport uses * * * * The boundary of an 'airport' is intended to include areas developed or reasonably expected to be developed with airport uses, including hangars, and conversely that airport uses including hangars are intended to be located within airport boundaries." *NAAVE v. Washington County*, 59 Or LUBA 153, 162-63 (2009). All airport uses must be located within the airport boundary. ODAV must expand the boundary first, prior to adoption of the 2026 Master Plan which shows airport expansion onto land outside the boundary on EFU land.

The draft findings indicate that ORS 836.608 requires local governments to allow geographic expansion of the airport, without regard to local land use regulations. That is not what the text says. ORS 836.608(3) states: "A local government shall allow for the growth of uses described in ORS 836.616 (2) that existed at any time during 1996 at an airport ***" but airport is defined in ORS 836.605(2) as the area used for "existing commercial and recreational airport uses and activities as of December 31, 1994." Marion County allows for growth of uses within the 1994 airport boundary. These statutes do not mean that Marion County must allow the Aurora State Airport to grow beyond the 1994 boundary.

The draft findings indicate ORS 836.610 requires local governments to accommodate airport uses and zones. This statute does not compel Marion County to allow urban-scale uses in the EFU zone. Rather, it requires LCDC to adopt rules for airports which local governments must comply with. "Local governments shall amend their comprehensive plan and land use regulations consistent with the rules for airports adopted by the Land Conservation and Development Commission under ORS 836.616 and 836.619." ORS 836.610(1). The Marion County Public Zone MCC 17.171 already allows ORS 836.616 (and OAR 660-013-0100) uses. Marion County fully complies.

Marion County's Airport Overlay Zone MCC 17.177 includes safety zones and compatibility standards to implement ORS 836.619 (and OAR 660-013-0070 and -0080). That overlay zone applies in the EFU zone, but nothing in ORS 836 requires changing the base zone from EFU to Public for expansion of this urban-scale airport onto rural land outside Aurora's UGB.

The City of Aurora is a public agency authorized by the state to plan for development of the area surrounding the airport. The City is a party to the IGA regarding coordination of land use planning at and surrounding the airport. The entire City is located within the Airport Overlay zone. And the City's acknowledged comprehensive plan requires annexation prior to expansion.

The 2012 Master Plan appeal demonstrates that expansion of the Aurora State Airport onto land zoned for Exclusive Farm Use is not consistent with the Marion County Comprehensive Plan. *Schaefer v. Oregon Aviation Board*, 312 Or App 316 (2021). Therefore, the 2026 Master Plan violates 49 US Code Section 47106(a)(1).

An airport master plan is a state agency program affecting land use. The unadopted 2012 Master Plan identifies land use conflicts and the lack of zoning "suitable for airport-related development recommended in this Master Plan." (page 6-4). That statement confirms that the 2012 Master Plan understood that the new development which it recommended on Class 2 agricultural land did not comply with state and local land use regulations. The 2026 Master Plan proposes similar urban development on EFU land; however, it does not commit the Department of Aviation to resolving the land use conflicts at any time, much less prior to final adoption. Therefore, the 2026 Master Plan does not comply with the mandates of ORS 197.180(1)(a-b).

It is noteworthy that the LCDC rule consistently uses the plural form "goals". For examples, see OAR 660-030-0065(1-5). In OAR 738-130-0035(1) the Department of Aviation attempts to authorize itself to significantly

violate statewide planning goals other than Goal 12, while simultaneously excluding urban aviation facilities and activities that affect other Goals (such as the airport expansion onto agricultural land that affects Goals 3, 6, 9, 11 and 14) from the rule's definition of "Activities Which Significantly Affect Land Use". There is no justification for the Department to define activities that affect land use so narrowly.

The Department of Aviation has yet to complete the coordination procedures for adoption the 2026 Master Plan. The Cities of Aurora and Wilsonville identified land use conflicts between the 2026 Master Plan and the statewide land use planning goals. However, the Department of Aviation has not yet met "with the local government planning representatives to discuss ways to resolve the conflicts" as required. OAR 738-130-0045.

With regard to the findings the Oregon Aviation Board plans to adopt on the 2026 Master Plan, this memorandum and other comments in the record have identified the numerous applicable statewide land use planning goals. The relevant LCDC administrative rule lists seven situations which compel the adoption of findings with all applicable statewide land use goals. OAR 660-030-0065(3)(a-g). However, the Department of Aviation has attempted to limit, without authority, the scope of review to just one of the seven situations, when subsections (b) and (d) clearly apply.

> "(3) A state agency shall adopt findings demonstrating compliance with the statewide goals for an agency land use program or action if one or more of the following situations exists: * * * *
>
> (b) An agency takes an action that is not compatible with an acknowledged comprehensive plan after exhausting efforts to be compatible as described in OAR 660-030-0070; or * * * *
>
> (d) A statewide goal or interpretive rule adopted by the Commission under OAR chapter 660 establishes a compliance requirement directly applicable to the state agency or its land use program[.]

Subsection (b) applies because the 2026 Master Plan is not compatible with the Aurora or Marion County comprehensive plans. Subsection (d) applies because OAR 660-031-0012(2)(g)(B) classifies an airport site approval like the 2026 Master Plan as a state agency permit which affects land use.

The 2026 Master Plan is not compliant with Goal 2 or OAR 660-030-0065(3) because it simply neglects six out of seven subsections; two of which

apply to the 2026 Master Plan and the Airport Layout Plan. This means the proposed findings are therefore inadequate because they do not address subsections (b) and (d).

> OAR 660-030-0065
>
> (4) A state agency which is in one of the compliance situations described in section (3) of this rule shall address directly only those goals that have not otherwise been complied with by the local government. To assist in identifying which statewide goals may be directly applicable to the agency's land use program, the agency may:
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> (a) Utilize its agency coordination program, where certified;
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> (b) Consult directly with the affected local government;
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> (c) Request interpretive guidance from the Department [DLCD]; and
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> (d) Rely on any applicable goal interpretations for state agencies adopted by the commission under OAR chapter 660.
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> (5) State agencies shall include the following elements in their goal compliance procedures adopted under sections (1) and (3) of this rule:
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> (a) Identification of the specific statewide goals which are most likely to be addressed directly by the agency;
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> (b) Commitment to address directly other applicable goals if requested or required; and
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> (c) Description of the most likely situations in which the agency will address statewide goal requirements in addition to any compatibility findings regarding the acknowledged comprehensive plan.

Marion County has yet to comply with the Goal 2, Part 2 (and OAR 660-004) exceptions process for statewide planning goals that are required for the airport expansion proposed by the 2026 Master Plan and the Airport Layout Plan. *Murray v. Marion County*, 23 Or LUBA 268, 283 (1992).

The Department of Aviation has not made any effort to comply with this rule as shown by the 2026 Master Plan's lack of any discussion about it. The 2017 SAC has not been certified by LCDC. The Department has not consulted directly with the affected local governments of the City of Aurora or the City of Wilsonville.

There is no information in the record that the Department requested interpretive guidance from DLCD about which goals apply, or that it relied on applicable goal interpretations adopted by LCDC.

The Oregon Aviation Board's draft findings decline to address compliance with all of the statewide planning goals and their implementing rules identified in this memorandum, and therefore they are not sufficient. ORS 197.180(1)(a).

B. The City of Aurora is an Affected Governmental Unit

Goal 2 provides for the inclusion of "affected governmental units" in the planning process, and defines them as: "those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan."

The draft findings that Aurora has "comprehensive planning authority over areas underneath the airspace of the Aurora State Airport" and that "A draft of the proposed airport master plan was provided to the affected jurisdictions and organizations on Aug. 29, 2025. Within 45 days of the request, responses were received from City of Aurora" prove that Aurora is an affected local government under Goal 2.

The City of Aurora has several land use programs that govern the Master Plan area. First, the City is included as an essential party in the 2008 Intergovernmental Agreement on the Coordination of Growth Management and Transportation Issues Between the City of Aurora, Marion County and the Oregon Department of Aviation which expressly includes the Master Plan area. Second, the City is a party to the 2010 City of Aurora/Marion County Urban Growth Coordination Agreement which also expressly includes the Master Plan area. Third, the entire geographic limits of the City are included within the county's Airport Overlay zone. The City administers the overlay within the City limits through municipal code Chapter 16.24, Airport Overlay. Fourth, the Airport Layout Plan Drawings Sheet 5 Airport Airspace Plan and Sheet 11 Off Airport Land Use Plan with 2041 Noise Contours include the City. The City comprehensive plan includes express provisions regarding the airport.

These programs and responsibilities demonstrate the City is an affected governmental unit under Goal 2. See also OAR 738-130-0015(1). Therefore, failure to evaluate the City's land use regulations and coordinating compliance with them violates Goal 2.

Summary of 2026 Master Plan Elements That Affect Land Use

There are three primary elements of the 2026 Master Plan that affect land use which are addressed in this memorandum. Each of these elements does not comply with the statewide land use planning goals, their administrative rules, and local land use regulations.

Expansion onto EFU land

The 2026 Master Plan and Airport Layout Plan propose to purchase approximately 62 acres of Class 2 Agricultural Land for the airport expansion, including 16 acres at the former church camp, 31 acres south of Keil Rd., and 15 acres west of Highway 551, as illustrated on the Airport Layout Plan. The draft findings admit the airport is expanding onto EFU land when it references the "areas identified in the UAO Master Plan for future airport expansion on lands currently zoned EFU[.]" But the airport is not an allowed use in the EFU zone. The southern runway safety area has already been filled to raise the grade, as demonstrated by the septic test pit soils information in the record. This filled area extends about 900 feet south of the end of the existing runway and stopway. To extend that runway safety area east as shown on the Airport Layout Plan will require more fill to raise the grade up to the level of the runway, which is not allowed in the EFU zone. *Ehler v. Washington County*, 52 Or LUBA 663, 672 (2006). The area will be fenced off. Portions of it will be paved for the relocated Keil Rd.

It has been argued that other uses proposed within the EFU area should be classified as utilities necessary for public service which are permitted in the EFU zone, and therefore the 2026 Master Plan does not affect land use because it is only located on existing exception land. This argument is unpersuasive, because there is no land use distinction between the various elements of the airport expansion. This is demonstrated by 2018 HB 4092 which was drafted to exempt the airport expansion from the goals. The legislative counsel that drafted that bill expressly defined "runway area" to mean "a runway, taxiway, safety area or runway protection zone." The bill also confirms that all the navigation equipment is encompassed by that same definition. "A state airport runway area extension under this section may include new or expanded ground-based navigation facilities and related navigation equipment and any fencing required for airport safety or security." In other words, the legislative counsel classifies the airport as a single land use that includes everything that is proposed for inclusion airport property, including a taxiway, runway safety areas, the runway protection zone, navigation equipment, and fencing.

There is no precedent for classifying the individual elements of the Aurora State Airport such as the localizer or the runway protection zone separately from the land use classification of the runway itself, which is an urban public

facility. Nor is there precedent for designating different zoning districts for these elements. The proposed runway extension including its accessory components such as the runway protection zone and navigation equipment affect land use because the entire project has for decades been classified as one urban public facility on Class 2 agricultural land which requires exceptions to Goals 3, 11 and 14. *Murray v. Marion County*, 23 Or LUBA 268, 283 (1992).

All the nearby similar airports apply urban zoning to the runway, stopway, runup, and navigation equipment. All of nearby airports that serve private jets include the runway, the stopway, and the runup in the same zone. (McMinnville (M-2 Zone), Salem (PS Zone), Hillsboro (IG Zone), Troutdale (GI Zone) and Portland (IG-2 Zone)).

Keil Rd. Relocation

The 2026 Master Plan and Airport Layout Plan illustrate the "relocation" of Keil Rd., which is an east-west Rd. currently connecting Airport Rd. on the east to Highway 551 on the west. This new right-of-way will divide the M&H Farms economic farm unit on tax lots 900, 1200 and 1500 of map T4S R1W S11A, in violation of Goal 12 Planning Guideline A.4.

The Airport Layout Plan relocates Keil Rd. The new right-of-way is not shown in the Marion County Rural Transportation Plan, in the City of Aurora Transportation System Plan, or in any other adopted or acknowledged transportation or land use plan. This new road affects land use because it is being created in a rural area to support urban development, because it crosses Class 2 agricultural land, and because it will divide economic farm units that are substantially smaller than the minimum parcel size allowed in the EFU zone, in violation of Goal 12 Guideline A.4 because feasible alternatives exist for D-II aircraft at the Salem and Hillsboro airports. The road would have significant adverse effects on current farm operations, because slow moving equipment would need to cross it, and airport traffic would impede these crossings. OAR 660-012-0065(3)(b) does not apply because the realignment is not merely a realignment; rather, the EFU land currently east of Keil Rd. is being purchased by ODAV and converted to the airport use which required exceptions to Goals 3, 11 and 14 as LUBA ruled in *Murray*. The area will be fenced and filled which is an on-the-ground improvement of the land.

The Keil Rd. relocation conflicts with OAR 660-012-0065(3)(o) because it does not serve local travel needs. Rather, it serves the needs of regional travel as demonstrated in the most recent traffic study for development at the airport, done for the development of the former church camp. The trip

distribution map for that study demonstrates most vehicle trips to and from the airport are not local trips.

The last time Keil Rd. was relocated to accommodate airport expansion, Goal 3, 11, and 14 exceptions were required. *Murray v. Marion County*, 23 Or LUBA 268 (1992). This demonstrates that the airport expansion and relocation of Keil Rd. shown on the Airport Layout Plan are not in compliance with these goals and their implementing rules, nor compatible with the comprehensive plan designation of agriculture and the agricultural, public services, and urbanization plan policies that implement those goals, in violation of ORS 197.180(1).

Development of the Former Church Camp

Until 2017, tax lots 800 and 900 of map 041W02D, which together comprise 16.54 acres, were used solely for forest and religious purposes. These properties are commonly known as the "former church camp". It is designated as Primary Agriculture in the Marion County Comprehensive Plan zoned EFU and has Class 2 agricultural soils. Following sale to a non-religious entity in 2017, the mature oak forest was clear cut, and no replanting has occurred. The land has been partially cleared and grubbed, and was filled in 2023.

In February 2019, the property owner applied to Marion County for exceptions to Goals 3 and 14 "to site an urban use on rural land." Development of the former church camp for office and aviation uses affects land use because large scale office use is not allowed in the EFU or Public zones. Marion County's approval of the application was reversed by the Court of Appeals and LUBA in *Schaefer v. Marion County*, LUBA No. 2020-108. In particular, the Court of Appeals ruled that the former church camp was outside the airport boundary, and the boundary could only be expanded through the process described in OAR 660-013.

Therefore, until the former church camp and other proposed expansion areas are brought within the airport boundary in the county comprehensive plan through the process described in OAR 660-013, the 2026 Master Plan violates the acknowledged comprehensive plan. The designation of EFU land for this urban airport thus violates the comprehensive plan which designates the properties as Primary Agriculture, and also violates ORS 197.180(1)(b) which requires compatibility with the county's acknowledged comprehensive plan. ORS 836.640(5)(a) supersedes OAR 660-012-0065(3)(n) because a statute supersedes an administrative rule, and because this statute is more specific that the rule which is general about airport expansions and silent on

through the fence operations. To the extent the Master Plan will expand onto EFU land by ODAV's purchasing that land instead of approving it for through the fence uses, OAR 660-012-0065(3)(n) does not apply because the master plan permits service to D-II airplanes, a larger class of airplanes than B-II. The Court of Appeals and Marion County have both confirmed the airport is a B-II airport. Expansion onto EFU land to the west and south of the existing airport for expanded safety areas allows D-II airplanes and therefore will permit service to a larger class of airplane. Marion County and the Court of Appeals confirm that for land use purposes, the airport is a B-II airport.

Criteria Applicable to the Findings

The 2026 Master Plan must first demonstrate compliance with the statewide planning goals and their respective administrative rules. ORS 197.180(1)(a). In this instance, the applicable goals are Goal 1 Citizen Involvement; Goal 2 Land Use Planning; Goal 3 Agricultural Lands; Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces; Goal 6 Air, Water and Land Resources Quality; Goal 9 Economic Development; Goal 11 Public Facilities and Services; Goal 12 Transportation; Goal 13 Energy, and Goal 14 Urbanization. The Oregon Aviation Board must give the goals equal weight when adopting findings on the Master Plan and Airport Layout Plan. ORS 197.340(1). The Master Plan must also demonstrate compliance with the administrative rules that have been promulgated to implement the goals by the Land Conservation and Development Commission ("LCDC"), including OAR 660-013.

OAB is adopting the 2026 Master Plan pursuant to OAR 738-130-0055; however, that is not a LCDC rule. Nor has it been certified as complaint with the land use laws pursuant to ORS 197.180(4)-(9). Therefore, ORS 197.180(10) requires OAB to "make findings *** as to the applicability and application of the goals or acknowledged comprehensive plans[.]"

ORS 197.180(13) also requires compliance with local government regulations.

> "State agency rules, plans or programs affecting land use are not compatible with an acknowledged comprehensive plan if the state agency takes or approves an action that is not allowed under the acknowledged comprehensive plan."

This provision requires conformance with all of the applicable local comprehensive plans, which are addressed below.

The goals and comprehensive plan implement the state statute on county zoning, including the statute on EFU zones, ORS 215.203-327. The 2026 Master Plan and Airport Layout Plan must comply with that statute and the implementing rules in OAR 660-033 regarding Agricultural Land, including the use regulations in OAR 660-033-0120.

ORS 836.600-642 also governs land use and development at the Aurora State Airport. OAR 660-024-0075, Airport Economic Development Pilot Program provides useful context. It defines "Public facilities and services" to mean "water, sanitary sewer, storm water management, transportation facilities, and emergency services." OAR 660-024-0075(1)(d). In other words, LCDC has determined that adequate public facilities for an airport include public "water, sanitary sewer, storm water management *** and emergency services" Applying Goal 11 to the new master plan, this rule demonstrates that for the Aurora State Airport to have adequate public facilities as required by Goal 11, it must have public water, public sanitary sewer, public stormwater management, and public emergency services. The 2026 Master Plan and other evidence indicate that none of these are provided. The only recent civil engineering report in the record indicates these public facilities are not adequate.

The 2026 Master Plan does not include any similar report from a civil engineer which explains how the airport has adequate public facilities and services. It only claims non are required. But Goal 11 and OAR 660-013-0040(5)(c) and (7) require the facilities to be public. Therefore, Goal 11, OAR 660-013-0040(5)(c) and (7) Airport Facility Planning Requirements, and ORS 836.642(4) are not satisfied.

The airport has numerous through the fence uses, governed by OAR 738-014-0050, *Standards and Guidelines for Through the Fence Operations*. This rule expressly requires ODAV to "create a 'Through the Fence Operations' operating plan for their airport, to accompany the Airport Layout Plan." There is no apparent operating plan that accompanies the Airport Layout Plan, so OAR 738-014-0050 is not met.

To meet this rule, ODAV must, among other requirements: (1) Identify current operating costs and revenues for the pilot site airport. Describe how the through the fence operations will provide financial support to the pilot sites in compliance with FAA regulations; (2) Require each through the fence operation to submit a facility site plan for its own property to the airport sponsor and seek any necessary land use approval; (3) Require that each through the fence facility only be permitted to operate through a written

contract with the airport sponsor that includes ***. Again, this information must accompany the Airport Layout Plan, and it is not possible to adopt the plan without this additional information.

Adoption of the Master Plan is a Quasi-Judicial Land Use Decision

Adoption of the Master Plan is a quasi-judicial land use decision because the three factors for such a decision are all present. First, the 2026 Master Plan and Airport Layout Plan are limited to one specific location; the Aurora State Airport and its abutting through the fence land. For purposes of state agency coordination, they are an Airport Site Approval under OAR 660-031-0012(2)(g)(B) for expansion of the Aurora State Airport. They do not apply to any other airport, nor do they create any policy that will apply to any other specific location or geographic area.

Second, the Oregon Aviation Board is compelled to make a final decision adopting the 2026 Master Plan and the Airport Layout Plan, as it has done many times on prior occasions, to comply with FAA requirements and qualify for its grant programs. (See Section 2 of the Aurora State Airport Assessment Report). The Oregon Aviation Board is also compelled to make a final decision including land use findings by its state agency coordination regulations in OAR 738-130-0055(6), as described more fully below.

Third, the 2026 Master Plan and the Airport Layout Plan are subject to preexisting, specific land use criteria. These include ORS 836.600 to .630 and its implementing rules in OAR 660-013; the applicable statewide planning goals and their implementing administrative rules in OAR 660, and numerous provisions of the Marion County Comprehensive Plan and Rural Zoning Code. See ORS 197.180(1), (10) and (13). Thus, the adoption of land use findings by the Oregon Aviation Board in support of the Master Plan and the Airport Layout Plan, or in support of the Department of Aviation's agency coordination program and rules including OAR 738-130-0055(6), is a quasi-judicial land use decision. *Strawberry Hills 4 Wheelers v. Board of Commissioners of Benton County*, 287 Or 591, 601 P2d 769 (1979).

That classification as a quasi-judicial land use decision means the Oregon Aviation Board must act as an impartial tribunal. It must adopt findings that detail whether and how the 2026 Master Plan and the Airport Layout Plan comply with each applicable criterion. Generalizations and conclusions are not sufficient. And the board should acknowledge and also be mindful of the pressure asserted on Marion County and the Aurora State Airport by the lobbying efforts of private economic interests. *Fasano v. Board of County Commissioners of Washington County*, 264 Or 574, 507 P2d 23 (1973).

Adoption of the Master Plan is a Statutory Land Use Decision

The Oregon Aviation Board must directly apply the statewide land use planning goals when adopting the 2026 Master Plan and its land use findings. ORS 197.180(1) and (10); OAR 660-030-0065(3)(b) because the Master Plan is not compatible with the Marion County, City of Wilsonville, and City of Aurora comprehensive plans. The statutory definition of land use decision includes a "final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals[.]" ORS 197.015(10)(a)(B). All three elements of this definition are present in the Decision.

The adoption of the 2026 Master Plan is the final decision or determination of the Oregon Aviation Board ("OAB"). No party argues otherwise. Second, OAB is a state agency other than the commission, because "commission" is defined as the Land Conservation and Development Commission. ORS 197.015(4). Third, the decision to adopt the Master Plan is required to apply the goals by ORS 197.180(1) and (10) and OAB's agency coordination rule, OAR 738-015-0065(6). Therefore, this decision is a final decision or determination of a state agency other than the commission with respect to which the agency is required to apply the goals[.]" ORS 197.015(10)(a)(B). And the proposed findings actually apply several statewide land use planning goals.

The 2026 Master Plan authorizes urban expansion onto land designated Primary Agriculture in the Marion County comprehensive plan, which violates many provisions of the comprehensive plan. The findings fail to demonstrate those provisions do not apply to ODAV's purchase and urban development of 62 acres of agricultural land.

Adoption of the 2026 Master Plan has a significant impact on land use.

ODAV's agency coordination rule demonstrates, as a matter of codified law, that adoption of the 2026 Master Plan has a significant impact on land use. The 2026 Master Plan is a state agency program with significant effects on land use, as explained in ODAV's SAC rule OAR 738-130-0035 titled "Activities Which Significantly Affect Land Use".

> "The following activities undertaken by the Department significantly affect land use:
>
> (1) Adopting Airport Master Plans which significantly affect the objectives of the Transportation Goal (Goal 12).
>
> (2) Enlarging an existing transportation facility to increase the level of transportation service provided, relocating an

existing transportation facility, or constructing a new transportation facility.

(3) Constructing a new Airport Operations Area (AOA), enlarging an existing AOA, or significantly changing the use of an existing AOA.

(4) Changing the size of land parcels through the purchase or sale of property."

All four of those definitions are satisfied. Definition (1) is satisfied because the 2026 Master Plan and Airport Layout Plan significantly affect the objectives of Goal 12, because they are not in compliance with that goal's enumerated Planning Guidelines 2, 3 and 4. Planning Guideline A.2 is violated because the Highway 551 relocation does not utilize existing right-of-way. Planning Guideline A.3 is violated because the relocated Keil Rd, relocated Hwy 551, and the airport expansion comprise a major transportation facility that is planned outside an urban growth boundary on Class II agricultural land when feasible alternatives for D-II aircraft exist and the Salem and Hillsboro airports. The airport and its expansion are a major transportation facility as defined in OAR 660-012-0005(21) because it is larger and provides more service than other airports in rural areas, it serves more than neighborhood needs, and because the urban scale of the airport improvements in this smaller, rural area. Highway 551 is also a major transportation facility as defined in OAR 660-012-0005(21) because it is larger and provides more service than other highways in rural areas, it serves more than neighborhood needs, and because the urban scale of the highway with multiple lanes and traffic signals in this smaller, rural area. The purpose of the relocation of Hwy 551 is to accommodate D-II airplanes, and, therefore, the highway relocation is an essential feature of the 2026 Master Plan. Correction of this Goal 12 violation requires a new or amended Airport Layout Plan and master plan. Moreover, under Goal 2, Part III, ODAV "shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the goals. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals." The 2026 Master Plan is a land use plan within the meaning of Goal 2, and fails to utilize either the guidelines or alternative means to meet the goals, and fails to state how the goals or alternative means were utilized. Therefore, Goal 2 is not satisfied.

ODAV insists it will not use condemnation to acquire portions of these properties south of Keil Rd, and, therefore, land divisions to divide them will be required, however, those land divisions are prohibited because they are below the minimum lot size for the EFU zone.

OAR 738-130-0035(2) applies because the 2026 Master Plan and Airport Layout Plan enlarge the existing airport by roughly 62 acres. These enlargements will increase the level of transportation service provided by lengthening the runway and thereby permitting service to larger classes of B-III, C-II, and D-II airplanes, and by providing space for more hangars and another fixed base operator to provide aviation goods and services such as maintenance.

OAR 738-130-0035)(3) similarly applies because the existing airport operations area will be expanded by many acres to the southeast into the EFU zone to expand the runway protection zone (RPZ).

OAR 738-130-0035(4) also applies because size of the state-owned tax lot 800 of map 04S1W11A is being expanded to the southeast into the EFU zone to expand the runway protection zone.

Therefore, according to ODA's own administrative rule the 2026 Master Plan has four significant impacts on land use. These effects are actual, qualitative, and quantitative significant impacts on future land uses and therefore LUBA has jurisdiction. *City of Pendleton v. Kerns,* 294 Or 126, 133-134, 653 P2d 996 (1982).

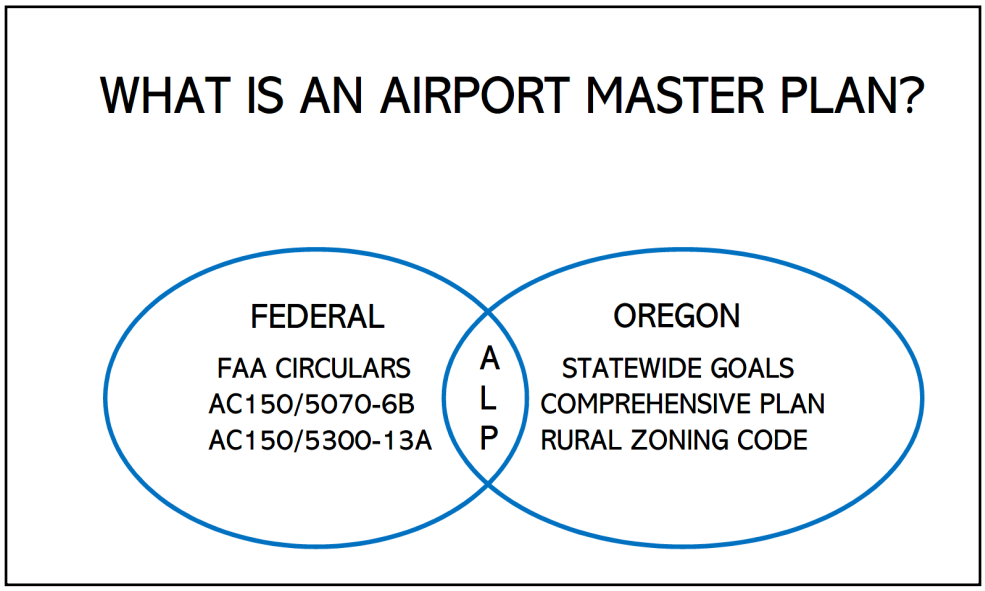
The 2026 Master Plan satisfies the common law standards for a significant impacts land use decision.

The significant impact test recognizes that road closures like the relocation of the western segment of Keil Rd. in this case are significant impact land use decisions. *Mekkers v. Yamhill County*, 38 Or LUBA 928, 931 (2000) was a significant impact land use decision because the road vacation set "the stage for further development that will alter the character of the surrounding land uses." In this case the western segment of Keil Rd. will be relocated, which sets the stage for further airport development; that is, the runway extension and other accommodations for D-II airplanes. *Harding v. Clackamas County*, 16 Or LUBA 224, 228 (1987), *aff'd*, 89 Or App 385, 750 P2d 167 (1988).

The non-land-use standards that govern this case are found in FAA Circular AC 150/5300-13A Airport Design, including Section 310, Runway Protection Zone, and drive the design of the southerly expansion of the airport at issue because expansion of the runway protection zone "includes clearing RPZ areas (and maintaining them clear) of incompatible object and activities." Subsection 310.a.(2) requires that "airport owners, as a minimum, should maintain the RPZ clear of all facilities supporting incompatible activities. *See* FAA memorandum, Interim Guidance on Land Uses Within a Runway Protection Zone, dated 9/27/2012, for guidance on incompatible activities."

Table 1 of that guidance document classifies public roads as a land use that requires coordination with APP-400. That in turn requires an alternatives analysis to "identify and document the full range of alternatives that could: (1) Avoid introducing the land use within the RPZ." In accordance with this FAA guidance, the 2026 Master Plan and Airport Layout Plan relocate Keil Rd further from the runup area and the Runway Protection Zone.

Those FAA standards govern LUBA's review because they cause the airport design to trigger Oregon land use laws regarding expansion of this urban use onto rural land which will require the rezoning of exclusive farm use property to public and an exception to Oregon Planning Goal 3 would be required. Those regulations are non-land-use standards because they are federal, technical requirements for airport design. However, they overlap with Oregon land use laws as illustrated on this Venn diagram.



The application of this federal regulation impacts land use and directly relates to the use of land in two ways. First, it creates adverse farm impacts resulting from expansion onto EFU land. Second, it impacts Goal 12, Guideline 4 which requires the Master Plan to "avoid dividing existing farm units".

The 2026 Master Plan includes all the elements of a significant impacts land use decision subject to LUBA jurisdiction.

The exclusions for state agency decisions do not apply.

In addition to defining what state agency actions are a land use decision, ORS 197.015(10)(e)(C) also defines other state agency actions which are not land use decisions.

> "(i) The local government with land use jurisdiction over a use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action has already made a land use decision approving the use or activity; or
>
> (ii) A use or activity that would be authorized, funded or undertaken by the state agency as a result of the state agency action is allowed without review under the acknowledged comprehensive plan and land use regulations implementing the plan."

Adoption of the 2026 Master Plan is not within either of those two definitions of a state agency action that is not a land use decision. Subsection (i) does not apply because Marion County has not made a land use decision approving the airport expansion. No party has identified the previous county land use decision that authorized the northerly extension of the runway, the airport expansions onto EFU land which divide farm units, shifting Hwy 551 west onto EFU land, or the relocation of the western segment of Keil Rd. onto EFU land. The original committed exception to Goal 3 "did not insulate all future changes in the plan and zone designations of the property from needing an exception for uses not recognized or justified" in the 1976 Master Plan. *Ooten v. Clackamas County*, 70 Or LUBA 338, 346 (2014).

The exclusion in ORS 197.015(10)(e)(C)(ii) does not apply here because the proposed aviation uses require conditional use review under the comprehensive plan and the rural zoning code. The parties may dispute what specific land use approvals are required; however, all parties agree that discretionary land use approvals are necessary. Therefore, the authorized expansion of aviation uses is not allowed without review, and the subsection (ii) exclusion does not apply.

The exclusion in ORS 197.015(e)(C)(ii) also does not apply because the 2026 Master Plan expands onto land zoned for exclusive farm use, which is not allowed without a discretionary land use review. Because the existing EFU zoning must be changed, the Master Plan is not allowed until several land use reviews have been completed.

In addition, ODAV and OAB lack a certified state agency program pursuant to ORS 197.180(4)-(9). Therefore, ORS 197.180(10), OAB is required to "make findings when adopting or amending its rules and state

agency plans and programs as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate." No court has ever ruled the goals do not apply to expansion of the Aurora State Airport onto EFU land.

2016 Revision to the Airport Layout Plan

The Department of Aviation's web page for the Aurora State Airport includes a tab that is labelled: "Download Current ALP (2016)". The tab leads to just one sheet titled "Airport Layout Plan Drawing"; however, it indicates there are 10 sheets in total. The revised sheet provided has not yet been signed by either the Department of Aviation or the FAA. The City of Aurora is not aware of any coordination procedures for this version of the layout plan, or whether the changes made in 2016 have been presented to or adopted by the Oregon Aviation Board, and acknowledges that the changes may not have a material effect on the relevant land use issues.

It is nevertheless important that this 2026 process be complete and up to date in every respect, and if the Department of Aviation and FAA are relying on the 2016 Airport Layout Plan, all ten sheets should be included in the record and adopted by the Oregon Aviation Board in this proceeding. The adopted findings should explain the changes between the 2016 and 2026 versions of the Airport Layout Plan.

Application of the Criteria

Introduction to the Applicable Criteria

Compliance with the myriad applicable regulations is particularly challenging for a growing urban land use that is located outside of an urban growth boundary, because a fundamental purpose of Oregon's land use planning system is to restrict urban expansion in rural areas. See Goal 14, Implementation Guideline B.2. Goal 14 and the other applicable regulations mean that until the airport is brought within the City of Aurora's urban growth boundary, the expansion of the urban aviation and aviation-related uses described in the 2026 Master Plan cannot comply with the applicable state and local land use regulations.

The 2026 Master Plan should be modified, although it is not necessary to change the proposed airport layout, the site plan or operations plans. Instead, the Master Plan text must be revised to clarify that annexation of the airport into the City of Aurora urban growth boundary and city limits and implementation of a conventional urban growth management agreement must precede the new development described in the Master Plan and illustrated in the Airport Layout Plan. Both annexations must precede the further

intensification of existing land uses on the existing exceptions lands both on and off the airport, precede the geographic expansion of the Airport Layout Plan, and precede the extension of urban infrastructure and development onto surrounding Class 2 agricultural lands that are currently planned and zoned for exclusive farm use. With those revisions the Master Plan might be consistent with the laws.

During the 2026 Master Plan process, several alternatives were considered. The staff recommended no extension of the runway to the south due to land use conflicts with the EFU-zoned properties and Goal 3. The selected alternative nevertheless proposes the expansion of the airport to the south to accommodate a wider runway safety area and development of land south of Keil Rd., and to the east for airport-related development on the former church camp. Both of those expansion areas have Amity silt loam soil, which is a Class 2 soil that is good for growing crops; although it drains poorly in the rainy season and therefore is not a good candidate for the disposal of storm water or septic fields, which creates conflicts with Goal 5, Goal 6, Goal 9 and Goal 11. These expansion areas are important reasons why the Master Plan does not comply with the applicable rules and regulations.

The City and Marion County have acknowledged comprehensive plans which "identify and separate urbanizable land from rural land." *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 455, 724 P2d 268 (1986), (quoting the then-current Goal 14). The 2026 Master Plan describes the conversion of resource land to urban uses outside the City's urban growth boundary.

Several statewide land use planning goals compel the annexation to occur prior to the development of additional urban uses on resource land near the airport. The Department of Aviation was correct that the existing EFU zoning is not "suitable for airport-related development." (2012 Master Plan, page 6-4). However, the 2026 Master Plan does not acknowledge that annexation must necessarily precede urban zoning. This discrepancy is a land use conflict identified in the Master Plan that has not yet been resolved. Annexation is the best method for resolution consistent with the goals.

ORS 836.600 to .630

This statute was adopted in 1997. It limits development of airports in Exclusive Farm Use zones to the area used for airport purposes on December 31, 1994. ORS 836.605(2). Growth of an existing use within the airport boundary requires a public hearing when the growth "cannot be supported by existing public facilities and services and transportation systems authorized by applicable statewide land use planning goals." ORS 836.608(4)(a). A new use

may only be allowed when it "is or will be supported by adequate types and levels of public facilities and services and transportation systems authorized by applicable statewide land use planning goals[.]" ORS 836.608(5)(a).

The 2026 Master Plan conflicts with these laws because it proposes new uses at the airport and on through the fence lands which are not and will not be supported by adequate levels of public facilities. The public facilities are inadequate because the airport area lacks a public potable water system, a public sanitary sewer system, and a public stormwater system. Private water and sewer systems are inadequate, as documented by Marion County in 2015, and by ODAV's own engineer James Kirby of Century West, who testified regarding the existing septic field on the south end of the airport. "The spot where the drain field is at isn't really viable for it to be functional in any way. No matter what system you propose to put over the top of it, it's already out of standard for grades." This testimony from ODAV's own engineer undermines any assertion that there are adequate private sewer facilities to compensate for the lack of public sewer service. ODAV lacks even a septic system for its own control tower, and transports the raw sewage to Oregon City for treatment and disposal in violation of this statute and Goal 11. The septic fields located on the south end of the ODAV property (tax lots 500 and 800 of map 041W11A) which are illustrated on Figure 2-12, titled Existing Conditions, of the 2026 Master Plan also violate Goal 11, and were constructed without a Goal 11 exception, in violation of OAR 660-011-0060(2)(a) and (c). The continued use, expansion, or relocation of this septic field to the north portion of the airport constitutes a new extension of sewer service to rural lands that were not served by the Columbia Helicopters septic system on July 28, 1998. The plan to extend sewer service violates Goal 11 and OAR 660-011-0060(2)(c) and thus requires a Goal 11 exception, before the 2026 Master Plan can be adopted.

Goal 11 and OAR 660-011-0060(2) and (9) are also violated because the application proposes the extension of a sanitary sewer system to serve urban uses on rural land without a Goal 11 exception for the properties where the sewage is processed and discharged. The septic tanks are on the Columbia Helicopters and HDSE Properties and the septic fields are on the ODAV property. And there is no evidence of sewer easements. There is no evidence of a health hazard on the TLM Property that compels the sewer extension. The evidence shows that ODAV is requiring the septic fields on its property to be relocated. The use of holding tanks and pumper trucks to transport untreated sewage to an urban treatment and disposal facility is the extension of a sewer system within the meaning of OAR 660-011-0060(1)(b) and therefore requires a Goal 11 exception. And all goal exceptions must be addressed in this application. *Norvell v. Portland Metropolitan Area Boundary Commission*, 43 Or App 849, 854, 604 P2d 896 (1979).

ORS 836.640 to .642

This statute was adopted by the legislature as SB 680. On May 19, 2009, DLCD clarified the function of the statute.

> "The through the fence program is not a land use process and by statute can only be put in place after the necessary land use actions have been approved and are in place."
>
> (DLCD Letter to Branden Reich, Marion County Planning Div. May 19, 2009)

The through the fence statute does not does not authorize the 2026 Master Plan's proposed expansion of the aviation-related uses onto agricultural land. By failing to account for the through the fence properties expressly authorized by ODAV to operate urban aviation, commercial, and industrial uses on EFU land, the plan violates Goals 3, 11, 12 and 14 and their implementing rules, and therefore violates Goal 2 because there is no acknowledged comprehensive plan provision or goal exception in place to authorize these uses on tax lots 600 and 900 of tax map 041W02D by the TLM Through the Fence Agreement. The 2026 Master Plan lacks adequate findings that the through the fence operations that ODAV has approved at the Aurora State Airport comply with the goals and acknowledged comprehensive plans in violation of ORS 197.180(1), and the plan is not supported by substantial evidence which identifies the properties served by the airport access points shown on the Airport Layout Plan with the TTF symbol.

The legislature discussed how the statute would apply to the Aurora State Airport. The statute's sponsor Sen. Betsy Johnson confirmed "that this is not a bill that would expand the airport into prime farm land." Testimony to House Committee on State and Federal Affairs regarding Senate Bill 680, August 2, 2005, Tapes 63-64. ORS 836.640 to .642 is not a land use process, and it does not authorize the 2026 Master Plan.

Moreover, OAR 660-013-0020(1) and OAR 660-012-0065(3)(n) do not implement ORS 836.640 through 836.642, which is the state program for providing private properties with taxiway and other access to the public use airport, because that that statute was adopted in 2005 after those rules were adopted in the 1990s. The statute is silent on those rules, and the rules are also silent on the statute. OAR 660-013 expressly only "implements ORS 836.600 through 836.630 and Statewide Planning and Goal 12 (Transportation)." OAR 660-013-0010. And OAR 660-12-0065(3)(n) only implements Section 3, chapter 529, Oregon laws 1993. Therefore, ORS

836.640 through 836.642 cannot be a basis for approval of the 2026 Master Plan, or a basis for applying OAR 660-012-0065(3)(n).

The 2026 Master Plan and any appeal thereof must be final before eligibility for through the fence agreements under ORS 836.640 through .642 is determined. And until the airport boundary is expanded by Marion County consistent with OAR 660-013-0040 and acknowledged, there is no basis for determining that the former church camp on tax lots 800 and 900 of tax map 041W02D is within the airport boundary, as that boundary is defined in ORS 836.640(1): "the combined public and private properties that are permitted to have direct access to the airport runway by aircraft." OAR 660-013-0040 is the exclusive process for expanding the airport boundary. The Court of Appeals already ruled that the former church camp is outside the boundary. ORS 836.640(5)(a) confirms that only properties within the airport boundary are eligible for the through the fence program. The 2026 Master Plan and the existing Through the Fence agreement for the former church camp violate ORS 197.180(1), ORS 836.640(5)(a), ORS 836.642(4), OAR 660-013-0040, and Goals 3, 11, 12 and 14.

The 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) because the surrounding lands are zoned EFU and thus the proposed expansion area properties illustrated on the Airport Layout Plan and Figure 5-33 in yellow stripes as "Property Acquisition Priority (25 AC)" are proposed urban aviation uses which are not consistent with applicable provisions of the acknowledged comprehensive plan including the Rural TSP, EFU and Public land use regulations, and Goals 3, 6, 11, 12, 13, and 14, because public use airports are prohibited on EFU land, as described herein.

In addition, Figure 5-33 and the Airport Layout Plan also illustrate the "Property Acquisition For Aeronautic Reserve (153 AC)" in solid yellow, which includes approximately 65 acres zoned EFU. The EFU tax lots are 900, 1000, and 1100 of map 041W11A, tax lots 500 and 800 of map 041W12B, and tax lots 800 and 900 of map 041W02D.

These compatibility issues have not been addressed pursuant to OAR 660-013-0040(6) because OAB has not taken reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. Moreover, the policy in ORS 836.600 only applies to "airports" as defined in ORS 836.605(2); that is, within the 1994 airport boundary, but the Airport Layout Plan shows expansions to the south, east and west of that boundary.

The existence of the Through the Fence statute and program demonstrate the legal distinction between a public use airport and surrounding private properties. As explained by the FAA in its letter regarding Based Aircraft

Inventory, airplanes based on Through the Fence lands are not included in the tally of aircraft based at the public use airport. "Please be reminded not to include aircraft associated with through-the fence operations at your airport." (Emphasis original) (FAA Letter Agency Record, Page 2273 of 4021). If there was no such distinction, as the 2026 Master Plan assumes, there would be no need for the statute and program. The distinction is also recognized by the FAA.

Furthermore, the findings fail to apply or even consider the "public use airport" requirement. The term "public use airport" must be given effect. ORS 174.010. This term is defined in OAR 738-005-0010(110) as an airport that is "open to the flying public." Through the fence development are generally not open to the flying public.

The Department of Aviation's "Model Public Use Airport Zone" is consistent with the argument that "public use airport" is limited to the state-owned airport land because it only applies to publicly owned airports. The model code text confirms this.

> "**Purpose.** The purpose of the Public Use Airport zone is to encourage and support the continued operation and vitality of [public use airports] [name of specific airport(s)] in the [city] [county] by allowing certain airport-related commercial and recreational uses in accordance with state law. [ORS 836.600]" (Bracketed insertions original).
>
> **"Application.** This zoning district applies to all publicly owned airports[.]"

The Oregon Blue Book page for the Department of Aviation also connects public ownership with the term "public use airport". The department "is responsible for a Statewide Capital Improvement Program in coordination with the FAA and federally funded public use airports around the state." Clearly the state and federal governments do not fund private office and commercial development on private land like the former church camp on tax lots 800 and 900 of map 041W02D.

The federal definition of "public use airport" is in the FAA statute, 49 USC § 47102:

> "(21) 'public use airport' means—
>
> (A) a public airport; or
>
> (B) a privately-owned airport used or intended to be used for public purposes[.]"

The through the fence lands are not part of a "public use airport" because they are not intended to be used for public purposes and lack a publicly owned runway. 49 USC § 47102(20). It is not a privately owned airport used for public purposes because it lacks a runway and is not open to the public. Therefore, through the fence lands are not part of a "public use airport" as defined by the FAA.

These two state agency documents and the federal statute provide legal context that shows that the former church camp is not a "public use airport".

Furthermore, the 2026 Master Plan conflicts with the plain text of OAR 660-012-0065(3)(n) which applies to: "Expansions or alterations of public use airports[.]" The plain language of the provision being interpreted is the best evidence of the drafters' intent. *State v. McCoin*, 190 Or App 532, 537, 79 P3d 342 (2003).

The 2026 Master Plan does not authorize any public use of the former church camp; rather, is a strictly private commercial development. There is no evidence in the record that the general public has any legal right to use the proposed private facilities. There is no easement in the record that benefits the travelling public ("itinerant aircraft") and allows them to travel to or otherwise use the subject property. There is no substantial evidence in the record, such as a taxiway easement, or even a condition that requires one. There is no evidence that ODAV has funds to purchase the property for public use. The 2026 Master Plan is not expansion of a public use airport and OAR 660-012-0065(3)(n) does not apply. There is no authority for unlimited expansion of private urban development around rural airports under the guise of the through the fence program.

The alleged taxiway easement is not actually a taxiway easement at all. Rather, the property conveys an avigation easement to the federal government. The easement does not grant the property the right to taxi airplanes to the state-owned runway.

OAR 660-013-0040

This is the airport planning rule, and creates the exclusive procedure for expansion of an airport. To accommodate the 2026 Master Plan's expansions to the east, west and south, Marion County must adopt a map showing an airport boundary that is larger than the boundary shown on the previously adopted map, which is from the Aurora State Airport Master Plan 1976-1995. OAR 660-013-0040(1). That county action is the act that increases the size of the airport, and is the end product of the airport planning procedure of OAR 660-013.

Since 1980, Marion County has not acted pursuant to OAR 660-013-0040(1) to adopt a new map of the airport into the comprehensive plan. The 2026 Master Plan violates this administrative rule because it proposes an airport that is substantially larger than the airport shown in the comprehensive plan; that is, the 1976 Airport Layout Plan. More specifically, the Airport Layout Plan illustrates expansion onto the former church camp, to the west requiring moving Hwy 551, and to the south across Keil Rd, all of which are outside the airport boundary shown on the 1976 Airport Layout Plan.

The Statewide Land Use Planning Goals and Their Implementing Administrative Rules

Goal 2: Land Use Planning

Part 1 of Goal 2 is to "establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions." The 2026 Master Plan has not demonstrated compliance with this goal because it is inadequately coordinated with the comprehensive plan of Marion County, which planned and zoned the two airport expansion areas for agricultural use. It also is not coordinated with the City of Aurora comprehensive plan because it authorizes further expansion of urban aviation uses onto agricultural land that is outside the City's urban growth boundary.

The 2026 Master Plan does not identify the issues and problems raised by the goals described in this letter, nor does it provide adequate "evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs." Goal 2, Part 1. For example, there is no ESEE analysis. Thus the plan lacks adequate findings.

Also included in Goal 2, Part 1 is the mandate to coordinate with affected governmental units. The City of Wilsonville and City of Aurora have emphasized why they are adversely impacted by the airport, and why they must be classified as affected governmental units. The record has not shown that the 2026 Master Plan identified their issues and attempted to resolve the identified conflicts, as required by Guidelines A(4) and B of Part 3. As described above, the City of Aurora has several land use programs within the Master Plan area and therefore is clearly an affected governmental unit under Goal 2.

A third element of Goal 2, Part 1 is the requirement for an adequate factual base. The 2026 Master Plan Frequently Asked Questions Page frankly stated that traffic congestion would not be considered. Therefore, there is not an adequate factual base for a finding that the plan satisfies transportation planning and safety requirements.

The same inadequate factual basis is evident in the 2026 Master Plan data on airport operations, which was derived from optimistic forecasts made about ten years ago. In 2015 the control tower was constructed, and since then there are accurate counts of flight operations. The Master Plan's reliance on historic forecasts is inadequate. It should be updated based on the accurate data from the tower flight logs. That newer data demonstrates the forecasts in the Master Plan were not accurate, thereby revealing that the plan lacks an adequate factual base. A reasonable decision maker would not rely on outdated, aspirational projections of flight operations when more current and accurate information in the form of actual control tower reports is available.

The 2026 Master Plan does not expressly address compliance with Goal 2 and its administrative rule. In particular, it does not describe the facts essential to demonstrating compliance with this goal or its administrative rule, and thus lacks an adequate factual base. Without those facts, it is not possible to consider the respective roles of all affected government units. The Master Plan fails explain how the identified land use conflicts presented by the various local governments were resolved prior to adoption under OAR 738-130-0055(3). OAR 660-031-0025(2)(a) is violated because the approved Airport Layout Plan is a Class B permit as defined in OAR 660-031-0012(g)(B) but the 2026 Master Plan fails to address incompatibility with the Marion County Comprehensive Plan, which prohibits this urban airport on Agricultural land.

Goal 2, Part II regards goal exceptions, which are also governed by ORS 197.732 and implementing rules in OAR 660-004, OAR 660-011-0060, OAR 660-012-0070, and OAR 660-014-0030 & 0040. The owner of the former church camp applied to Marion County for exceptions to Goal 3 and Goal 14 (and other land use approvals) to convert the camp properties to office and aviation uses. The fact that this development described in the 2026 Master Plan requires goal exceptions confirms that the Master Plan does not comply with these goals because if the Master Plan did comply with the goals, then exceptions would not be required. LUBA and the Court of Appeals ruled the exceptions failed to comply with the statewide planning goals and the requirements for exceptions to the goals. This failure is a land use conflict that can only be resolved by annexing the airport and land planned for airport expansion into the City of Aurora.

The last time the runway was extended to the south, LUBA found that "both the existing and proposed airport uses are clearly urban public facility uses." *Murray v. Marion County*, 23 Or LUBA 268, 283 (1992). LUBA concluded that: '[t]his requires that exceptions to Goals 11 and 14 be adopted for those 10 acres." *Id*, at 284. The exceptions were for the following airport improvements only.

(1) Addition of a 100 ft. wide by 1,000 ft. long extension to the southern end of the existing runway.
(2) Addition of a 40 ft. wide by 1,000 ft. long extension to the southern end of the existing parallel taxiway.
(3) Increase in runway/taxiway centerline separation from 200 ft. to 300 ft.
(4) Installation of a precision instrument approach (PIA) system.

Those exceptions did not authorize any other uses on the affected airport property. See OAR 660-004-0018.

The result of these cases is that LUBA and the Court of Appeals have consistently ruled that the Aurora State Airport's runway and runway protection zone are an urban public facility that requires goal exceptions. The same is true in 2026, as there has been no substantive change in the law since that time. Due to the increased development since 1992 as shown on the aerial photos, and the increased number of flight operations, this urban classification is even more apt today.

A list of the prior goal exceptions for the airport is maintained by DLCD. In 2017, the City of Aurora asked Marion County's senior planner about the runway extension and received this reply on October 16, 2019. "New land added to the airport requires a Goal 3 and perhaps Goal 14 exception." The owner of the former church camp applied to Marion County for Goal 3 and Goal 14 exceptions as an initial step for conversion of that property to aviation and office uses. All of these private and public entities have consistently agreed that the airport is an urban use and therefore expanding it requires goal exceptions. A goal exception by definition means that the proposed development is not in compliance with the goals. The 2026 Master Plan does not comply with these relevant goals, because it expands the airport for the runway safety area and further aviation development on the former church camp and also south of Keil Rd. This land use conflict can only be resolved by bringing the airport and through the fence properties into the City of Aurora.

The administrative rule implementing ORS 197.732 and Goal 2, Part 2 governing goal exceptions is OAR 660-004. The 2026 Master Plan does not even attempt to demonstrate compliance with this rule for goal exceptions; and omits any discussion of it. For example, the Master Plan discusses relocation of septic fields; however, it does not address the rules for sanitary sewer service to rural lands. (*See* OAR 660-004-0000(1)(a) and OAR 660-011-0060(9)). Nor does the Master Plan discuss the applicable transportation and urbanization rules for extension of the runway and its appurtenant facilities

onto rural land. (*See* OAR 660-004-0000(1)(b) & (c); OAR 660-012-0070; and OAR 660-014-0040). Finally, the 2026 Master Plan does not address the Goal 12 exception rule for the relocation of Keil Rd. onto Class 2 agricultural lands that will divide economic farm units. OAR 660-012-0070.

These omissions demonstrate the 2026 Master Plan does not comply with Goal 2. To satisfy Goal 2, Part 1, the Master Plan must be revised to respond to the land use conflicts identified by the affected local governments in the area. These responses cannot be accomplished through findings alone. Moreover, the record lacks sufficient information to demonstrate compliance with the Goal 2, Part 2 goal exception requirements. Only Marion County has the authority to determine that the goal exception criteria are met, but the county has not approved any goal exceptions for the new development described in the Master Plan. The fact that goal exceptions are required for airport expansion confirms that the Master Plan cannot be made compliant with the applicable goals through the adoption of findings alone.

Goal exceptions are required because the Transportation Planning Rule and ORS 215.283 only allow specified uses on farm land. Nowhere in their text, context, legislative history or case law is there any authority for the argument that OAR 660-012-0065(3)(n) authorizes comprehensive plan and zoning map amendments to redesignate EFU land to any other designation, much less one that allows urban development.

OAR 660-012-0065(3)(n) also does not implement ORS 197.175 regarding comprehensive plan amendments. The rule cannot supersede ORS 197.175(2)(a), which requires the County to "amend and revise comprehensive plans in compliance with goals[.]" The text in ORS 197.175(2)(a) does not say compliance with the goals is only required unless exempted from goal compliance by rule, and it does not authorize a state agency to determine its own goal compliance.

Nor does OAR 660-012-0065(3)(n) implement ORS 197.732 regarding goal exceptions. Goal 2, Part II, ORS 197.732(1)(b)(A), and OAR 660-004-0005(l)(b) and (c) define an "exception" as a necessary requirement for a comprehensive plan amendment that redesignates agricultural land. *Rogue Advocates v. Jackson County*, 60 Or LUBA 392, 394 (2010) (Goal 3 exception is required to change the zoning of agricultural land).

No administrative rule can supersede ORS 197.175(2)(a) and ORS 197.732 to obviate the needed exceptions to Goals 3, 11, 12, and 14. "[A]ll parties agree that LCDC's rules are valid only if they are consistent with both the applicable statutes and goals." *Wetherell v. Douglas County*, 342 Or 666, 676, 160 P3d 614 (2007).

There is no authority to amend a comprehensive plan map and a zoning map without following the requirements of ORS 197.175(2)(a) which governs comprehensive plan amendments, or ORS 197.732, which governs goal exceptions. OAR 600-012-0065(3)(n) cannot not authorize the comprehensive plan and zoning map amendments without goal exceptions.

OAR 660-012-0065(3)(n) indicates that a public use airport expansion "may be permitted" on EFU land by a county. Use of the permissive "may" means that a county has the discretion whether to permit the use, or whether to protect the agricultural land instead. The text of Goal 3 also utilizes the permissive "may" regarding a county's discretion whether to allow nonfarm uses that have been defined by LCDC rule.

> "Counties may authorize farm uses and those nonfarm uses defined by commission rule that will not have significant adverse effects on accepted farm or forest practices."

A county is not required to do so, and the Marion County Rural Zoning Code does not permit a public use airport use in the EFU zone. MCC 17.136.030 to 050. See *Friends of Yamhill County v. Yamhill* County, 373 Or 790, 794 (2026) (county may "opt not to allow" conditional uses authorized by state law) (citing *Brentmar v. Jackson County*, 321 Or 481, 496, 900 P2d 1030 (1995)). The draft finding admits the 2026 Master Plan proposes "future airport expansion on lands zoned EFU[.]" That no specific construction is identified does not mean that the plan complies with the EFU zoning. The master plan, including all future airport expansion, must comply with the zoning of the expansion areas. The 2026 Master Plan violates the EFU zoning, including MCC 17.136.040 and .050 because a public use airport is not an allowed use in the EFU zone. A public use airport is allowed in other county zones, including the Public zone, which demonstrates the omission from the EFU zone is intentional and preclusive. Marion County's response to ODAV stated that "If airport uses or airport structures are proposed to be placed on land currently zoned Exclusive Farm Use, it will be necessary to obtain a zone change to Public." The future airport expansion illustrated on the ALP therefore requires a zone change prior to adoption of the master plan, because the urban airport on EFU land violates Goals 3, 11, 12, and 14, and all statewide goal issues must be addressed in this proceeding. ORS 197.180(1)(a) and (10). They cannot be deferred to later stages of project development.

Rather, it only allows a public use airport in the Public zone. MCC 17.171.030.A. OAR 660-012-0065(3)(n) does not supersede these county zoning code provisions. Therefore, the 2026 Master Plan violates the Marion County EFU zoning and ORS 197.180(1)(b).

ODAV lacks authority to purchase any land for non-airport uses. ODAV cannot defer airport boundary expansion, a zone change, or goal exceptions until some unspecified future date. The plan must be corrected now. Moreover, no willing seller can partition the EFU parcels to align with the new boundaries shown on the Airport Layout Plan, because the EFU zone requires a minimum parcel size of 80 acres. The 2026 Master Plan ignores this requirement. All EFU land contemplated for acquisition is in farm use. Purchase of the land by ODAV for the airport will convert the land to nonfarm use. Any area of the RPZ which is purchased by ODAV and/or developed with security fencing converts the land to the urban airport use. The EFU zone does not allow a public use airport as a permitted or conditional use, and therefore purchase of RPZ land which is currently zoned EFU for the airport violates MCC 17.136, Goal 3, and the Agricultural Lands policies of the Marion County Comprehensive Plan, which require preservation of agricultural land for agricultural use.

OAR 660-033-0120, Uses Authorized on Agricultural Lands, also uses the permissive "may" to indicate that OAR 660-012-0065 uses "may" be allowed on rural land, at the discretion of each county. This is distinguished in the rule from uses that are allowed outright. See OAR 660-033-0120(1) and (2). A public use airport is not allowed as a matter of right in any EFU zone, because the farm impact test must be satisfied, as required by ORS 215.283(3)(b).

Again, OAR 660-012-0065(1) explains that the rule "identifies transportation facilities, services and improvements which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14[.]" That is, the rule lists certain types of rural development that may be permitted when consistent with Goals 3, 4, 11 and 14. Expansion of the Aurora State Airport and its adjacent through the fence properties have repeatedly and conclusively been classified as not consistent with Goals 3, 11 and 14 by LUBA and the Court of Appeals in *Murray v. Marion County*, *Schaefer v. Oregon Aviation Board*, and *Schaefer v. Marion County*. These cases demonstrate expansion of the Aurora State Airport and the expansion of it's adjacent through the fence operations, onto adjacent EFU land, violate Goals 3, 11 and 14.

OAR 660-012-0065(3)(n) is only an administrative rule and cannot supersede those rulings. Therefore OAR 660-012-0065(3)(n) cannot be applied to the Aurora State Airport or its adjacent through the fence properties.

In addition, an administrative rule can only allow uses on EFU land so long as the rule is not less restrictive than ORS 215.283; that is, a rule may not allow more uses than ORS 215.283. The statute which authorized LCDC to adopt OAR 660-012-0065 is Section 3, chapter 529, Oregon Laws 1993. That statute instructed LCDC to adopt rules for transportation facilities that

may be allowed pursuant to ORS 215.283(3)(b). OAR 660-012-0065(1) explains that it is intended to identify transportation facilities "which may be permitted on rural lands **consistent with Goals 3, 4, 11 and 14** without a goal exception." (Emphasis added). In other words, the listed uses were deemed by LCDC to be consistent with those goals. However, where litigation over many years has repeatedly concluded that expansion of the Aurora State Airport and its adjacent through the fence operations are not consistent with those goals, OAR 660-012-0065(3)(n) does not apply because that would violate ORS 215.283, which never states that transportation facilities which are not consistent with Goals 3, 4, 11 and 14 do not require goal exceptions.

Said differently, LCDC lacks the authority to decree in a rule that expansion of a rural airport that does not permit service to a larger class of airplanes is exempt from Goals 3, 4, 11 and 14 regardless of the scale of additional urban uses that the airport expansion proposes in rural areas. By the Department of Aviation's logic, hundreds of additional acres of EFU land could be consumed by the expanding airport for hangars and aviation related uses, so long as the runway was not changed to allow a larger class of airplanes.

ORS 215.283(3) only authorizes "transportation improvements" which LCDC defines as "any physical facility that moves or assist[s] in the movement of people or goods[.]" OAR 660-012-0005(51). Neither an airport master plan nor an airport boundary drawn under OAR 660-013-0040 are a physical facility. Therefore, to the extent ODAV believes that OAR 660-012-0065(3)(n) applies to the master plan, then that rule unlawfully allows more land uses than ORS 215.283(3).

In summary, Section 3, chapter 529, Oregon Laws 1993 does not authorize LCDC to exempt the Aurora State Airport from these goals. It does not say that LCDC can exempt certain transportation facilities on rural lands from Goals 3, 4, 11 and 14. Rather, the statute only allowed facilities that are consistent with those goals. Because LUBA and the Court of Appeals ruled expansion of the Aurora State Airport is not consistent with those goals, OAR 660-012-0065(3)(n) does not apply.

Moreover, OAR 660-012-0065(3)(n) does not apply because the 2026 Master Plan permits service to a larger class of airplanes. Note that the current designation of the airport is ARC B-II. This is shown on the 2000 Airport Layout Plan, which lists the airport as ARC B-II, and the critical aircraft as "Small Business Class." This is the last Airport Layout Plan prior to the 2012 Master Plan which was never adopted by the Oregon Aviation Board and which the Court of Appeals rejected. In particular, that court rejected the argument that the airport is C-II because "it was already serving many of the larger planes that the airport expansion would accommodate. **** The Master Plan proposed

improvements to the airport to move from ARC B-II design standards to ARC C-II design standards. The improvements necessary to meet C-II design standards were expanding the Runway Safety Area, expanding the Runway Object Free Area, expanding the Obstacle Free Zone, expanding the Runway Protection Zone, and adding runway blast pads **** As explained above, OAR 660-012-0065(3)(n) represents LCDC's decision on how to balance goal 12 transportation needs against goals 3, 4, 11, and 14. It that context, LCDC likely intended the rule to focus on airport design and space needs, not whether it is possible for larger and faster planes to use runways that are designed for smaller, slower planes." *Schaefer v. Oregon Aviation Board*, 312 Or App 316, 344-45 (2021).

The improvements necessary to meet C-II design standards were never constructed and the 2012 Master Plan, having been remanded by LUBA, is null and void. The airport improvements in the 2026 Master Plan would serve the design aircraft Gulfstream IV, an ARC C-II airplane. And the Airport Layout Plan indicates the airfield will serve ARC B-III, C-II, and D-II airplanes, which is a larger class of airplane that the current airfoiled design of ARC B-II. As the Court of Appeals explained, airfield upgrades to the ARC C-II standard permit service to a larger class of airplanes.

Therefore, OAR 660-012-0065(3)(n) does not apply. As a result, OAR 660-012-0070(1) requires a Goal 12 exception because the 2026 Master Plan is transportation facility on rural lands that does not meet the requirements of OAR 660-012-0065.

Several statutes expressly require ODAV to comply with the statewide planning goals and the local comprehensive plan. These statutes supersede the purported general exemption for expansions of a public use airport in OAR 660-012-0065(3)(n) because a specific statute controls over a contrary and general administrative rule, and because while OAR 660-012-0065(3)(n) indicates a county may permit expansion of a public use airport, the Marion County's EFU zoning code does not do so.

First, ORS 197.180(1) expressly requires ODAV, as a state agency, to take actions affecting land use "in compliance with the goals" and "In a manner compatible with acknowledged comprehensive plans and land use regulations." The prior LUBA and Court of Appeals rulings demonstrate the expansion of the Aurora State Airport and surrounding through the fence operations do not comply with the statewide planning goals, and are not compatible with the Marion County Comprehensive Plan. OAR 660-012-0065(3)(n) does not supersede ORS 197.180(1) or Goal 2.

Second, ORS 836.608(4)(a) requires growth of the Aurora State Airport to be "supported by existing public facilities and services and transportation

systems authorized by applicable statewide land use planning goals." The prior LUBA and Court of Appeals rulings demonstrate the expansion of the Aurora State Airport and surrounding through the fence operations proposed in the 2026 Master Plan do not comply with the statewide planning goals. OAR 660-012-0065(3)(n) does not supersede ORS 836.608(4)(a) or Goal 11.

Third, ORS 836.616(3) provides that a local government may allow commercial, industrial and other uses within an airport boundary "where such uses are consistent with applicable provisions of the acknowledged comprehensive plan, statewide land use planning goals and commission rules[.]" That means compliance with the EFU zone, the Agricultural Policies in the comprehensive plan, and Goal 3. And the prior LUBA and Court of Appeals rulings demonstrate the expansion of existing commercial, industrial and other uses at and adjacent to the Aurora State Airport must comply with the Goal 2 administrative rule OAR 660-004-0018 regarding increased intensity of uses on existing exception lands. Prior attempts to expand these uses have failed to comply with the EFU zone and the Agricultural Policies, and failed to address OAR 660-004-0018, and the 2026 Master Plan fails as well. OAR 660-012-0065(3)(n) does not supersede ORS 836.616(3), and Goal 12 does not supersede Goal 3. ORS 197.340(1).

ORS 836.642(4) governs through the fence uses, such as those proposed for the former church camp and areas south of Keil Rd. It expressly requires that, as a pilot site, expansion of through the fence uses adjacent to be "consistent with applicable statewide land use planning requirements." The several Court of Appeals and LUBA decisions already concluded development of the former church camp for through the fence uses was not consistent with applicable statewide land use planning requirements. See, for example, *Schaefer v. Marion County*, 323 Or App 390, 407-09 (2022). OAR 660-012-0065(3)(n) does not supersede ORS 836.642(4).

The statutes expressly reference the statewide goals, the county comprehensive plan, and statewide land use planning requirements. An administrative rule cannot exempt the 2026 Master Plan from these statutory requirements.

Even if OAR 660-012-0065(3)(n) did apply, the 2026 Master Plan is required to satisfy the farm impact test in ORS 215.296(1), which it fails to do. ORS 215.283(3)(b) mandates that proposed transportation facilities under OAR 660-012-0065 must satisfy the farm impact test. The 2026 Master Plan fails to satisfy that test for several reasons. The text of the plan describes increased numbers of aircraft based at the airport and increased takeoffs and landings. The 2026 Master Plan fails to describe how these increased flight operations will affect nearby farm operations, and fails to consider how those impacts force

significant changes in farm operations or increase the cost of farm operations. The use of leaded aviation fuel at the airport is well documented, but the master plan fails to describe the increased airborne lead emissions that result from increased flight operations, or the cumulative effect of that increase in emissions combined with the legacy contamination from decades of prior use of leaded aviation gas. Nor does the master plan evaluate how those lead emissions impact farm soils north and south of the runway where emissions are concentrated. This will significantly increase the cost of accepted farm practices on surrounding lands by compelling to farms to test for lead contamination, and to remediate the soils.

The 2026 Master Plan also adversely impacts the 100-acre vegetable farm on the east side of Airport Road in violation of ORS 215.296(1)(a) and (b), because the increased vehicle traffic conflicts with slow-moving farm equipment. This increases farming costs and forces a change in farm practices because it forces the farmer to duplicate equipment, and increases travel times (and consequent labor costs) between this site and other properties in the farm operation, in addition to presenting a serious traffic safety hazard at the farm entrance driveways. The master plan fails to mitigate these increased costs on surrounding farms. The farmer's testimony that through the fence development of the former church camp will increase the costs of farming on the east side of Airport Road is uncontroverted. ORS 215.296(1) is not satisfied, and thus OAR 660-012-0065(3)(n) does not authorize the airport expansion onto tax lots 800 and 900 of assessor's map 041W02D, and on the EFU land south of Keil Rd. on tax lots 900, 1000 and 1100 of map 041W11A, and tax lots 500 and 800 of map 041W12B.

ORS 215.296(1) requires some description of farm practices on surrounding farm lands, in order to evaluate whether the impacts of the 2026 Master Plan will significantly change or increase the costs of such practices. There is not sufficient information regarding surrounding farms and farm practices in the record to support a finding that ORS 215.296(1) is satisfied because the 2026 Master Plan does not identify and discuss each farm use, does not describe the operations on each of the surrounding properties devoted to farm use, and does not identify evidence of the unmitigated impacts of the proposed additional aviation-related uses and activities. The plan merely assumes that such adverse impacts will not require substantial changes to, or increased costs for, farm operations. However, the plan does not identify evidence that significant impacts are avoided. The burden is on the master plan to demonstrate there is no significant change in farm practices or increased costs. That burden cannot be met when the plan does not analyze either the practices or the costs.

The Airport Layout Plan illustrates increased hangar development and the text of the 2026 Master Plan describes increased flight operations.

Goal 2, Part II's administrative rule for additional development of existing exception lands is OAR 660-004-0018. The 2026 Master Plan violates OAR 660-004-0018(2) because it relies on increased intensity and density of existing uses on existing committed exception land in the Public zone, including increased intensity of the runway, air traffic control tower, taxiways, fueling, firefighting water service, and septic wastewater disposal uses and facilities, as the basis to construct nonfarm uses on EFU land. Subsection (2) requires that zoning applied to lands that are subject to irrevocably committed exceptions shall limit uses, densities and services to those that "will not commit adjacent or nearby resource lands to uses not allowed by the applicable goal" and that "are compatible with adjacent or nearby resource uses." OAR 660-004-0018(2)(b)(B) and (C).

The 2026 Master Plan violates OAR 660-004-0018(4)(b) because it increases the intensity of the runway, air traffic control tower, taxiways, fueling, firefighting water service, and septic wastewater disposal uses and facilities uses on the state-owned airport exception land, on the Southend Corporate Airpark exception land, and on the Columbia Helicopters and HTS exception lands, without taking new reasons exceptions. For example, the Master Plan authorizes further hangar development. The number of based aircraft will thus increase proportionally to the hangar space, and will increase flight operations on the runway, taxiways, and in the control tower, and water and sewer use, which are an increase in the intensity of the use of the runway and related aviation facilities, including the sewage disposal facilities, that are located on the state-owned exception lands. The additional hangars and runway extension to allow larger D-II aircraft increase the intensity of the uses approved in the prior exceptions, so new exceptions are required.

In addition, the runway extension will allow larger airplanes, and existing airplanes can carry more fuel, passengers and cargo. The runway extension satisfies the *Curry County* factors for an urban use, as follows. The first factor is density; that is, the size of the area in relationship to the proposed use.

The second factor is whether the development will undermine Aurora's UGB by allowing leap frogged development, for which the answer is an obvious yes. The third factor regards the types and levels of public services necessary for the development. As an urban land use, it requires urban public facilities under Goal 11. The airport is an urban use.

For the state-owned airport, a committed exception to Goal 3 was taken in 1980 for 144 acres which comprised the then-existing airport. The intensity

of aviation uses approved in that exception is not specified in the text of the exception document. Now the state transports the raw sewage from the control tower to Oregon City for treatment and disposal. The transportation is extension of a sewer system which requires a Goal 11 exception, but none was ever taken. Therefore, the control tower sewer system is not a lawfully established use.

The 2026 Master Plan increases the intensity of the development and uses on the 1980 Exception Land under OAR 660-004-0018 because it allows for more intensive urban development of additional land in several ways. First, it allows buildings over former septic fields. Second, it allows hangars and other buildings beyond the area of the 1980 Exception Land. Third it extends the runway for use by larger B-III, C-II, and D-II airplanes. The additional development increases the intensity of uses on the 1980 Exception Land because it allows more airplanes and helicopters to utilize the airport facilities. An increase in flight operations is an increase in the intensity of the uses on the 1980 Exception Land which requires exceptions to Goal 11, 12 and 14, regardless of whether the runway has capacity for the additional flight operations as a matter of engineering. *Storm v. Yamhill County*, 66 Or LUBA 415, 422 (2012). That additional development increased the density and intensity of uses on the 1980 Exception Land because in 1980 that land included a septic drainfield, and no buildings, pavement, or other impervious surfaces. And the change in the critical design aircraft and the airfield design from B-II to B-III, C-II, and D-II permits service to a larger class of airplanes, and larger airplanes generally, which is an increase in the intensity of the aviation uses on the exception land.

Goal 3, 11 and 14 reasons exceptions were taken in the 1990's for the last southerly extension of the runway. Again, the intensity of aviation uses approved in that exception is not specified in the text of the exception document; however, the contemporaneous 1988 Airport Master Plan, which the goal exceptions were based on, does detail the approved uses and intensity. That plan does not illustrate or authorize the through the fence development shown in the 2026 Master Plan for tax lots 800 and 900 of assessor's map 041W02D, or on tax lots 900, 1000 and 1100 of map 041W11A, and tax lots 500 and 800 of map 041W12B south of Keil Rd.

Goal 11 and 14 reasons exceptions were also taken in 2004 to allow build-out of the Southend Corporate Airpark and adjacent properties to the south with a shared sewer. Again, the intensity of aviation uses approved in that exception is not specified in the text of the exception document; however, the contemporaneous 2000 Airport Master Plan does detail the approved uses and intensity. As shown on the 2000 Airport Layout Plan, there area is designated "Potential Future T-Hangars, Corporate Hangars & FBO's."

Notably, the 2004 exceptions did not include a Goal 11 exception for the state-owned airport where the septic drainfields are located on ODAV's tax lot 800 of assessor's map 041W11A. Therefore, that septic drainfield is not a lawfully established nonconforming use. The text of Goal 11 is clear: "Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land." There is no evidence in the record that a public health hazard exists where the airport intends to expand, which is outside an urban growth boundary. Therefore, an extension of sewer service violates Goal 11.

Goal 11 also defines Rural Facilities and Services to mean "facilities and services suitable and appropriate solely for the needs of rural lands." Planning guideline A.2 provides: "Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses." The proposed airport expansion is exclusively for development of urban uses. As LUBA explained the airport is an urban public facility. It far exceeds the aviation needs for the rural area it is located in. The master plan and findings neither utilize this guideline or provide an alternate means of compliance with Goal 11, in violation of Goal 2, Part III.

Therefore, the urban scale public facilities proposed, including extension of a sewer system and extension of the non-potable water system for fire-fighting, violate Goal 11. The airport lacks public sanitary sewer, public stormwater, and public potable water services. Goal 11 requires adequate *public* facilities. It does not allow substitution of private facilities to support urban development on rural land.

There is no Goal 11 exception in effect which allows the extension of sewer service from ODAV's tax lot 800 to serve other properties, which violates Goal 11 and OAR 660-11-0060(2)(c), which do not allow extension of sewer service to serve an urban use on a rural property without a Goal 11 exception. A new Goal 11 exception is required to relocate the septic fields on a different property, tax lot 900 of map 041W11A as has been proposed.

In 2009, Goal 3, 11 and 14 reasons exceptions were taken to allow development of the HTS helicopter facility with a limited use overlay. The intensity of aviation uses approved in that exception is described in the text of the exception document, where the north portion of the HTS property remained as an open field.

The proposed 2026 Master Plan increases the intensity of the development and uses on the 2009 Exception Land because it allows for full development of the northern portion of that land, which currently includes a septic drainfield, and no buildings, pavement, or other impervious surfaces.

OAR 660-004-0018 applies because the 2026 Master Plan approved increases in the intensity of the various uses beyond what was approved in the prior exceptions that govern the state-owned and privately-owned airport and through the fence properties. More specifically, the existing goal exceptions for the state-owned airport did not authorize the increases in the intensity of uses and additional development that the Master Plan proposes. Flight operations and fuel sales will increase for the increased numbers of based aircraft and flight operations. The 2026 Master Plan fails to discuss latent demand; that is, the impact of a longer runway on aviation demand from jets that would be less constrained, or no longer constrained, if the longer runway was built. Nor does the Master Plan describe how that increase will affect the intensity of uses on the existing exception lands at the state-owned airport, or the Southend Airpark's 2004 Exception Lands.

The 2026 Master Plan includes purchase for aviation-related development of the former church camp on tax lots 800 and 900 of assessor's map 041W02D, and the EFU land south of Keil Rd. on tax lots 900, 1000 and 1100 of map 041W11A, and tax lots 500 and 800 of map 041W12B. The flight operations of airplanes based on those properties will increase the intensity of the airport use on the state-owned properties. Employment will increase and with employment comes increased water and sewer use, but no public water or sewer, and no private sewer, is available to serve these properties. Increased hangar development will occur as illustrated on the Airport Layout Plan. All of these factors will increase the intensity of uses, density, and public facilities and services that were not authorized in the prior committed and reasons exceptions for the state-owned airport. None of the prior exceptions encompass any increase in intensity uses that will result from the development of EFU land for which OAR 660-004-0018(2) and (4)(b) require new goal exceptions.

OAR 660-004-0018(2) is violated because it mandates that the Public zone "shall limit uses, density, and public facilities and services to * * * maintain the land as 'Rural Land' as defined by the goals, and are consistent with all other applicable goal requirements." OAR 660-004-0018(2)(b)(A). The definition is:

> "RURAL LAND. Land outside urban growth boundaries that is:

> a) Non-urban agricultural, forest or open space,
> b) Suitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or
> c) In an unincorporated community."

The state-owned airport is not agricultural, forest or open space, it is not suitable for sparse residential settlement, and it is not within an unincorporated community. Therefore, the airport is not currently "Rural Land" and the 2026 Master Plan does not maintain the state-owned airport land as Rural Land. And the Marion County Public zone cannot be interpretated or applied in a manner to allow increases in the uses, density, and public facilities and services at the airport shown in the 2026 Master Plan because those increases fail to maintain the land as 'Rural Land' as required by OAR 660-004-0018(2)(b)(A). Therefore, the 2026 Master Plan violates ORS 197.732, Goal 2, and the Goal 2 rules OAR 660-004-0018(2) and (4)(b).

There is no Goal 11 exception in the record that authorizes private properties to discharge their septic effluent onto the state-owned airport land. As a state agency, ODA's requirements are specified in Goal 11, which states:

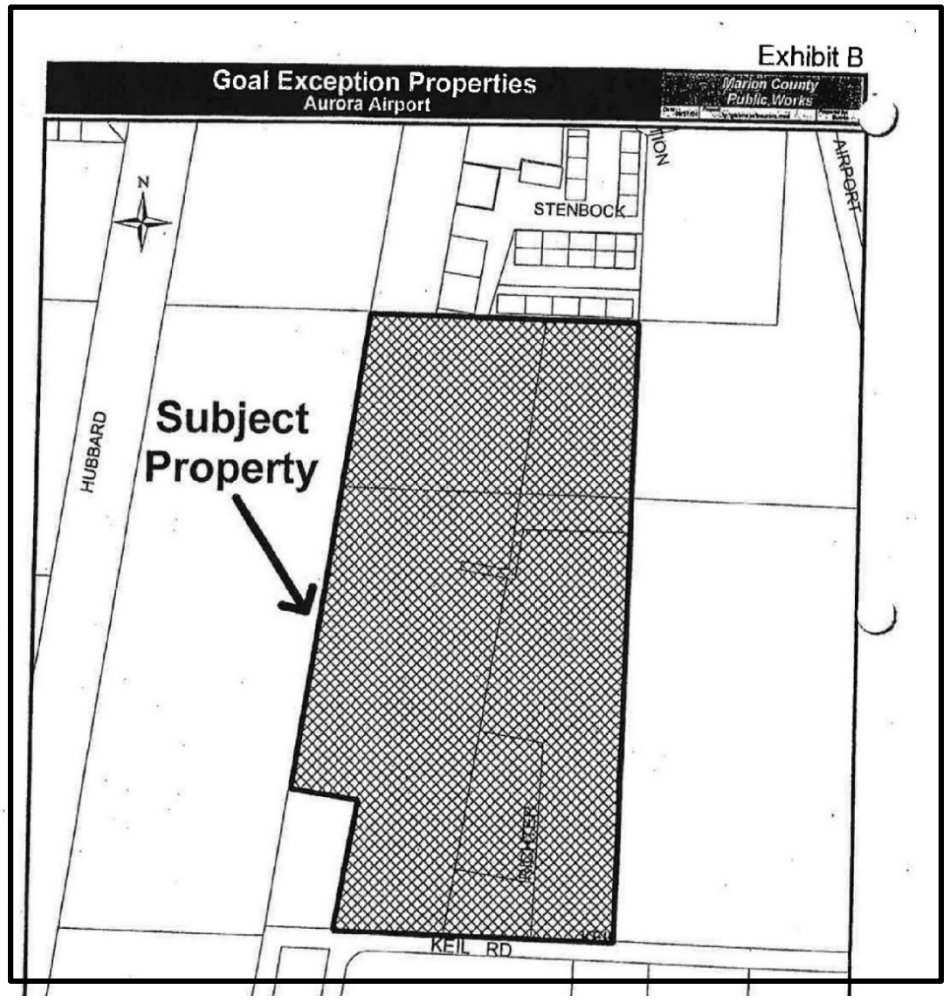
> "In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties."

The 2026 Master Plan fails to coordinate ODA's provision and extension of sewage facilities with the public facility plans of Aurora, an affected local government, which violates Goal 11. Aurora is an affected local government because the Part 77 surfaces extend into the airspace over the City of Aurora and the City of Wilsonville. In addition, the record demonstrates many planes each day fly outside the designated airspace and flight paths and directly over these cities at very low elevations. An exception to Goal 11 is required by OAR 660-011-0060(2)(a) and (c); and by OAR 660-011-0060(9) for the septic drainfields on the state-owned properties illustrated on page 2-39 of the 2026 Master Plan that serve other properties, because those rules require an exception for extension of sewer systems to other properties. Page 2-39 illustrates four drainfields, but indicates there are nine drainfields. Therefore the 2026 Master Plan does not accurately reflect the extent of the sewer systems or the full extent of the needed Goal 11 exception. Moreover, the plan fails to identify all the properties that require a Goal 11 exception because they

discharge septic effluent to those septic drainfields on the state-owned property.

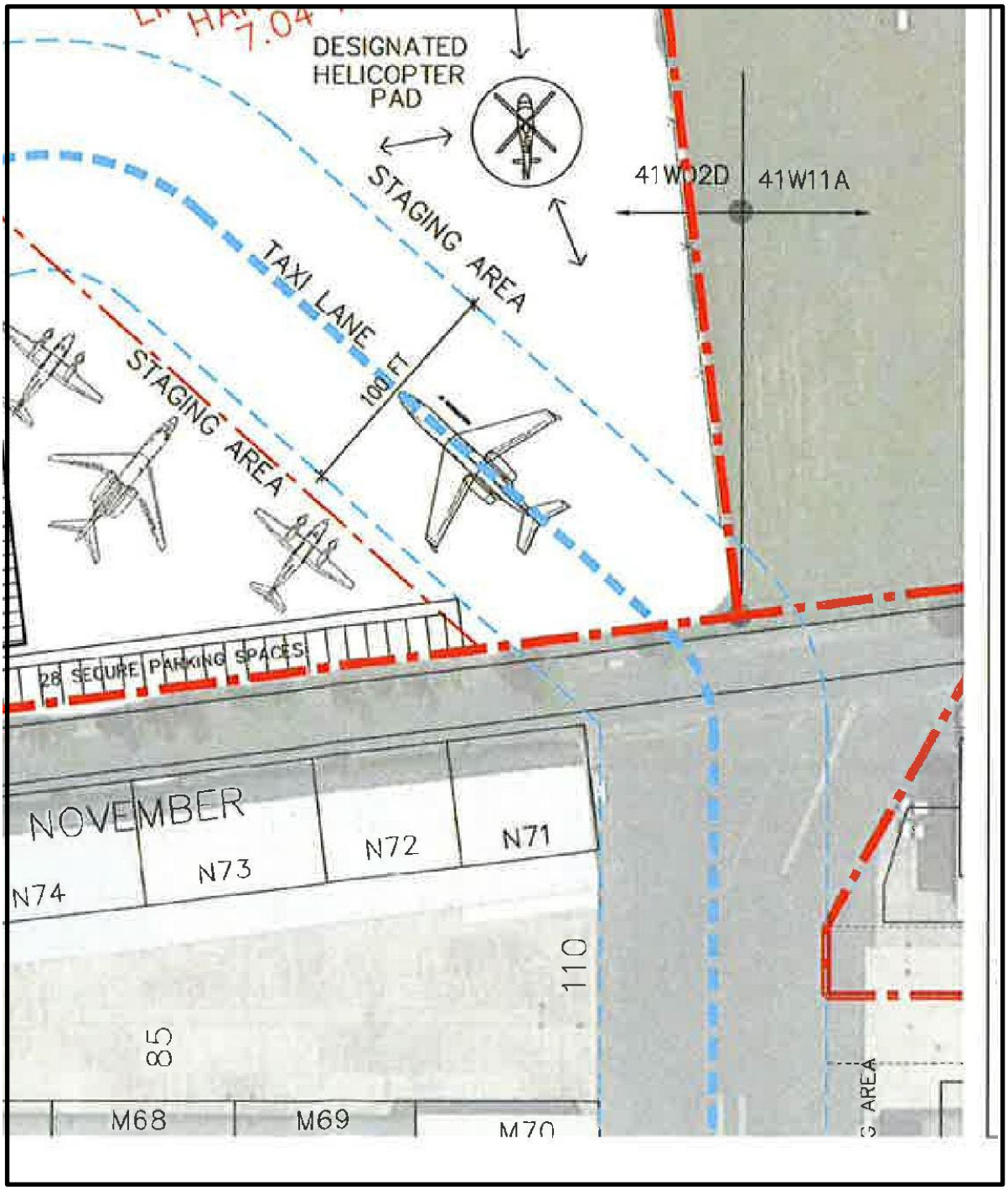
OAB and the FAA must take a "hard look" at the environmental impacts of additional air traffic generated by the new runway. See *Envtl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 451 F.3d 1005, 1009 (9th Cir. 2006). This is required by Goal 6. Finally, OAB and the FAA must comply with the Airport and Airway Improvement Act's requirement to ensure that the new runway was consistent with the plans of the appropriate local agencies. See 49 U.S.C. § 47106(a)(1)." This includes consideration of how the longer runway and other airport upgrades "would lead to increased demand and increased aircraft operations."

For the Southend Airpark, Goal 11 and 14 reasons exceptions were taken in 2004 to allow build-out of the airpark and adjacent properties to the south with a shared sewer (the "2004 Exceptions"). The 2004 Exceptions area was illustrated on this exhibit.



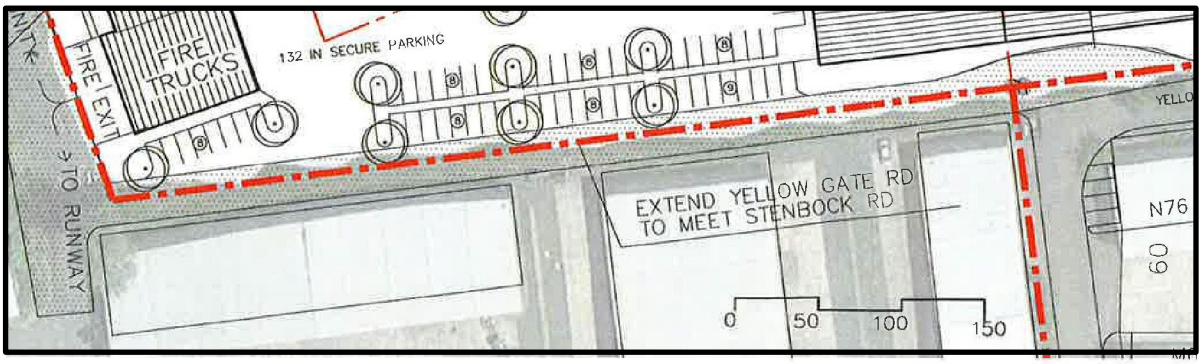
The 2004 Exceptions did not include or account for urban development of the former church camp on tax lots 800 and 900 of Map T4S R1W Section 2D, but the 2026 Master Plan and Airport Layout Plan designate tax lots 800 and 900 for airport expansion as the "Southern Development Area." The property owner has indicated development of tax lots 800 and 900 will increase the intensity of uses on the 2004 Exception Land by connecting them to the shared septic system, by connecting those tax lots to Yellow Gate Lane, and by connecting those tax lots to the taxiway for use by planes that are based on the two tax lots.

OAR 660-004-0018(4)(b) applies because the 2026 Master Plan increases the intensity of the airpark uses, and those increases were not authorized in the 2004 Exceptions. First, the airpark's taxiway is being extended across Yellow Gate Lane to the east boundary of the airpark and then onto the former church camp properties, with a consequent increase in taxiway traffic. The taxiway extension is delineated by the blue dashed line on the site plan excerpted on the following page. The red dashed lines are property lines.



The private Yellow Gate Lane within the airpark is also being extended northward to provide automobile access to parking spaces on the tax lots 800 and 900, with a consequent increase in motor vehicle traffic on the 2004 Exceptions Land. This extension is clearly illustrated on this site plan excerpt, which states: "EXTEND YELLOW GATE RD TO MEET STENBOCK RD."

The Yellow Gate Lane extension straddles the property line, with the eastern portion on tax lots 800 and 900 and the western portion on the 2004 Exception Land.



The 2004 Exceptions did not recognize or justify increased taxiway and Yellow Gate Lane traffic, increased sewage processing, or increased aviation-related commerce on the Southend Corporate Airpark generated by urban development of tax lots 800 and 900, as the Court of Appeals confirmed. "It is undisputed that, when the exception for the adjacent parcel was taken in 2004, no development was contemplated on the subject parcel [land zoned EFU]. Thus, under petitioner's legal theory, as a matter of law, the 2004 exception did not encompass any increase in intensity that will result from development of the subject parcel."

Therefore, the 2026 Master Plan failed to analyze the uses approved in the 2004 Exceptions, or evaluate the increased intensity of uses and services that will result from the additional development described in the Master Plan and illustrated on the Airport Layout Plan, in violation of OAR 660-004-0018.

The relationship between tax lots 800 and 900 and the Southend Corporate Airpark, and how the intensity of the complementary aviation, commercial and sewage uses will be greater than the sum of their parts, is described by the property owner. The development of tax lots 800 and 900:

> "will allow expansion of the South End Airpark, which consists primarily of hangars, related corporate offices, FBOs, and aircraft repair services to the Subject Property [tax lots 800 and 900]."

This testimony demonstrates increased intensity of the uses beyond the intensity that was authorized in the 2004 Exceptions. It is substantial evidence because a reasonable decision maker would conclude that the 2026 Master

Plan will result in increased taxiway and Yellow Gate Lane traffic, increased sewage processing, and increased commerce on the 2004 Exception Land.

Marion County found increased sewer usage.

> "Standard on-site wastewater disposal is not feasible without procuring off-site drain field facilities, which is feasible. Applicant examined alternatives to standard septic systems, and favors tying into the digester system on the Southend Airpark property to the west." App 29.

Marion County also found that airplanes based on tax lots 800 and 900 will traverse the Southend Corporate Airpark taxiway.

> "Applicant's revised site plan and testimony adequately explained that the ultimate users of the Subject Property will require use of the runway access taxi easement directly."

The same is true for the proposed expansion of the airport south of Keil Road illustrated on the Airport Layout Plan. That area is approximately 22 acres, and when developed for aviation uses, will increase the intensity of airplane traffic on the taxiways on the 2004 exception lands, and on the runway which is part of the original committed exception. Because the 2026 Master Plan increases the intensity of the uses above what was approved in the 2004 Exceptions, and because committed exceptions are not a vehicle for growth, a new reasons exception for these properties required by OAR 660-004-0018(4)(b).

Because the Master Plan signifies a change in the type or intensity of the use in these three exception areas, the Master Plan "must (1) make findings showing either that Goal 14 does not apply or the proposal complies with an existing Goal 14 exception; or (2) take a new Goal 14 exception." *Leathers v. Marion County*, 31 Or LUBA 220, 234, 144 Or App 123, 925 P2d 148 (1996). Expansion of an urban airport onto land zoned EFU violates Goal 14, so a new Goal 14 exception is required.

The new goal exceptions for the three existing exceptions lands cannot be deferred to a later Marion County land use proceeding, because ORS 197.180(1) and OAR 738-130-0055(6) require the 2026 Master Plan to be compatible with the goals, including the ORS 197.732 and Goal 2, Part II requirements for goal exceptions and their implementing rules in OAR 660-004-0018, when the 2026 Master Plan is adopted.

Goal 2, Part III

> "In Goal 2, Part III, in the section titled 'plan content,' the guidelines provide that '[t]he following elements should be included in the plan: (a) Applicable statewide planning goals[.]'"

Nicita v. City of Oregon City, 317 Or App 709, 723 (2022).

The 2026 Master Plan fails to include or address the applicable statewide planning goals, in violation of Goal 2, Part III. It only describes them in the separate findings, which is inadequate. Moreover, Part III also mandates that:

> "Governmental units shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the goals. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals."

The 2026 Master Plan fails to identify any guidelines from the applicable statewide planning goals, and fails to explain alternative means that were used to satisfy the goal for those instances where the guidelines are clearly violated, in further violation of Part III. The statutory requirements to comply with the goals and local regulations in ORS 197.180(1)(a) and 197.180(10) supersede any purported exemption from the goals under OAR 660-012-0065(3)(b) or (3)(n). The 2026 Master Plan ignores the Goal 2, Part III provision on Guidelines. The master plan violates many guidelines as described below. The master plan does not address these guidelines at all, or perform an alternatives analysis. The master plan and findings neither utilize the guidelines nor develop alternative means to meet Goal 2, Goal 11, or Goal 12, in violation of Goal 2, Part III.

The applicable goals and guidelines are not satisfied, for the following reasons.

Goal 3: Agricultural Lands

Goal 3 is "to preserve and maintain agricultural lands *** consistent with *** the state's agricultural land use policy expressed in ORS 215.243[.]" The airport is surrounded by Class 2 agricultural land that is designated Primary Agriculture in the comprehensive plan. "215.243(3) suggests that provision

of 'urban-like' development or services on EFU land is inconsistent with Goal 3." *Linn County Farm Bureau v. Linn County*, 61 Or LUBA 323, 340 (2010).

Goal 3 is violated because the 2026 Master Plan fails to preserve agricultural land and expands urban development into this rural area which is inconsistent with Goal 3 and ORS 215.243(3). A Goal 3 exception is required for the 2026 Master Plan because it neither utilizes the Goal 3 guidelines, nor proposes an alternative means of achieving Goal 3; that is, the plan fails to preserve agricultural land and expands urban development into this rural area which is inconsistent with Goal 3 and ORS 215.243(3). The plan violates the Goal 3 guidelines, because it expands the urban airport use onto Class II agricultural land. Specifically, Planning Guideline 1 requires that "Urban growth should be separated from agricultural lands by buffer or transitional areas of open space." The 2026 Master Plan proposes more urban development without any buffer or transitional areas, in violation of this guideline. Planning Guideline 2 requires that: "Plans providing for the preservation and maintenance of farm land for farm use, should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources. The 2026 Master Plan proposes more urban development and relocation of septic fields without identifying replacement septic fields and thus exceeds the carrying capacity of the land for sewage disposal. Implementation Guideline 1 requires that "Non-farm uses permitted within farm use zones under ORS 215.213(2) and (3) and 215.283(2) and (3) should be minimized to allow for maximum agricultural productivity." The 2026 Master Plan proposes more urban development on agricultural land which displaces agricultural productivity in violation of this guideline. Implementation Guideline 2 requires that "Extension of services, such as sewer and water supplies into rural areas should be appropriate for the needs of agriculture, farm use and non-farm uses established under ORS 215.213 and 215.283." The 2026 Master Plan assumes extension of sewer and water services to new aviation-related development in violation of this guideline. Therefore, under Goal 2, Part III, the plan must develop an alternative means of achieving Goal 3, but fails to do so, and fails to state how the guidelines or alternative means are utilized to achieve Goal 3. The expansion proposed in the 2026 Master Plan violates Goal 3 and its administrative rule, OAR 660-033 because urban services such as transportation facilities in agricultural lands should not be connected to non-farm uses and should be "limited in capacity to serve specific service areas and identified needs." Implementation Guideline B.3 is therefore violated.

The 2026 Master Plan and Airport Layout Plan propose to expand onto the former church camp, and onto EFU-zoned land south of Keil Rd. This EFU

land is not included within any prior adopted master plan for the airport, nor within any prior goal exception for the airport. It is designated as Primary Agriculture in the Marion County Comprehensive Plan.

Marion County interprets MCC 17.136.050.J.4 of the EFU zoning code to allow expansion of the airport boundary and airport-related commercial and industrial uses (although that interpretation is not acknowledged). The 2026 Master Plan and Airport Layout Plan expand onto EFU land for "landside" development of hangars and airport-related commercial and industrial uses. Therefore, as a result of the OAB approval of the 2026 Master Plan, ODAV can establish dozens of acres of hangars and other commercial and industrial uses on EFU property.

And the Airport Layout Plan proposes dividing several EFU properties to purchase portions from willing sellers for airport use. As ODAV's engineer explained, "The reason that property acquisition and improvements within the property acquisition are evaluated is that those areas would become part of the airport proper." There is no doubt the 2026 Master Plan proposes airport development on EFU land.

However, the 2026 Master Plan fails to explain what facts lead to the conclusion that dozens of acres of EFU land are needed for hangars and other aviation-related commercial and industrial uses. Rather, the need is only eight acres, as described in the Landside Elements Goals and Requirements section of Chapter 4.

> "There is approximately 8 acres of land in the ODAV terminal area that are available for future hangars, aircraft storage, and other aviation related needs. **** Table 4-7 summarizes the criteria used to estimate hangar space demand over the planning period. **** FACILITY REQUIREMENT The remaining undeveloped areas in the ODAV Terminal Development Area and any future infill development opportunities should be reserved to accommodate aeronautical uses."

There is no information in Chapter 4, or elsewhere in the 2026 Master Plan, that additional acreage outside the ODAV Terminal Development Area and Public zone is needed for landside development over the planning period. Therefore, there is no adequate factual basis for the Airport Layout Plan to illustrate expansion onto approximately 50 acres of EFU land explained by Note 2 on Sheet 3 for "Airport Property Acquisition" and to list these properties as numbers 20, 21, 116, 115, 31, 27 and 28 in the table of "Property to be Acquired" on Sheet 12. The findings are inadequate because they fail to

explain what evidence leads to the conclusion that these 50 acres are needed for the public use airport, when the text and illustrations of Chapter 4 omit them, and indicate that only eight acres located within both the current ODAV ownership and the Public zone, are needed for future landside development. Therefore the Airport Layout Plan and Master Plan are unsupported by substantial evidence and lack adequate findings.

The master plan must comply with the base zone and other local government land use regulations, as required by OAR 197.180(1)(b). The "Property to be Acquired" includes portions of several EFU parcels south of Keil Rd, so MCC 17.136 applies. Each of those parcels is already less than the 80-acre minimum lot size in the EFU zone. MCC 17.136.090.A.1.c. These include numbers 27 (3.07 acres), 28 (9.51 acres), 31 (8.86 acres), 115 (6.75 acres), and 116 (8.32 acres) as listed on Sheet 12. And MCC 17.136.090.B.1 requires that a new, non-residential nonfarm parcel can only be created for the uses listed in MCC 17.136.040 or .050, but a public use airport is not on either list. Therefore, the proposed partitions necessary to create the new non-farm parcels illustrated on Sheets 3 and 12 are prohibited in the EFU zone. The 2026 Master Plan also violates related zoning code provisions, including MCC 17.113.020 by reducing several existing lots below the minimum 80 acres required by MCC 17.136.090.A.1.c, including tax lots 500 and 800 of map 041W12B, and tax lots 900, 1000, 1100 and 1200 of map 041W11A. The reduced lot sizes also violate MCC 17.172.360 which requires the lot sizes to be consistent with the comprehensive plan designation of Primary Agriculture, but the ALP is inconsistent with that designation because it shows properties less than 80 acres. Note Chapter 4 of the 2026 Master Plan indicates that Exhibit A of Chater 6, the Airport Property Plan, illustrates these areas. "Reserve property is also depicted, in the event of a willing seller[.]" Page 6-4. Because the plan is to purchase from willing sellers only, there is no use of condemnation authority and therefore no potential exemption from the minimum lot sizes in the EFU zone.

Again, ODAV's consultant explained the purpose of purchasing this area is "that those areas would become part of the airport proper." The draft findings state these properties are identified "for future airport development[.]" This Airport Layout Plan designation will authorize the use of state and federal funds to purchase these acres and develop them for non-farm, aviation-related commercial and industrial uses. Therefore, the ALP and findings are clear that ODAV will establish aviation-related uses, including commercial and industrial uses, on the "Property to be Acquired". There is no authority to postpone compliance with EFU regulations or Goals 3, 11, 12, and 14 which prohibit expansion of this urban airport onto EFU land without goal exceptions.

The Airport Layout Plan's Sheet 13 includes the table and illustration of the "Property to be Acquired". There are seven listed properties in the EFU zone totaling 33.44 acres. This violates OAR 660-012-0020(2)(e), which requires the county TSP to identify "where public use airports *** are located or planned within the planning area" because those properties are not shown in the TSP. ORS 197.180(1)(b) requires the Airport Master Plan to be compatible with the acknowledged county comprehensive plan which includes the TSP, and this statute is also violated by showing airport expansion that is not included in the TSP. To comply with OAR 660-012-0020(2)(e) and ORS 197.180(1)(b) the county TSP must therefore be amended first, before the Airport Master Plan and Airport Layout Plan can be approved by OAB. Because the expansion is not shown in the TSP, the 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) which requires consistency with the acknowledged TSP.

The land is within the Marion County Airport Overlay Zone; however, this overlay does not authorize the use of EFU land for urban aviation uses, such as hangars, the ROFA, RPZ, a new septic field, or the localizer; nor does it authorize aviation related development on the 16.54 acres of the former church camp on tax lots 800 and 900 of assessor's map 041W2D and the EFU land south of Keil Rd. on tax lots 900, 1000 and 1100 of map 041W11A, and tax lots 500 and 800 of map 041W12B, which are properties to be acquired numbers 20 and 21 on sheet 12. None of these uses are farm uses, because even if FAA regulations allow crops in these areas, the areas are used for the primary purpose of urban aviation—not for the primary purpose of obtaining a profit in money by raising crops or animals as required. See ORS 215.283(2)(a) and 215.203(2)(a).

Moreover, the Airport Overlay Zone text expressly describes its limited applicability to only "200 feet beyond the end of the runway". MCC 17.177.020.C.1.

There is no list of approved or conditional uses for the overlay zone, and the term "runway protection zone" does not appear in the text. MCC 17.177. Rather, the overlay zone governs the airspace above the land in order to regulate tall buildings and other potential hazards to avigation. The restrictive EFU zoning remains in effect. The purpose statement of the overlay zone in MCC 17.177.010 confirms this.

> "The airport overlay zone is intended to minimize potential dangers from, and conflicts with, the use of aircraft at public airports based on the adopted master plans for each airport. It is to be used in conjunction with the underlying zone. If

> any conflict in regulation or procedure occurs with the underlying zoning districts, the more restrictive provisions shall govern."

The EFU zoning regulations within MCC 17.136 are much more restrictive than the regulations of the Airport Overlay Zone. For example, MCC 17.136 does not allow urban public facilities such as the Aurora State Airport, nor does it allow the proposed office and aviation uses on the former church camp. Note that the church camp is also within the Airport Overlay Zone, and the property owner previously applied for exceptions to Goal 3 and Goal 14. This confirms the overlay zone does not authorize urban aviation uses when the underlying EFU zoning prohibits those uses.

More specifically, MCC 17.136.010 provides: "The purpose of the EFU (exclusive farm use) zone is to provide areas for continued practice of commercial agriculture **** To minimize impacts from potentially conflicting uses it is necessary to apply to non-farm uses the criteria and standards in OAR 660-033-0130." Then OAR 660-033-0130(2)(a) prohibits a "group of structures with a total design capacity of greater than 100 people *** within three miles of an urban growth boundary, unless an exception is approved[.]" Conditional use criterion MCC 17.119.070.B is violated because the urban commercial, industrial, and aviation uses are not in harmony with these purposes of the EFU zone to preserve agricultural land, and the 2026 Master Plan proposes a group of structures with design capacity of more than 100 people. The urban uses are unrelated to agriculture and therefore need a Goal 3 exception. An urban development that requires a Goal 3 exception is by definition not in harmony with the purpose of the EFU zone. OAB's interpretation of MCC 17.136.010 and MCC 17.119.070.B must comply with Goals 3, 11 and 14. *See Oregon Shores Cons. Coalition v. Coos County,* 51 Or LUBA 500, 519 (2006) (no deference is owed for interpretation of local code that implements a statewide goal). The findings rely on the 1976 Airport Layout Plan which does not support expansion of the boundary, and is not found in the current comprehensive plan. This application must be evaluated against the current comprehensive plan. *Baker v. City of Milwaukie*, 271 Or 500, 514, 533 P2d 772 (1975).

Another relevant example is the proposed relocation of Keil Rd. and airport expansion south of Keil Rd. MCC 17.136.050.J.4 is more restrictive than the Airport Overlay Zone, and confirms that Goal 3 exception is required for this road. The Keil Rd. relocation cannot be approved under OAR 660-012-0065(3)(o) because it does not serve local travel needs. Rather, it serves the needs of regional travel as demonstrated in the traffic study for development at the airport, done for the development of the former church camp. See LUBA No. 2020-108. The trip distribution map on page 14 of that study

demonstrates at least half of the vehicle trips are not local trips, because they originate from, and return to, I-5. Keil Rd. provides the only public road access to Yellow Gate Lane, which serves urban development, in particular the 2004 Exception Lands and the 2009 Exception Lands. Those lands lead into to the larger airport which is a major transportation facility that does not serve local needs, but rather serves regional, national and international destinations. The purpose of the Keil Rd. relocation is to serve those regional, national and international flights, not local trips within the meaning of OAR 660-012-0065(3)(o).

The Class 2 agricultural land east of Keil Rd. lies several feet below the grade of the existing Department of Aviation property. The expanded runway protection zone created by the Keil Rd relocation will require extensive fill to raise the grade up to the elevations specified on the Airport Layout Plan. This fill will bury the existing Class 2 soils in order to support the airplanes that inadvertently leave the pavement due to an emergency, and emergency equipment. It would remove these acres from agricultural production.

In response the Department of Aviation has said it can still farm this land, notwithstanding that it will be fenced off, will not be Class 2 soils, and will pose an obvious safety hazard to farm workers working in the flight path. The FAA requirement for fencing is a non-land use standard that directly bears on the urban use of EFU land within the runway protection zone, because it separates the fenced airport from the adjacent farm unit to which currently farms the area at issue and which ODAV intends to purchase and fence off for urban use.

There is no information that the Department of Aviation has ever farmed the land around the runway, including land in the existing runway protection zone, despite prior findings adopted by Marion County that this land "would be leased for continued farming." *Murray*, at 276. Rather, the state has leased the land for septic fields where, according to the county, which informed the state: "THE APPROVED SEPTIC SYSTEM AREA MUST BE PROTECTED from any vehicular traffic, livestock, and farming activities."

The Department of Aviation lacks legal authority to conduct "farm use" as that term is defined in ORS 215.203(2)(a), which requires that farm use be "for the primary purpose of obtaining a profit in money." The Department of Aviation is a state agency whose primary purpose is to promote and regulate aviation, not to earn a profit in money from farming. There is no information in the 2026 Master Plan that commits the Department of Aviation to either farming the land for a profit or leasing the land to a private farmer. It seems improbable that any private sector farmer would be interested in leasing the land under the onerous restrictions that would apply. This remains an unresolved land use conflict.

Guideline A.1 of Goal 3 specifically addresses urban development. "Urban growth should be separated from agricultural lands by buffer or transitional areas of open space." The 2026 Master Plan conflicts with this guideline by proposing the direct expansion of new urban uses onto the adjacent agricultural lands without any consideration of appropriate buffers. The Master Plan does not include the facts to demonstrate these guidelines have been considered in more than a cursory manner, and does not include facts or findings to show an appropriate buffer.

Goal 3 only allows nonfarm uses "that will not have significant adverse effects on farm or forest practices." The Department of Aviation maintains an active program of tree removal on surrounding agricultural land. This is demonstrated by the Department's letter of support for the harvest of the mature oak forest on the former church camp property, which has not and will not be replanted. In response to the irreconcilable needs of trees and aviation, the Department's policy is to cut the trees, and it maintains an active program for tree removal. However, Goal 3 requires that forest uses "should be permitted on agricultural land" and the county zoning code that implements Goal 3 expressly allows forestry as a permitted use on EFU land. MCC 17.136.020.B. The Department of Aviation's programs cannot supersede local zoning. See ORS 846.035. The urban aviation uses proposed in the Master Plan, including the tree removal program, conflict with Goal 3 and MCC 17.136.020.B.

The land use application for the former church camp described land use conflicts between aviation and farm uses, including the problem caused when agricultural dust interferes with sensitive aviation instruments. This is precisely the type of conflict that could be resolved with a suitable buffer.

The Goal 3 administrative rule includes provisions for non-farm uses. A transportation facility (the runway) and its supporting equipment (lighting and other instruments) are allowed as a conditional use only upon demonstrating that there are no substantial adverse impacts to farm and forest operations. See OAR 660-033-0130(13) and (16)(a)(D); ORS 215.296. The 2026 Master Plan does not analyze potential adverse impacts from the runway extension or expansion of the airport onto land zoned EFU. The limited record does not provide a survey of surrounding farm practices or other substantial evidence to support a finding that there are no substantial adverse impacts to farm and forest operations.

The record demonstrates both that the 2026 Master Plan will force a significant change in farm practices, because existing farm units south of Keil Rd. will be divided which will significantly increase farm costs. This new road will divide the existing M&H Farms and Kelly family filbert orchard economic

farm units into several smaller parcels, which are adverse farm impacts under ORS 215.296 and OAR 660-012-0065(5)(a). The Master Plan does not demonstrate how the runway extension, the placement of fill for relocating Keil Rd and raising the expanded runway protection zone, the extension of airport equipment and runway protection fencing onto agricultural land will not force a significant change in farm practices or a significant increase in the cost of farm practices. See OAR 660-033-0130(13) and (16)(a)(D).

The 2026 Master Plan violates Goal 2, Part II(c)(4)(B) because it fails to assure continued resource management of surrounding EFU land. This is evidenced by the purchase of the former church camp by airport developer TLM Holdings, LLC, which clear cut the mature oak forest, and scraped off the topsoil to clear the land for development approved by Marion County. The photographic evidence of the clearcut and topsoil removal is attached. The land remains zoned EFU, but the 2026 Master Plan designates this land, and more EFU-zoned acreage south of Keil Rd., to be developed for urban, airport-related uses. That does not assure continued resource management; rather, it takes agricultural land out of resource use, contrary to Goal 3.

Therefore, a Goal 3 exception will be required for the 2026 Master Plan. By definition, a state agency land use program affecting land use that requires a new goal exception "does not comply with some or all goal requirements[.]" Goal 2, Part 2. Because both the Master Plan and the Airport Layout Plan as written do not comply with Goal 3, they are also not in compliance with ORS 197.180(1)(a) and (10). There is not an adequate factual base to support a finding that those plans are in compliance with these regulations.

Goal 5: Natural Resources

A Goal 5 exception is required for the 2026 Master Plan because it neither utilizes the Goal 5 guidelines, nor proposes an alternative means of achieving Goal 5. The plan violates Goal 5 and the guidelines, because the plan expands an urban scale land use without providing adequate public sewer and stormwater facilities to protect the adversely impacted Goal 5 resource, the Pudding River. The airport discharges undetained and untreated stormwater into two tributaries of the Pudding River, a salmonid-bearing river which is identified in the Marion County Comprehensive Plan as a Goal 5 resource. The 2026 Master Plan fails to account for current or proposed stormwater discharges resulting from additional impervious area illustrated on the Airport Layout Plan, including the extended runway, and fails to evaluate how those discharges will impact this Goal 5 resource. Therefore, plan must develop an alternative means of achieving the goal, but fails to do so, in violation of Goal 2, Part III.

The Marion County Comprehensive Plan's Background and Inventory Report for water resources identifies the Pudding River as one of three major river basins. The inventory report explains:

> "A map of the Middle Willamette Drainage Basin that includes the three basins was prepared by the State Water Resources Department in 1977. This map is available for review in the Planning Department office and it illustrates all of the significant surface water features in the County."

That map is in the record. The Pudding River is identified as a Goal 5 resource in the comprehensive plan.

The inventory report later continues:

> "In cooperation with the Department of Environmental Quality, the Mid-Willamette Valley Council of Governments has undertaken a study of water quality management and water pollution control (see pp. II H-3 in the Marion County Comprehensive Plan). Data has been incorporated into a technical study to help define the role that population growth, economic development, and related land uses play in analyzing local and regional water quality problems. The data will also be used to help ongoing and anticipated facility planning efforts into an area wide planning philosophy to achieve cost effective solutions to local and regional water quality problems."

The septic systems and stormwater systems at the airport discharge their overflows to the Pudding River. As explained by DEQ: "Nearest surface stream which would receive waste if it were to discharge: Pudding River." (Columbia Helicopters 2009 Septic Permit.) The septic drainfields around the runway are hydrologically connected to swales that parallel the runway, from which stormwater flows west though a pipe to Deer Creek, which empties into the Pudding River.

For the east portion of the airport and through the fence developments, stormwater discharges to the Pudding River via a system of pipes and open ditches along Keil and Airport Roads which discharge directly into the headwaters for the Pudding River about 100 feet south of the intersection of Keil and Airport Roads. "The proposed runoff will discharge into an existing storm system within the Airpark Property and eventually discharge to an existing drainage ditch along the North side of Keil Road." (Group Mackenzie 2014 Stormwater Report.) That ditch discharges directly into the headwaters

of the Pudding River 100 feet south of the intersection of Keil Road and Airport Road.

The 2026 Master Plan violates Goal 5 because it fails to evaluate the adverse impacts of the sewer and stormwater discharges on the Goal 5 resource, the Pudding River. Nor does the plan take measures to mitigate those adverse impacts.

Planning Guideline 3 requires that "Natural resources *** should be conserved and protected. Planning Guideline 4 requires that "Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources."

Implementation Guideline 4 requires that "Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans." The Pudding River is essential salmon habitat and there is no indication the 2026 Master Plan considered compliance with ODFW plans for the river. Therefore, under Goal 2, Part III, the plan must develop an alternative means of achieving Goal 5, but fails to do so, and fails to state how the guidelines or alternative means are utilized to achieve Goal 5.

In the Environmental Quality and Natural Resources section of the Comprehensive Plan, Water Resources Goals and Policies are:

GOAL A: To efficiently utilize the water resources of and for Marion County while maintaining good quality water for public water supplies, propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, commercial, municipal, recreation and other beneficial uses.

Policies

1. The County shall consider the physical capacity of the land and water to accommodate land uses when planning for the location, type and density of rural development.

2. Maintain rural densities of 1.5 to three acres per dwelling in rural residential areas to minimize potential groundwater pollution from septic tank use. Even lower densities should be required when soil limitations show more than the usual limitations for septic tank systems.

3. In areas experiencing proven water pollution from septic tanks or inadequate water supply, encourage the provision of alternative individual treatment systems or water systems to overcome health hazards or to provide a greater margin of public safety in allowable developments.

4. Minimize soil erosion and sedimentation by encouraging soil conservation techniques. Educational programs and technical assistance should be provided in voluntary erosion abatement.

5. The County Health Department should conduct sanitary surveys in areas of concentrated rural development to determine present or potential septic tank pollution problems.

6. Residential, commercial and industrial development should be encouraged to be designed or located in a manner to maintain an acceptable impact on water quality.

7. Marion County shall cooperate with watershed councils and the Marion Soil and Water Conservation District to promote watershed management practices that protect and enhance water quality and quantity.

8. Water resources used as municipal water supplies shall be protected by encouraging the strict enforcement by the State Department of Forestry of the State Forest Practices Act.

9. Small watersheds that are water sources for municipalities shall be identified, and coordination requirements defined, in intergovernmental agreements if the city determines that special protective measures are needed for the watershed. When municipalities have identified particular needs and methods for protecting their watersheds, the County shall consider including such measures within the Marion County Comprehensive Plan.

10. Encourage water quality testing of rural residential wells through a public information program.

11. Improve maintenance and use of residential and industrial septic systems by:

a. Encouraging proper operation and maintenance of septic systems;

b. Encouraging water conservation to reduce waste loading; and

c. Educating users about chemical additives, particularly those containing chlorinated organic solvents, that are sold to improve septic system and drain field operation.

12. Marion County recognizes the risk to maintenance of good quality groundwater from improperly abandoned wells and encourages proper abandonment of unused wells.

13. Participate in cooperative water quality planning through such agencies as the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, Department of Environmental Quality, Natural Resources Conservation Service, Army Corps of Engineers, U.S. Bureau of Reclamation, and U.S. Geologic Survey.

14. Encourage water providers to share delivery systems and supply sources within urban growth boundaries.

15. Encourage construction of wells for municipal water use only within urban growth boundaries to minimize impacts of wellhead protection areas on other land uses.

GOAL B: To ensure all standards and regulations applicable to waters in Marion County are coordinated.

Policies

1. Marion County shall coordinate with State and Federal agencies to help ensure the waters of the County comply with applicable State and Federal water quality standards.

2. Marion County shall, to the extent financially and practically possible, support water quality or quality management plans and programs of Federal, State and regional agencies. In regulating land use, the County shall encourage conservation of water resources, improved treatment of point sources of pollution and the control of non-point sources of pollution.

3. Encourage DEQ to expand their monitoring program and increase sample areas to determine locations approaching or exceeding drinking water standards. Impacts from domestic sewage outfalls should be assessed to identify any possible hazards.

4. Marion County shall cooperate with municipal and other public water service providers in development and implementation of wellhead protection programs consistent with State water quality and land use requirements.

5. Discourage sale of treated water and/or extending service from municipal facilities to areas outside urban growth boundaries.

GOAL C: To strive for an adequate quantity of water for beneficial uses within the County.

Policies

1. Evaluation of demand for water shall include, but not be limited to, the following potential beneficial uses in no particular order: domestic, municipal, agriculture, streamflow augmentation, industrial, commercial, livestock, hydroelectric, mining, and recreation.

2. Encourage the Army Corps of Engineers and U.S. Bureau of Reclamation to include Marion County's future water needs in the Willamette Project Reservoir Study.

3. Encourage increasing streamflows through flow augmentation and water exchanges.

4. Discourage transfers of agricultural water rights used on irrigable lands zoned for farm use to other lands for non-agricultural use.

GOAL D: To educate property owners about the importance of the use of their property to water quality and quantity.

Policies

1. The Planning Division of the County may develop and maintain a library of information regarding water conservation, water quality protection, and water laws for public use.

2. Marion County shall refer land use applicants to sources of information regarding water conservation, water quality protection, and water rights early in the development review process.

3. Encourage individual water conservation practices to hold water demands to a minimum through a public information program.

In the Environmental Quality and Natural Resources section of the comprehensive Plan, Fish and Wildlife Habitat Goals and Policies are:

Goals

Protect fish and wildlife habitat, maintain optimal ecological balance and protect endangered species.

Policies

1. New roads requiring County approval shall be located to avoid identified habitat areas whenever possible. Bridges, roads and access rights-of-way should be designed to avoid restriction of channel capacity and minimize removal of shoreline vegetation.

2. Developments should retain vegetation along streams, lakes, reservoirs (and fencerows) to provide for shelter, shade, food and nesting.

3. To maintain stream quality and protect sensitive waterfowl areas, land uses that require drainage, excessive removal of riparian vegetation, alteration of stream banks and filling shall be discouraged in these locations.

4. Conflicts with wildlife (especially big game) shall be considered in land development. Development adjacent to streams, sensitive waterfowl areas and critical wildlife areas shall incorporate adequate setbacks and buffer zones.

5. Development density shall be controlled so that significant wildlife habitat will not be adversely affected in the County's resource zones. The standards for dwelling density in big game habitat, as identified on the habitat maps, shall be: one dwelling unit/80 acres in major habitat; one dwelling unit/40 acres in peripheral habitat. If dwellings are clustered within 200 feet of each other, these densities may be doubled.

6. Off road vehicle use should be controlled and seasonal roads should be closed to reduce harassment to big game animals during stress periods of winter and early spring.

7. Marion County will encourage the continuance or development of stocking programs for fish and wildlife in suitable habitat.

8. Marion County will cooperate with local, State and Federal agencies to identify, conserve and protect fish and wildlife habitat and in implementation measures for the protection of such areas.

9. Native plant species, wetlands and streambank vegetation on County-managed public lands shall be protected.

In the Environmental Quality and Natural Resources section of the comprehensive plan, the Noise Impacts section explains:

> "Exposure to excessive noise levels over prolonged periods can be a threat to health. Noise pollution is not a pervasive problem in rural Marion County but excessive noise from

certain industries, from highly traveled roads or airports could reduce the livability of nearby dwellings."

* * * *

"The DEQ defined excessive noise in its rules for industrial and commercial noise sources for two different times of the day. From 7:00 a.m. to 10:00 p.m., noises above 55 decibels will disturb normal conversation and are considered potentially harmful. Between the hours of 10:00 p.m. and 7:00 a.m. sounds above 45 decibels inside a dwelling disturb sleep."

"In addition to DEQ controls, it is necessary for the County to consider noise impacts when approving development near certain sources. These sources are:

"Aurora Airport: The Aurora Airport, located in north Marion County is the only public airport outside of an urban growth boundary. Its use is projected to increase so the noise impacts can be expected to become more significant.

"The airport property and the lands adjacent to it on the east are zoned for public use with two exceptions. The remainder of property in the airport area is zoned EFU (Exclusive Farm Use) and will experience minimal development.

"The Airport Overlay zone further limits development in the airport area and provides a good base from which to implement setbacks and buffering. The Aurora Airport Master Plan, previously reviewed by DEQ, defines a 1995 NEF 20 contour line that will be used by the County to define the noise impact area around the airport."

Noise Policy

1. Residential uses or other noise-sensitive uses proposed in the vicinity of Highway 99, Highway 22, Interstate 5, the Woodburn Drag Strip and public airports shall be reviewed to determine if the residents will be adversely affected by these noise sources. The County should seek comment from DEQ when resolving noise conflicts.

2. If other significant noise sources are identified, Marion County shall amend the Comprehensive Plan to designate the source and provide adequate protection for nearby lands.

3. All developments that are noise sources shall comply with applicable DEQ standards. When new major highways, airports, racing facilities and commercial and industrial developments are proposed, the County shall consult with DEQ to ensure that applicable sound regulations are satisfied.

4. When siting noise-sensitive land uses near the sources identified in Policy No. 1 above, the objective should be to provide some outdoor living area with a daytime dBa of 55 or less and indoor sleeping areas with a nighttime dBa of 45 or less.

5. Setbacks, building orientation, soundproof construction, barriers and other feasible means shall be considered in attempting to mitigate noise impacts.

The 2026 Master Plan assumes that aircraft are following the designated flight path. The undisputed evidence in the record demonstrates a large percentage of aircraft travel outside the flight path, including over residential areas of Aurora and Wilsonville. Therefore, the draft finding on noise compatibility is unsupported by substantial evidence.

Goal 6: Air, Water and Land Resources Quality

Goal 6 is to: "maintain and improve the quality of the air, water and land resources of the state." Waste and process discharges "shall not exceed the carrying capacity of [land] resources considering long range needs." The various problems with the airport's septic effluent disposal are also described below with regard to MCC 17.171.060.I Sewage Disposal, and that discussion is incorporated herein by this reference. The 2026 Master Plan violates Goal 6 because it fails to address the waste and process discharges from the proposed expansion of the airport and increased intensity of airport uses, including the runway extension to accommodate C-II and D-II aircraft, and the continued sale and use of leaded aviation gas which emits lead pollution along the flight path.

A Goal 6 exception is required for the 2026 Master Plan because it neither utilizes the Goal 6 guidelines, nor proposes an alternative means of achieving Goal 6. The plan violates the guidelines, because the plan expands an urban scale land use that already emits large quantities of airborne lead, and lacks a municipal sewer and stormwater system. Therefore, it must develop an alternative means of achieving the goal, but fails to do so.

Planning Guideline 2 requires:

> "Plans should designate areas for urban and rural residential use only where approvable sewage disposal alternatives have been clearly identified in such plans."

The 2026 Master Plan violates this guideline because it fails to provide adequate sewage disposal alternatives that comply with Goal 11.

Planning Guideline 3 requires:

> "Plans should buffer and separate those land uses which create or lead to conflicting requirements and impacts upon the air, water and land resources."

The 2026 Master Plan violates this guideline because it expands the urban airport without urban public utilities and services for sanitary sewer or stormwater.

Planning Guideline 4 requires:

> "Plans which provide for the maintenance and improvement of air, land and water resources of the planning area should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources."

The 2026 Master Plan violates this guideline because it fails to consider or provide substantial evidence regarding the carrying capacity of the air, land, and water resources of the planning area.

Planning Guideline 5 requires:

> "All plans and programs affecting waste and process discharges should be coordinated within the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plan."

The 2026 Master Plan violates this guideline because it fails to coordinate with Aurora, Wilsonville, Clackamas County, or Marion County regarding the DEQ regulations that govern expansion of the airport operations, including stormwater regulations.

Planning Guideline 6 requires:

> "Plans of state agencies before they are adopted should be coordinated with and reviewed by local agencies with respect

> to the impact of these plans on the air, water and land resources in the planning area."

The 2026 Master Plan violates this guideline because it fails to coordinate with Aurora, Wilsonville, Clackamas County, or Marion County regarding the DEQ regulations that govern expansion of the airport operations, including stormwater regulations.

Employment will increase, and with employment comes increased water and sewer use. Increased hangar development will occur as illustrated on the Airport Layout Plan. All of these factors will increase the sewage flows, but the increased flows are not addressed in the Master Plan. Goal 6 requires:

> "All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards."

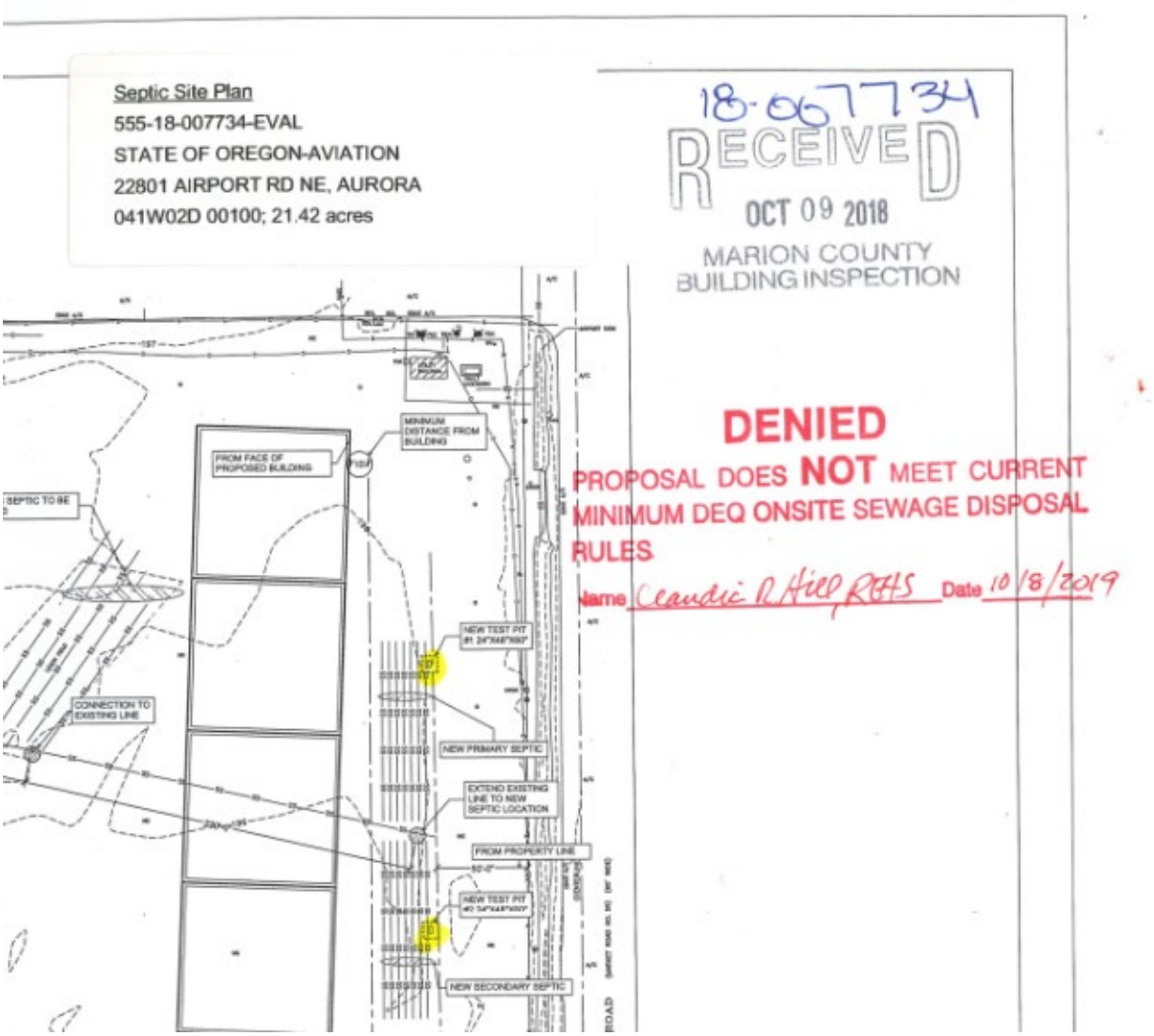
By failing to evaluate the increase in waste and process discharges that will result from increased development at the airport, combined with the discharges from existing development, the Master Plan fails to comply with Goal 6. The 2026 Master Plan does not consider helicopters at Columbia Helicopter and HTS to be aircraft based at the airport. Therefore, the noise and other environmental impacts from those helicopters were not included in the analysis of noise contours shown on the Airport Layout Plan Sheet 11. By failing to account for helicopter noise, the 2026 Master Plan lacks substantial evidence that noise requirements can be satisfied. ORS 197.180(1) requires compliance in this proceeding. The 2026 Master Plan assumes that aircraft are following the designated flight path. The undisputed evidence in the record demonstrates a large percentage of aircraft travel outside the flight path, including over residential areas of Aurora and Wilsonville. Therefore, this the draft finding on satisfaction of noise standards is unsupported by substantial evidence.

Planning Guideline 2 of Goal 6 is especially relevant. "Plans should designate areas for urban and rural residential use only where approvable sewage disposal alternatives have been clearly identified in such plans." The 2026 Master Plan and Airport Layout Plan are not in compliance with this guideline because they propose additional urban development that will increase sewage flows without identifying approvable sewage disposal alternatives. They only apply to the specific conditions at and adjacent to

Aurora State Airport, where the soil conditions are poor and the available area for septic drainfields is further limited each year as undeveloped areas are developed with more pavement and hangars.

Approvable in this context means approvable under the MCC 17.171.060.I Sewage Disposal, the relevant zoning code that only allows two specific alternatives. Neither alternative is addressed in the 2026 Master Plan or the Airport Layout Plan. For example, the Airport Layout Plan designates several hangar development areas; however, it does not identify a single new septic field. The record shows the proposed hangar development areas are required for existing septic fields. A recent septic system application would displace an existing septic field with twelve new jet hangars on property owned by the Department of Aviation, near the blue gate on Airport Rd.

The application was denied by Marion County. (Permit No. 18-007734). Two test pits were dug. The first was denied because the "soil" was comprised of "fill, garbage, rebar, gravel and plastic." The second pit was denied "due to evidence of saturation too close to the surface."



Previous test pits nearby on the same property were also denied in 2014, for permit number 14-001749.

Every other rural development is required to first provide a Site Evaluation, followed by an application with a site plan that clearly designates septic drainage fields and replacement drainage fields, and that illustrates the separation of these fields from water wells and other conflicting uses like roads and parking areas. The Airport Layout Plan must be revised to add this information.

Planning Guideline 6 is directed to the 2026 Master Plan and Airport Layout Plan. "Plans of state agencies before they are adopted should be coordinated with and reviewed by local agencies with respect to the impact of these plans on the air, water and land resources in the planning area." Clearly the Department of Aviation is struggling to implement the Master Plan and

Airport Layout Plan because they did not comply with this guideline prior to proceeding with the development of additional aircraft storage hangars in the area identified with symbol 17 and the new FBO identified with symbol 18 shown on Sheet 3 of the Airport Layout Plan. The addition of these hangars and FBO do not comply with MCC 17.171.060.I or the Goal 11 rule which it implements because there is no means of disposing of more septic effluent at that location.

The 2026 Master Plan and Airport Layout Plan propose additional aircraft storage hangars in the area identified with symbol 17 and the new FBO identified with symbol 18 shown on Sheet 3 of the Airport Layout Plan where an existing septic field lies. Clearly this was not coordinated with the experts on the Marion County Public Works team that regulate on-site sewage disposal. And clearly this development exceeds the carrying capacity of the land. The Master Plan and the Airport Layout Plan have also not been coordinated with the City of Aurora or its sewer master plans. The collection of untreated sewage in holding tanks for disposal by pumper truck conflicts with Goal 6 and also with MCC 17.171.060.I. This is effectively a pipeline on wheels that leads to municipal sewage plants where the pumper trucks are then emptied.

As noted in their letter, the Marion County Board of Commissioners is confident that "sewer service from the City of Aurora would address these deficiencies." Because the 2026 Master Plan and the Airport Layout Plan make no attempt to evaluate or address the deficiencies in sewage disposal at the airport, they are not in compliance with Goal 6. The Master Plan does not utilize the Goal 6 guidelines, and does not develop alternative means to achieve Goal 6, and this failure is a violation of Goal 2, Part III.

Nor is there an adequate factual base that could support findings that these plans do not exceed the carrying capacity of the land or that the plans have been coordinated with the key government agencies that are responsible for sewage disposal.

Goal 6 also requires the 2026 Master Plan to discuss latent demand; that is, the impact of a longer runway on aviation demand from jets that would be less constrained, or no longer constrained, if the runway extension was built. Nor does the Master Plan describe how that increase will affect the intensity of uses on the existing exception lands at the state-owned airport, or the Southend Airpark's 2004 Exception Lands. The Master Plan also fails to account for the rotary aircraft operations of Columbia Helicopters and HTS. Those properties are illustrated on the Airport Layout Plan, but no effort was made to consider the environmental effects of rotary aircraft operations, either in and of themselves, nor in combination with the effects of the fixed wing

aircraft. Goal 6 requires review of cumulative effects, and cannot be satisfied without a complete analysis of the rotary aircraft operations.

An important environmental issue that the 2026 Master Plan does not account for is the discharge of lead from piston-engine aircraft. The EPA estimates that in 2017 alone, 0.2602 tons of lead were emitted around the Aurora State Airport. The Master Plan does not estimate the additional lead emissions form the proposed airport expansion, nor the cumulative effects of the additional emissions together with emissions from historical use of leaded fuel at the airport. Airborne lead emissions from airplanes burning leaded aviation gas are a "waste and process discharge" within the meaning of Goal 6, which requires analysis of that cumulative effect.

The 2026 Master Plan does not demonstrate that the additional airborne lead emissions will not violate EPA standards for a maximum lead concentration in soil of 1200 ppm, for the maximum concentration of airborne lead for workers at the airport itself of 30 micrograms per cubic meter calculated as an 8-hour time-weighted average, for worker blood lead to remain below 60 micrograms per liter, and to remain below 15 ppb in drinking water from nearby potable water wells, among other lead standards.

The Master Plan fails to consider that expanding the airport would lead to increased demand and increased flight operations. Therefore, under Goal 2, Part III, the plan must develop an alternative means of achieving Goal 6, but fails to do so, and fails to state how the guidelines or alternative means are utilized to achieve Goal 6.

Goal 7: Natural Hazards

The airport discharges undetained stormwater into two tributaries of the Pudding River, a salmonid-bearing river which is identified in the Marion County Comprehensive Plan as a Goal 5 resource. These discharges increase flooding. That the airport itself is above the floodplain does not mean that it is free to discharge stormwater directly into the floodplain without violating Goal 7. The 2026 Master Plan fails to account for current or proposed stormwater discharges and their impact on flood levels.

Goal 9: Economic Development

Goal 9 is to "provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." Planning Guideline 5 requires consideration "as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources."

The 2026 Master Plan does not meaningfully consider the limited carrying capacity of the land in terms of providing water and sewer services for the airport. As described more fully below in the discussion of regarding Goal 11 and MCC 17.171.060.I, the development proposed in the Master Plan will exceed the carrying capacity of the land because the available soils are inadequate for disposal of the septic system effluent for two reasons. First, the continued expansion of buildings and pavement has reduced the area available for septic drainfields beyond the minimum necessary. Second, the Amity silt loam soils drain poorly and thus are not suitable for the large septic systems required. Therefore, the Master Plan exceeds the carrying capacity of the land and is not in compliance with Goal 9.

It is noteworthy that the Goal 9 administrative rule only applies within urban growth boundaries, which is where urban economic activity is focused in Oregon. Marion County already has adequate opportunities for urban jet aviation at the Salem Airport which is equipped with a lengthy runway like the one proposed for the Aurora State Airport in the Airport Layout Plan. Goal 9 works in concert with several other goals to foster urban scale economic development within cities and their urban growth boundaries. That both the 2026 Master Plan and the Airport Layout Plan promote urban economic development outside of the urban growth boundary and city limits of Aurora demonstrates that they are unable to comply with Goal 9 and its administrative rule. Goal 9 does not supersede the other goals.

Goal 11: Public Facilities

Goal 11 is to "plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." Because Goal 11 mandates adequate public facilities and services, private utilities such as private septic systems, private holding tanks which are pumped and trucked to municipal wastewater plants for treatment and disposal, and private potable water systems are not lawful substitutes and the lack of public sewer and water services violates Goal 11.

Goal 11 places a specific requirement on state agencies that applies to the 2026 Master Plan. "In accordance with ORS 197.180 and Goal 2, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties."

The 2026 Master Plan and Airport Layout Plan violate Goal 11 by proposing more urban development of rural land without coordination of necessary public transportation, water and sewer improvements with the public

facility plans of the City of Aurora and Marion County. Whether Goal 11 is violated is a legal question, not merely a substantial evidence question regarding whether private utility services are adequate such that public facilities and services are not necessary. Urban development in a rural area that is served with private water and sewer facilities and services violates Goal 11 because the goal is to "regulate development as well as services and facilities, to coordinate development levels with service and facility levels and, together with Goal 14, to channel intensive uses and development to existing urban and urbanizable land first before allowing the conversion of or intense non-resource uses on the rural land that comprises the areas outside UGBs." *Gisler v. Deschutes County*, 149 Or App 528, 535, 945 P2d 1051 (1997) The 2026 Master Plan allows conversion and more intensive urban use of rural land in violation of Goal 11.

Goal 11 also mandates that "Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land."

The 2026 Master Plan violates this provision by the extension of sewer to the airport control tower and other developments without a health hazard; rather, the purpose of the extension is to serve more urban development at the airport where septic fields will exceed the carrying capacity of the land.

More specifically, Planning Guideline 2 requires that public "facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses." The 2026 Master Plan conflicts with this provision because it facilitates expansion of the airport's public facilities to support urban uses in a rural area. Because Goal 11 mandates adequate public facilities and services, private utilities such as private septic systems, private holding tanks which are pumped and trucked to municipal wastewater plants for treatment and disposal, and private potable water systems are not a lawful substitutes and violate Goal 11.

The airport needs these public water and sewer services, as confirmed in 2015 by the Marion County Board of Commissioners.

> "Wells at the airport have, at times, been insufficient to provide the water necessary for businesses located at the airport. Also, septic systems are difficult to locate at the airport due to soil conditions. The provision of water and

sewer service from the City of Aurora would address these deficiencies rural services."

Planning Guideline 7 includes a very similar provision to Goal 9 regarding the carrying capacity of the land resources of the planning area. Again, the development proposed in the Master Plan exceeds the carrying capacity of the land for septic effluent disposal, contrary to this goal, because it requires relocation of septic fields without identifying any replacement fields. Therefore, under Goal 2, Part III, the plan must develop an alternative means of achieving Goal 11, but fails to do so, and fails to state how the guidelines or alternative means are utilized to achieve Goal 11.

As noted in the March 20, 2019 Marion County staff report regarding development of the former church camp, the "addition of 16.54 acres of land in airport use to the existing 298 acres of airport will result in more aircraft being based at the Aurora Airport and increase the number of takeoffs and landings at the airport." The same is true for expansion onto dozens of acres of EFU land south of Keil Rd. More flights means water use and more septic effluent, and more hangars means less area for septic drainfields. The application also proposed to extend the sanitary sewer system from an adjacent property onto the subject property. That extension of sewer service onto rural land violates Goal 11 and requires an exception to Goal 11. See OAR 660-011-0060(9). As it is currently drafted, the 2026 Master Plan does not adequately or clearly address this public facilities consequence of the increased aviation development that it proposes.

In the Goal 11 administrative rule, airport facilities in the 2026 Master Plan are expressly governed. OAR 660-011-0005(7)(d)(F). The Master Plan must be revised to include an urban growth management agreement regarding the extension of City of Aurora water and sewer service to the airport. OAR 660-011-0010(1)(e). The lack of this agreement conflicts with this rule.

This coordination with the City is also required by OAR 660-011-0015(4) which references state agency coordination agreements. As part of its state agency coordination program, the Department of Aviation has yet to coordinate its public facility plan, including plans for water and sewer services to the airport, with the City of Aurora.

Most importantly, the 2026 Master Plan does not address the rule on sewer service to rural lands, OAR 660-011-0060. The current airport operates on a patchwork of septic systems, which is now proposed to include extension of existing systems on the airport property which are outside the Aurora urban growth boundary to serve new office and aviation uses on the former church camp that are also outside the urban growth boundary, some cases without a

Goal 11 exception. This is described in detail in the consultant's report for the development on the former church camp, in Chapter 2 of the Master Plan, as well as on the Airport Layout Plan, which illustrates additional hangar development areas. It violates OAR 660-011-0060(2)(c). The continued collection of untreated sewage in holding tanks at the control tower for disposal by pumper truck conflicts with Goal 11 and also with MCC 17.171.060.I. This is essentially a pipeline on wheels that leads to municipal sewage plants where the pumper trucks are emptied. Moreover, the Airport Layout Plan shows the existing septic drainfields must be relocated, but no replacement areas are identified.

The 2026 Master Plan and Airport Layout Plan are not in compliance with Goal 11 and lack the adequate factual base necessary to support findings that it could comply with this goal and its administrative rule without prior coordination of public facilities plans with, and annexation into, the City of Aurora. Therefore, under Goal 2, Part III, the plan must develop an alternative means of achieving Goal 11, but fails to do so, and fails to state how the guidelines or alternative means are utilized to achieve Goal 11.

As a result, the 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) which requires consistency with the applicable goals. *Murray v. Marion County* confirms that Goal 11 applies to expansion of this airport onto EFU land.

Goal 12: Transportation

Goal 12 is to "provide and encourage a safe, convenient and economic transportation system." The 2026 Master Plan violates Goal 12 because it fails to conserve energy and fails to conform with local comprehensive land use plans. It fails to conserve energy by placing an urban transportation facility in a rural area. It fails to conform with local comprehensive land use plans because it expands the urban-scale airport onto land designated agriculture, and expands urban uses in a rural area in violation of local plan provisions on transportation, agriculture, urbanization, and public facilities and services. For example, the proposed improvements and expansion are not included in the Marion County Transportation System Plan.

The 2026 Master Plan is a transportation plan within the meaning of Goal 12 because it plans a major transportation facility. Goal 12 requires all transportation plans to include nine things.

> "A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that

> would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans."

The 2026 Master Plan and draft findings fail to analyze these nine elements of a transportation plan, and therefore are not in compliance with Goal 12. Nor is there evidence in this record to support findings of compliance. For example, regarding item (7), there is no mention of services to meet the needs of the transportation disadvantaged.

In addition, to comply with Goal 2, Part III and Goal 12, the 2026 Master Plan must either comport with the Goal 12 guidelines or develop an alternative means to achieve the goal. More specifically, Goal 2, Part III, in the section titled 'use of guidelines,' provides:

> "Governmental units shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the goals. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals."

A Goal 12 exception is required for the 2026 Master Plan because it neither utilizes the Goal 12 guidelines, nor proposes an alternative means of achieving Goal 12. The plan violates the guidelines, because the plan expands an urban scale transportation facility that serves national and international travel needs onto Class II agricultural land, when many feasible alternatives exist at the Salem, McMinnville, Hillsboro and Redmond airports. The 2000 Aurora State Airport Master Plan Update explained:

> "Within the mid and northern Willamette Valley, there are four airports designed to serve the large ARC D-II aircraft, including Portland International Airport, the Hillsboro Airport, the McMinnville Airport, and McNary Field in Salem. These four provide strategically located service for the referenced large aircraft."

Therefore, the Master Plan must develop an alternative means of achieving the goal, but fails to do so.

The airport expands onto EFU land on tax lots 600 of map 041W11D, tax lots 301 and 1400 of map 041W12D, tax lot 300 of map 041W2D, and tax lots 1100, 1200, 1300, 1400 and 1500 of map 041W02A, for expansion of the west portion of the airport and relocation of Highway 551. This relocation violates the Goal 12 Guideline A.2 by failing to locate the highway within the existing right-of-way, and violates Guideline A.3 by locating this major transportation facility on Class II agricultural land. It violates Guideline A.3 by planning this major transportation facility outside an urban growth boundary on Class I and II agricultural land when feasible alternatives exist at the Salem Airport. The master plan does not address these guidelines at all, or perform an alternatives analysis. The master plan and findings neither utilize the guidelines nor develop alternative means to meet Goal 2, in violation of Goal 2, Part III.

Planning Guideline 3 of Goal 12 states that no "major transportation facility" should be planned or developed outside urban growth boundaries on Class 1 and Class 2 agricultural land "unless no feasible alternative exists". The existing airport and its proposed runway extension combined with the Keil Rd. relocation and expansion of the airport to the east and south across Keil Rd. are classified as a "major transportation facility" because they serve national and international destinations, and because they support the largest employment base in north Marion County, even though the airport is located in a less densely developed area. See OAR 660-012-0005(11). Conversely, the Aurora State Airport does not serve local transportation needs; it serves state transportation needs, as those terms are defined in OAR 660-012-0010(49) & (51). And a feasible alternative exists at the Salem Airport. All of these expansion areas are outside the airport boundary first set by ORS 836.605(2), and set by Marion County pursuant to OAR 660-013-0040. Therefore, the 2026 Master Plan violates OAR 660-013-0040, OAR 660-12-0040, the Air Element of the Marion County Rural Transportation Plan, and Goal 12 by planning urban airport expansion on EFU land outside the airport boundary. It also violates OAR 660-012-0020(2)(e), which requires the county TSP to identify "where public use airports *** are located or planned within the planning area." The boundary must be moved first using the OAR 660-013-0040 procedure.

It has been argued that this major transportation facility proposed by the 2026 Master Plan and the Airport Layout Plan will not occur on agricultural land, because the runway pavement will be located only on exception land. However, the Airport Layout Plan clearly shows airport expansion onto agricultural land at the former church camp and south of Keil Rd. Other

accessory components of the major transportation facility include the runway protection zone, the navigation equipment in the runway protection zone, and the relocated Keil Rd. All these components of the major transportation facility are urban uses that are proposed on Class 2 agricultural land that is not subject to any acknowledged goal exception.

These components of the 2026 Master Plan and the Airport Layout Plan do not comply with Goal 12, because they are located on Class 2 agricultural land, and because they will divide the existing economic farm unit, M & H Farms, located south of Keil Rd. on tax lots 900, 1200 and 1500 of Mao 041W11A. These are violations of Goal 12, Planning Guidelines A.3 & 4.

The NRCS soil maps confirm the airport related development of the former church camp on tax lots 800 and 900 of 041W2D, the EFU land south of Keil Rd. on tax lots 900, 1000 and 1100 of map 041W11A, and tax lots 500 and 800 of map 041W12B, the new runway protection zone, and the relocation of Keil Rd. will all occur on Class 2 soil, Amity silt loam. The former church camp, new runway protection zone, runway object free area, and the airport expansion area south of Keil Rd. will occur on land designated as Primary Agriculture in the Marion County Comprehensive Plan, and zoned EFU.

The Court of Appeals and LUBA already rejected the development of the former church camp for through the fence operations because it violates: Goal 6 (*Schaefer v. Marion County*, __ Or LUBA ___, October 12, 2021, slip op at 20); the Goal 2 administrative rule OAR 660-004-0018(4)(b) (*Schaefer v. Marion County*, 318 Or App 617, 639 (2022) and (*Schaefer v. Marion County*, __ Or LUBA ___, July 7, 2022, slip op at 36-38); the Goal 12 administrative rule OAR 660-012-0065(3)(n) *Schaefer v. Marion County*, 318 Or App 617, 620, 630 (2022); the Goal 2 administrative rule OAR 660-004-0020(2)(b)(B) (*Schaefer v. Marion County*, __ Or LUBA ___, July 7, 2022, slip op at 15-20); the Goal 2 administrative rule OAR 660-004-0020(2)(d) (*Schaefer v. Marion County*, __ Or LUBA ___, July 7, 2022, slip op at 23-27); the Goal 14 administrative rule OAR 660-014-0040(3)(a) (*Schaefer v. Marion County*, __ Or LUBA ___, July 7, 2022, slip op at 28-31); and the Goal 12 administrative rule OAR 660-012-0060(5) *Schaefer v. Marion County*, 323 Or App 390, 392-409 (2022). In addition, the Court of Appeals declined to address the need for an exception to Goal 11, but emphasized that "Schaefer is not foreclosed from raising that issue again in a subsequent review proceeding." *Id*, at 393. By including the former church camp as a through the fence property, the 2026 Master Plan violates all of these rules once again, for the reasons explained by LUBA and the Court of Appeals.

The 2026 Master Plan fails to identify the areas benefited by through the fence agreements granted by ODAV pursuant to ORS 836.640-642. It fails to

include any findings on the compliance of these through the fence properties and operations with the statewide goals, rules implementing the goals and rules implementing ORS 197.180, or findings on compatibility with acknowledged comprehensive plans and land use regulations. The 2026 Master Plan turns a blind eye to these aviation-related urban developments located within the airport boundary managed by ODAV under OAR 660-013.

The land is also within the Airport Overlay Zone; however, that zone does not affect the restrictions in place from the agricultural comprehensive plan designation and EFU zoning. Rather, the overlay "is to be used in conjunction with the underlying zone. If any conflict in regulation or procedure occurs with the underlying zoning districts, the more restrictive provisions shall govern." MCC 171.117.010.

The localizer is system of horizontal guidance in the instrument landing system, which guides aircraft along the axis of the runway. It is a radio system with frequencies that are generally between 108 and 112 megahertz. The localizer has no other purpose other than to support the urban aviation uses, and is accessory to the runway. The localizer would not exist if not for the runway. For land use purposes, the localizer is a nonfarm use because it is a fixture that is classified as being customarily provided in conjunction with an urban runway.

The argument has been made that localizer, which will be moved into the new runway protection zone that is now zoned EFU, is a permitted use under ORS 215.283(1)(c); MCZO 17.136.040(l); and see MCZO 17.177.020(c)(5), in the underlying EFU zone that is covered by the AO overlay. However, the terms "Instrument Landing System Localizer", "localizer", "radio" and "navigation equipment" do not appear in the text of the cited provisions, nor in the text of OAR 660-033-0130 which lists uses allowed in agricultural zones. Nor do those terms appear in the Oregon statutes regarding public utility facilities, ORS 757, 758 and 759. In ORS 758.012(1)(b), "utility facility" is only described as a linear transmission line, which the localizer obviously is not. The localizer and other types of navigation equipment are not "utilities" regulated by the Public Utilities Commission, and are not "utility facilities" within the meaning of ORS 215.275 and 215.283(1)(c)(A). The Department of Aviation is not a "public utility" as defined in ORS 757.005.

This runway and its protection zones have already been classified by LUBA as an urban public facility which requires exceptions to Goals 3, 11 and 14. *Murray*, supra. It is not a structure or a utility that supports a farm use or that is provided in conjunction with, or accessory to, a farm use because even geolocated farm equipment will not use the localizer. There is no explanation of how the localizer relates to any farm use. *Bratton v. Washington County*, 65

Or LUBA 461, 477 (2012). The Oregon Aviation Board should find the localizer is intended to be used as an accessory to the public use airport authorized in the Public Zone. The localizer cannot be permitted under ORS 215.283(1)(c); MCZO 17.136.040(l); or MCZO 17.177.020(c)(5) without exceptions to Goals 3, 11 and 14 .

Planning Guideline A.4 of Goal 12 states that major transportation facilities "should avoid dividing existing farm units…unless no feasible alternative exists". The proposed runway extension has the essential characteristics of a major transportation facility and it includes the relocation of Keil Rd.

The relocation of Keil Rd. to serve an urban development is not a permitted or conditional use in the EFU zone, because the area on the west side of the relocated road will be converted to urban airport uses. MCC 17.136.020-050. The EFU zoning code anticipates this issue, and requires an exception to Goal 3 in order to authorize the proposed relocation. MCC 17.136.050.J.4. The fact that a goal exception is required means that the 2026 Master Plan and the Airport Layout Plan do not comply with Goal 3. As a result, the 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) which requires consistency with the applicable goals. *Murray v. Marion County* confirms that Goal 3 applies to expansion of this airport onto EFU land.

There are several feasible alternatives to the runway extension and Keil Rd. relocation and expansion of the airport to the east and south onto EFU land that are not fully explored in the 2026 Master Plan. The first alternative is the no-build option. This is feasible because the runway extension is only needed to serve national and international jet traffic, and that service is already provided at the Salem, McMinnville, Troutdale and Hillsboro airports.

Implementation Guideline B.1 of Goal 12 requires that planned major transportation facilities should conform to existing land use plans and policies that will:

> "direct urban expansion to areas identified as necessary and suitable for urban development. The planning and development of transportation facilities in rural areas should discourage urban growth."

The proposed runway extension violates this guideline because it encourages urban growth in a rural area without providing necessary transportation service for rural and recreational uses. Instead, the runway extension is solely to accommodate larger corporate jets, and there is no evidence in the record that D-II airplanes provide necessary transportation service for rural and recreational uses. The 2026 Master Plan and the Airport

Layout Plan also conflict with this essential guideline of Goal 12 because they expand urban development onto EFU land in a rural area that is surrounded by EFU land. The Aurora State Airport has already been classified and acknowledged by the Court of Appeals as an urban use. The airport expansions onto EFU land to the south and east total roughly 50 acres, and the expansion to the west is about 15 acres. This expansion of the airport will serve national and international destinations. There is no information to demonstrate that these national and international flights require an airport that is located outside an urban growth boundary. The 2026 Master Plan and the Airport Layout Plan do not comply with this Guideline of Goal 12.

Implementation Guideline B.2 of Goal 12 then requires extensive findings.

> "Plans for new or for the improvement of major transportation facilities should identify the positive and negative impacts on: (1) local land use patterns, (2) environmental quality, (3) energy use and resources, (4) existing transportation systems and (5) fiscal resources in a manner sufficient to enable local governments to rationally consider the issues posed by the construction and operation of such facilities."

The record erroneously lacks findings on Implementation Guideline B.2 and the five factors therein, either for the runway extension or for other development illustrated on the Airport Layout Plan. The record also lacks the adequate factual base necessary to support findings that the 2026 Master Plan and the Airport Layout Plan have carefully evaluated or applied these five factors. For example, there is not any information in the record about the negative impacts on the local land use pattern, such as the division of two economic farm units, which is an adverse farm impact under ORS 215.296. Environmental quality issues are merely postponed to a later environmental assessment and environmental impact statement, contrary to Goal 6. There is not any information on the energy consequences of the pipeline on wheels that trucks drinking water in and sewage out from this airport that lacks public water and sewer service, or the energy consequences of increasing flight operations in this rural area, instead of at an existing urban airport, such as Salem.

Regarding the fourth factor, and as described more fully below in the discussion on MCC 17.171.060.J, the limited information on the impact to existing surface transportation systems is well out of date, and does not meet Marion County standards for a transportation impact study. Finally, on the fifth factor, there are no reports on the fiscal impacts to local governments. The omission of findings and evidence regarding these five factors means the 2026

Master Plan and the Airport Layout Plan are not in compliance with Goal 12. Nor does the 2026 Master Plan provide an alternative means of meeting Goal 12 as required by Goal 2, Part III. The plan also fails to state how the guidelines or alternative means are utilized to achieve Goal 12. For these reasons, a Goal 12 exception is required.

The 2026 Master Plan also requires compliance with OAR 660-012-0060 because the continued expansion of the airport will generate additional motor vehicle traffic and requires comprehensive plan map amendments and zoning map amendments. The limited traffic information provided in the 2026 Master Plan is not an adequate factual base upon which a reasonable decision maker could rely to find that it complies with Goal 12.

The airport is the largest land use in North Marion County in terms of employment and trip generation. However, the 2026 Master Plan does not include a traffic study in the conventional sense. The typical traffic study first examines existing conditions with specific traffic counts in the field and measurement of the level of service of nearby intersections. It then estimates the new traffic created by the project ("trip generation"). It then determines which direction the traffic to and from the site will go "trip distribution", and then what effect that additional traffic will have on surrounding roads and intersections, including intersections in the City of Aurora. Most importantly, the traffic study does not attempt to identify or recommend specific mitigation for the traffic caused by the Master Plan projects. These necessary elements of a traffic study are explained in more detail in Marion County's Traffic Impact Analysis Requirements, which has been placed into the record.

The 2026 Master Plan does not include this essential traffic information, and the lack of information on intersection operations is especially problematic. The information it does include is more than ten years out of date, and the City of Aurora has placed more recent traffic data in the record. A reasonable decision maker would not rely on incomplete, decade-old data when adopting findings on compliance with Goal 12 when more current and accurate data, including detailed analysis of intersection operations consistent with both Marion County and ODOT requirements, is available. Thus the Master Plan lacks an adequate factual base to support the necessary findings.

The March 10, 2011 meeting summary notes:

> "Traffic Analysis Recommendations: Rainse [Anderson, of consultant WH Pacific] said that ODA will continue to work with Marion County and the City of Aurora as improvements to Airport Rd. are considered and the appropriate considerations will have to be made with regard to airport

> businesses and entrances along Airport Rd. He added that it is likely that there will be sharing of the costs in the system development, similar to what HTS did with their system development, but this will need to be worked out between the entities."

There is no similar update for the 2026 Master Plan, nor information in the record to support a finding that the surface transportation impacts to area farmers "considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands" is addressed in a manner that ensures the cost of farm operations on surrounding agricultural lands will not be substantially increased. OAR 660-012-0065(5)(b)(ii).

To the extent that the Oregon Aviation Board understands that compliance with Goal 12 demonstrates consistency with other relevant goals, that proposition is not correct. *Waste Not of Yamhill County v. Yamhill County,* 65 Or LUBA 142, 157-58 (2012)

For these reasons, the 2026 Master Plan is not in compliance with Goal 12, and the transportation data in the record is insufficient to support a finding that compliance can be achieved. As noted above, OAR 660-012-0065 provides limited exemptions to the goals but does not apply because the 2026 Master Plan will permit service to a larger class of airplanes; that is, to ARC B-III, ARC C-II, and ARC D-II airplanes instead of the smaller class ARC B-II. For transportation facilities on rural lands that do not meet the requirements of OAR 660-012-0065, OAR 660-012-0070(1) expressly requires a Goal 12 exception.

The 2026 Master Plan does not comply with the rules governing Goal 12 exceptions. Initially, the exception can only be approved by Marion County. OAR 660-012-0070(1)(a). No such application to the county has even been submitted, and the 2026 Master Plan cannot assume such an exception would be approved. Rather, it must demonstrate compliance with the goals and the rules implementing the goals when it is adopted by OAB. ORS 197.180(1)(a); OAR 738-130-0055(6). Because OAR 660-012-0070(1)(a) requires Marion County to independently evaluate and approve the Goal 12 exception, OAB cannot approve the 2026 Master Plan prior to obtaining that exception.

The Goal 12 exception must satisfy ORS 197.732, Goal 2 and OAR 660-012. OAR 660-012-0070(2). Under Goal 2, Part II(c)(1) there must be lawful reasons justifying why the state policy in the Goal 12 should not apply. In addition, the 2026 Master Plan must show that the state transportation need for interstate air travel cannot be accommodated through improvements to

existing transportation facilities that do not require an exception, such as improvements to the Salem, Hillsboro or McMinnville airports. OAR 660-012-0070(4). The 2026 Master Plan mistakenly assumes the purported need is sufficient to justify why the state policy in the applicable goals should not apply. Under Goal 2, Part II(c)(2) there must not be adequate capacity at other airports that do not require an exception to Goal 3. OAR 660-012-0070(5). The record demonstrates there is surplus capacity at many nearby airports, including Portland, Salem, McMinnville, Redmond, Eugene and Hillsboro, and thus the Master Plan improvements cannot be sited on agricultural land that is subject to Goal 3. Under Goal 2, Part II(c)(3) there must be a thorough comparison of "the long-term economic, social, environmental and energy consequences of the proposed location and other alternative locations requiring exceptions," such as the Mulino State Airport. OAR 660-012-0070(7). Under Goal 2, Part II(c)(4) there must be an analysis of the 2026 Master Plan's adverse effects on the surrounding rural lands and land uses, including increased traffic and pressure for nonfarm development; a demonstration of compatibility with farm uses; and measures to support continued rural use of surrounding lands. OAR 660-012-0070(8). The 2026 Master Plan does not provide this information or analysis, nor mitigation to support continued rural use of the surrounding rural lands. Therefore, the Goal 12 administrative rules are not satisfied.

As a result, the 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) which requires consistency with the applicable goals. The airport is a transportation facility, and, therefore, Goal 12 applies to expansion of this airport onto EFU land.

Goal 13: Energy

The 2026 Master Plan violates Goal 13 because the diesel-powered pipeline on wheels which extends sewer service to the ODAV property and other properties fails to manage land uses to maximize conservation of energy based on sound economic principles. Instead of annexing to Aurora and using the conventional gravity pipeline system for sewage disposal, the 2026 Master Plan uses diesel-powered pumper trucks to transport untreated sewage to Oregon City for treatment and disposal.

As a result, the 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) which requires consistency with the applicable goals.

The Rural TSP lists sixteen improvements for this airport from the 2000 Master Plan. It does not include any of the additional improvements proposed in this new 2026 Master Plan. The plan therefore violates OAR 660-012-0020(2)(e) which requires the air element of the TSP to identify "where public use airports *** are located or planned within the planning area. For airports,

the planning area shall include all areas within airport imaginary surfaces and other areas covered by state or federal regulation." State regulations restrict urban airport development on EFU land. Until Marion County amends the Rural TSP, the proposed master plan violates OAR 660-012-0020(2)(e). Because the proposed urban airport expansion onto EFU land is not shown in the Marion County Rural TSP, the 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) which requires consistency with the EFU zone and Goals 3, 11, 12, and 14.

Goal 14: Urbanization

Goal 14 is to:

> "provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities."

Goal 14 does not allow the expansion or urban development on rural land. Therefore, the 2026 Master Plan and findings violate Goal 14. There is no orderly transition from rural to urban use because there is no planning for urban water, sewer, stormwater or surface transportation to accompany the airport expansion onto many dozens of acres of rural land. Rather, there have been years of appeals which the airport has consistently lost. The 2012 Master Plan is null and void. That is a disorderly and inefficient transition. Goal 14 requires the accommodation of "urban employment inside urban growth boundaries." The findings tout the purported thousands of jobs which are located outside Aurora's UGB in direct violation of Goal 14.

The 2026 Master Plan and the Airport Layout Plan are not in compliance with Goal 14 because they propose a major public transportation facility in a rural agricultural area, and therefore fail to provide for an orderly transition from rural to urban land use.

Implementation Guideline B.2 of Goal 14 requires:

> "the type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas."

The airport expansion proposed in the 2026 Master Plan and the Airport Layout Plan is a major public transportation facility because it serves both national and international destinations, and because it supports the largest

employment base in north Marion County, even though the airport is located in a less densely developed area. See OAR 660-012-0005(21). The 2026 Master Plan violates this guideline because it fails to direct expansion of the airport into an urbanizable area; rather, it directs the expansion onto Class II agricultural land that is rural land, not urbanizable land. In addition, the 2026 Master Plan fails to adopt alternative means of addressing Implementation Guideline B.2, and therefore violates Goal 2, Part III, which requires that the 2026 Master Plan must "either utilize the guidelines or develop alternative means that will achieve [Goal 14]. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals. The 2026 Master Plan neither utilizes Implementation Guideline B.2 nor states how alternative means satisfy Goal 14.

The 2026 Master Plan will require a Goal 14 exception to develop the former church camp on tax lots 800 and 900 of assessor's map 041W2D, and to develop the EFU land south of Keil Rd. on tax lots 900, 1000 and 1100 of map 041W11A, and tax lots 500 and 800 of map 041W12B, because the proposed airport uses including the runway protection zone "are clearly urban public facility uses." *Murray*, at 283.

The 2026 Master Plan proposes to convert roughly 60 acres of high-value farmland to urban uses without bringing the property into the urban growth boundary of the City of Aurora, for which a Goal 14 exception is required. See OAR 660-014-0040(2). The expansion areas are classified as "undeveloped rural land" because they are outside an acknowledged urban growth boundary and are not committed to urban development. See OAR 660-014-0040(1). This is clearly contrary to Implementation Guideline B.2.

A reasons exception to Goal 14 is authorized by OAR 660-014-0040(2), when a county adopts a comprehensive plan amendment which determines that reasons justify why the policies in Goals 3, 4, 11 and 14 should not apply. However, the need for these goal exceptions confirms that the 2026 Master Plan and the Airport Layout Plan are not in compliance with any of these goals. And the reasons exception cannot be based on the presence of the existing airport, due to OAR 660-012-0060(5). Nor is there an adequate factual base in the record to support a finding that they could be compliant with Goal 14, because they promote dense urban development on rural land, which is the opposite of what Goal 14 requires.

Goal 2, Part III requires the 2026 Master Plan to demonstrate compliance with the Goal 14 guidelines, or demonstrate an alternative means of satisfying that goal, and state how the guidelines or alternative means are utilized to achieve Goal 14. However, the plan makes no attempt to show compliance with the guidelines or to show an alternative means whereby the plan will

"provide an orderly and efficient transition from rural to urban land use;" or will "accommodate urban population and urban employment inside urban growth boundaries." Therefore, Goal 14 is not satisfied.

As a result, the 2026 Master Plan violates OAR 660-013-0040(5)(e)(B) which requires consistency with the applicable goals. *Murray v. Marion County* confirms that Goal 14 applies to expansion of this airport onto EFU land.

C. Marion County Comprehensive Plan

ORS 197.180(13) provides:

> "State agency rules, plans or programs affecting land use are not compatible with an acknowledged comprehensive plan if the state agency takes or approves an action that is not allowed under the acknowledged comprehensive plan."

This quotation demonstrates the 2026 Master Plan cannot be approved without detailed findings on compatibility with the acknowledged Marion County Comprehensive Plan. As described below, the 2026 Master Plan is not compatible with that plan and the MCC in many respects, although it could comply with that plan by requiring annexation into the City of Aurora. Until the 2026 Master Plan is revised to ensure that annexation precedes additional urban development of the airport, it conflicts with this ORS 197.180(1)(b) and (13).

The draft findings indicate

> "pursuant to OAR 660-013-0160, Marion County is required to update its comprehensive plan and land use regulations related to airport planning and periodic review. ODAV intends to apply to Marion County to adopt the UAO Master Plan and make any necessary regulatory amendments to its plan or regulations."

This finding effectively acknowledges that the 2026 Master Plan does not comply with the current comprehensive plan and land use regulations. It therefore demonstrates violation of ORS 197.180(1)(b). Marion County's plan and land use regulations are acknowledged and therefore not deficient in any way, and the mere adoption of a new airport master plan does not change that. The county plan and zoning code must be amended first, prior to adoption of this master plan.

ODAV must follow the OAR 738-130-0055 coordination requirements for all elements of the 2026 Master Plan now, and demonstrate compliance with the county comprehensive plan and land use regulations, as mandated by

ORS 197.180(1)(b), in this proceeding. Compliance with OAR 738-130-0065 in the future is not relevant.

The principal justifications set forth in the 2026 Master Plan emphasize the economic advantages of expanding the airport, without adequate consideration of county policies which favor the protection of high-value agricultural land, which ensure urban development that can be accommodated within existing urban growth boundaries is not built on resource land, which mandate that development outside urban growth boundaries must be compatible with surrounding agricultural uses and which require development in rural areas to mitigate its traffic impacts and to dispose of its sewage on site. As explained in the comprehensive plan, "the State land use program provides greater protection for high-value farmland compared with other farmland protected under Goal 3." (II Goals and Policies, Agricultural Lands, Introduction.) The former church camp, the new Hwy 551 right-of-way, the airport expansion area south of Keil Rd., and the proposed new right-of-way for the Keil Rd. relocation all are located on Class 2 soils, which is high-value farmland.

The relocation of Highway 551 violates the Agricultural Lands and Urbanization policies of the comprehensive plan, because the highway will displace commercial agricultural uses to support urban development. The zoning code does not control over the comprehensive plan; rather, the opposite is true.

The 2026 Master Plan neither interprets nor applies the comprehensive plan and zoning code of Marion County. It lacks an adequate factual base for doing so, and is inconsistent with the purposes, policies, and text of those regulations, and inconsistent with the state land use regulations which the comprehensive plan implements. As a result, the 2026 Master Plan proposes new development that is not allowed under the following provisions of the Comprehensive Plan.

Agricultural Lands

The introduction to the comprehensive plan section on agriculture includes two statements that emphasize agriculture's vital role.

> "Protection and preservation of farmland is primarily for the purpose of maintaining the soil resource and farm industry as a basis for food and fiber production now and in the future. Because of its dependence on the land resource, farming is sensitive to the effects of land use change and intensity. As explained in the rural issues and problems discussion, the division of land into small parcels and the presence of non-farm activities can drastically affect farm

operations. Therefore, to achieve the goal of protecting and preserving the agricultural industry, non-farm activities in rural farm areas of Marion County must be strictly controlled."

"It is the intent of Marion County to maintain the ability to economically farm these lands by limiting conflicts with non-farm uses. This will be accomplished by prohibiting incompatible non-farming activities and by limiting land division to those compatible with agricultural needs consistent with the requirements of either ORS 215.213 or 215.283 and OAR 660-033."

The 2026 Master Plan proposes expansion of an incompatible urban public facility onto agricultural land that is not allowed under the Marion County policies that follow.

Agricultural Lands Policies

1. Preserve lands designated as Primary Agriculture by zoning them EFU (Exclusive Farm Use).

The airport and its surrounding lands have Amity silt loam soil, rated as Class 2 and a high-value farmland. Thus, they are designated Primary Agriculture by the Comprehensive Plan and zoned EFU.

2 Maintain primary agricultural lands in the largest areas with large tracts to encourage larger scale commercial agricultural production.

The 2026 Master Plan proposes to divide the M&H Farms and Kelly economic farm units, which both are tracts comprised of several parcels, and therefore it is not allowed under this policy.

3. Discourage development of non-farm uses on high-value farmland and ensure that if such uses are allowed that they do no cause adverse impacts on farm uses.

The 2026 Master Plan encourages the development of non-farm uses by proposing urban aviation uses on this agricultural land. It does so without consideration of the adverse farm impacts. The proposal is not allowed under this policy.

The Master Plan fails to assess the cumulative impacts of existing and proposed airport development on each farm. In other words, the Master Plan must apply the farm impact test of ORS 215.296(1) to each particular change or cost increase in accepted farm practices. It must also consider the changes

and cost increases in the aggregate and how the aggregate or cumulative impacts affect each farm.

5. Divisions of agricultural lands shall be reviewed by the County and comply with the applicable minimum parcel size and the criteria for the intended use of the property.

The relocation of Keil Rd. and airport expansion south of Keil Rd. will divide several existing parcels into smaller parcels that cannot comply with the minimum parcel size in the EFU zone. Therefore, the 2026 Master Plan is not allowed under this policy.

9. When creation of a non-farm parcel is warranted, the size of the parcel shall be as small as possible to preserve the maximum amount of farmland in the farm parcel. Requirements may need to be imposed when non-farm parcels are allowed in farm use areas to minimize the potential for conflicts with accepted farm management practices on nearby land. These may include special setbacks, deed restrictions and vegetative screening.

The 2026 Master Plan does not address this policy, nor propose any mitigation such as special setbacks, deed restrictions or vegetative screening in order to minimize the potential for conflicts with farm management. The proposed development is not allowed under this policy.

Rural Development Policies

The introduction to these policies defines rural development as "the conversion of land outside of all urban growth boundaries to a more intensive non-resource-oriented use[.]" That is precisely what is proposed in the 2026 Master Plan. The general development policies applicable to the proposed urban development of the subject rural properties follow.

3. Rural industrial, commercial and public uses should be limited primarily to those activities that are best suited to a rural location and are compatible with existing rural developments and agricultural goals and policies.

The proposed urban aviation and office uses are not best suited to a rural location, especially on high-value farmland, because they are proposed at an urban density. For example, the 2026 Master Plan and Airport Layout Plan do not identify any area for sewage disposal, and actually propose aircraft storage hangars on areas currently used for septic fields. It will generate more than 1000 new daily vehicle trips which will exceed the capacity of the rural

transportation system. They are urban uses typically found inside urban growth boundaries where they serve local population centers.

The uses are not compatible with agricultural goals and policies because they displace the former resource use of the subject properties, and place urban development on high-value farmland. Rural industrial, commercial and public uses should not be located on high-value farmland when they can be reasonably accommodated within existing urban growth boundaries where they will not displace resource land uses and not conflict with agricultural goals and policies. Nor should they be located near existing UGBs where they will adversely affect the urban development of the City of Aurora consistent with Goal 14.

1. Where there is a demonstrated need for additional commercial uses in rural Marion County they should be located in designated unincorporated communities.

Marion County includes the following designated rural communities, none of which include the Aurora State Airport: Brooks, Butteville, Labish Village, Macleay, Mehama, Marion, Monitor, Quinaby and Shaw. The proposed aviation and office uses should be located within these designated communities, or within urban growth boundaries. The 2026 Master Plan conflicts with this policy.

2. The boundaries of identified unincorporated communities shall not be expanded to accommodate additional development.

Consistent with this policy, the boundary of the unincorporated Aurora State Airport should not be expanded to accommodate additional development until urban public water, sewer and stormwater services are provided; that is, until the airport is annexed into the City of Aurora.

3. Service districts within unincorporated communities may be created and expanded to serve the entire designated rural community; however, services shall not be extended outside of the community unless necessary to correct a health hazard.

The water service district that would supply the fire suppression water should not be expanded outside the existing airport boundary. There is no information in the record that there is a health hazard on the subject properties due to the lack of water service. The 2026 Master Plan violates this policy.

4. Public facilities in rural communities and rural service centers should be designed to service low density rural development and not encourage urbanization.

The airport is an urban public facility, and the 2026 Master Plan proposes expansion contrary to this policy, because it is designed to serve high density urban development. It encourages further urbanization because it provides an urban service to a rural area, in support of urban scale buildings and uses. The 2026 Master Plan violates this policy.

Rural Industrial Policies

1. Industrial uses in conjunction with farm or forest uses shall be evaluated to determine if they need to be located on resource lands or whether an equally suitable location is available in an urban area or on non-resource lands in a rural area.

The 2026 Master Plan suggests the airport may include industrial uses; however, it does not indicate the airport operates in conjunction with farm or forest uses. The airport operates independently from the surrounding agricultural uses. Equally suitable locations for the urban aviation uses are available in the McMinnville, Hillsboro and Salem urban areas. Equally suitable locations for the office uses proposed on the former church camp and other EFU properties south of Keil Rd. are available in Wilsonville, Aurora, and Salem, among other communities. Therefore, the expanded urban uses proposed in the Master Plan do not need to be located on Class 2 resource land as proposed. The 2026 Master Plan violates this policy.

2. Rural industries should be compatible with existing development and farm or forest uses in the vicinity, should not involve a large number of employees, should not require heavy truck traffic through residential areas or on unimproved roads, and should not have the potential to exceed the environmental capacity of the site or require urban services.

The proposed aviation and office uses are not compatible with existing agricultural development on surrounding high-value farmland. Customary farm practices including plowing and fertilizing produce dust, which is a conflict because it harms sensitive aviation instruments. The comprehensive plan confirms that: "the State land use program provides greater protection for high-value farmland compared with other farmland protected under Goal 3." (II Goals and Policies, Agricultural Lands, Introduction.) Conflicts must be resolved in a manner that protects farm uses on high-value farmland. The 2026 Master Plan violates this policy.

The application for development of the former church camp proposes hundreds of employees. The site plan shows 489 parking spaces, which will accommodate more than 400 employees. (See Master Plan Sheet L1.0, attached as Exhibit I to the application). For a rural area, this is an extraordinarily large number of employees, and is contrary to this policy.

As described below, that application proposes to use heavy trucks to transport the septic system wastewater that cannot be disposed of on the site due to the poor drainage of the soil, and will also truck away the industrial wastewater. Those heavy trucks will travel through residential areas in the City of Aurora (at the southern segment of Airport Rd, which is zoned and developed for residential uses) or Canby (on Knights Bridge Rd, also zoned and developed for residential uses).

The scale of the proposed uses vastly exceeds the environmental capacity of the site soils for treatment and disposal of the sanitary sewer wastewater, as more fully described below.

3. A non-resource-related industrial use should not be permitted on resource lands unless an evaluation of the relevant County and State goals and the feasibility of locating the proposed use in an urban growth boundary or rural non-resource lands show that the proposed site on resource lands is the most suitable.

The 2026 Master Plan proposes airport-related industrial use which is non-resource related. However, it does not evaluate the relevant County and State goals, or the feasibility of locating the industrial uses in the nearby City of Aurora, or other surrounding cities. Nor does the Master Plan consider other non-resource lands in the rural area in north Marion County. The omission of information in the record to support this required analysis demonstrates there is not an adequate factual base for a finding that this policy allows the uses proposed in the Master Plan. The 2026 Master Plan violates this policy.

Rural Services Policies

General Policies

1. The impact on existing services and the potential need for additional facilities should be evaluated when rural development is proposed.

The 2026 Master Plan is inconsistent with this policy (and the Goal 11 rule that it implements) because it proposes urban development but postpones evaluation of the impact on existing septic systems, and because the need for additional facilities is well known since the existing septic systems lack sufficient capacity for the increased sewage flow. The Master Plan does not evaluate the need for public water and sewer services, notwithstanding the clear statement of the urgent need by the Marion County Board of Commissioners. "The provision of water and sewer service from the City of Aurora would address these deficiencies in rural services." The 2026 Master Plan violates this policy.

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

Nearly 300,000 square feet of urban office and aviation buildings are proposed on the former church camp, in addition to many acres of "hangar development area" within the current airport boundary, plus expansion onto 23 acres of EFU land south of Keil Rd. These urban uses are inconsistent with maintenance of the rural character outside of urban growth boundaries. This is urban development which increases the potential and the need for urban services, as described by the Marion County Board of Commissioners' letter of February 13, 2015. The 2026 Master Plan and Airport Layout Plan are inconsistent with this policy and the Goal 11 rule that it implements.

3. Only those 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.

The proposed urban airport-related uses are not included within the adopted comprehensive plan or TSP; that is, they are not planned or allowed rural uses. They are inconsistent with this policy and the Goal 11 and Goal 14 rules that it implements, because they encourage additional urban development that is inconsistent with the rural density of the surrounding area.

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.

This policy is especially important due to its use of the word "shall" and the resulting mandatory prohibition on exceeding rural density. The proposed extension of the Aurora Airport Water Control District and extension of the community sewage to support urban development of the subject properties "shall not be approved". This policy precludes the extension of the water district services and the community septic system to serve the proposed runway extension and development on the former church camp and on the EFU properties south of Keil Rd.

The rural character of the area is determined by its classification as high-value farmland. The comprehensive plan emphasizes that: "the State land use program provides greater protection for high-value farmland compared with other farmland protected under Goal 3." (II Goals and Policies, Agricultural

Lands, Introduction.) The 2026 Master Plan is inconsistent with this policy and the Goal 3, Goal 11, and Goal 14 rules that it implements.

Special District Policies

1. Marion County shall coordinate with the special service districts in the County in planning for growth and development which will occur within the districts. A joint review process established through coordination agreements will be used to facilitate this coordinated planning.

This policy specially states the future growth and development will occur "within the districts". The proposed development described in the 2026 Master Plan is outside the boundary of the Aurora Airport Water Control District and therefore extension of the district's services beyond that boundary is contrary to the express text of this policy. There is no information in the record to demonstrate the necessary coordination has occurred, and the City of Aurora must be included in the joint review process. The Master Plan is not allowed under this policy or the Goal 2, 11 and 14 rules that it implements.

6. The creation or expansion of any sewer district as well as the extension of sewer services to lands outside an existing service district's boundaries, unincorporated communities' boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners and an exception to Goal 11 (Public Facilities and Services).

The 2026 Master Plan proposes to provide sewer service by extensions of the system(s) on neighboring properties and by heavy truck, for the collection and disposal of sanitary and industrial wastewater that cannot be treated or disposed of on site. There is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of sewer service is to be discouraged.

The 2026 Master Plan does not evaluate the cost of annexing into Aurora and connecting to its municipal system. As noted elsewhere, the extension of sewer service to the former church camp and to other EFU lands south of Keil Rd., by whatever means, requires a Goal 11 exception, and this policy confirms that "any" extension of sewer service requires the Goal 11 exception. The goal 11 exception must be taken prior to approval of the Master Plan, because this

element of the plan does not comply with Goal 11. The Master Plan is not allowed under this policy, or under the Goal 11 rule that it implements. The 2026 Master Plan violates this policy.

> *7. The creation or expansion of any water district as well as the extension of water services to lands outside an existing service district's boundaries, unincorporated community's boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners.*

The 2026 Master Plan assumes extension of fire suppression water service to the former church camp and other hangar development areas, including about 23 acres south of Keil Rd.; however, there is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of water service is to be discouraged. It also requires Board of Commissioners approval, and there is no information in the record that such approval has been or could be obtained.

Marion County must provide notice of any application for such an extension and the Goal 11 exception that such an extension requires. The Master Plan is not consistent with this policy, Goal 11, or the Goal 11 rule that the policy implements.

Urban Land Use Goals

The urbanization goal of Marion County is to provide for an orderly and efficient transition from rural to urban land use. Sub-goals for beneficial patterns of urban land use include the following:

> *a. Development of urbanization consistent with area-wide goals and objectives.*

The 2026 Master Plan supports urbanization of high-value farmland without annexation to a city, without an orderly transition. The applications for the former church camp indicate the sewage cannot be managed on site, and the Airport Layout Plan does not include either a septic drainfield or an area for a replacement drainfield. The Master Plan omits discussion of potable water, but assumes extension of a fire suppression water supply without any information that the supply will be sufficient, especially since the application

for the former church camp proposed large office buildings with much higher occupancy than any existing buildings currently served or sprinkled by that water supply. The proposed urbanization of the former church camp, and additional properties south of Keil Rd., conflicts with the area-wide goals for the preservation of agricultural land and the Master Plan is therefore not allowed under this policy and the Goal 3, 11 and 14 rules that it implements.

b. Establish urban growth boundaries to identify and separate urbanizable land from rural land and contain urban land uses within those areas most capable of supporting such uses.

The 2026 Master Plan is contrary to this policy because it does not contain urban land uses within an existing urban growth boundary; rather, it would approve an urban land use outside an urban growth boundary, notwithstanding the availability of land inside the Salem urban growth boundary that is already planned and zoned and available for lease that can reasonably accommodate the proposed aviation and office uses. There is not information in the record to demonstrate the Aurora State Airport area is capable of supporting the proposed urban uses, which is why the wastewater must be collected on site and then transported to a municipal system by truck for treatment and disposal. The Master Plan would impair urban-level utilization of lands already within the City of Aurora and its UGB, and is inconsistent with this policy and the Goal 14 rule that it implements.

c. To provide for an orderly transition from rural to urban land use.

The transition to urban land use includes the transition to urban governance with full urban services. The 2026 Master Plan would continue the expansion of urban land uses without urban governance or services, contrary to this policy and the Goal 14 rule that it implements, because urban uses are intended to be located within cities. It is also contrary to Goal 2, Land Use Planning because the lack of municipal zoning for urban land uses has allowed an urban area to develop without such basic urban public facilities as a single public street or sidewalk within the airport, potable water service, or sanitary sewer service. The proposed urban growth near the City of Aurora's UGB, with its consequent increase in noise and traffic, will have a direct impact on the City of Aurora and be inconsistent with its comprehensive plan, which the Master Plan does not address. The Master Plan does not adequately balance the needs of the City of Aurora or citizens in the area, and therefore is not allowed under this policy and the Goal 2, Goal 11, Goal 12, and Goal 14 rules that it implements.

d. Development of a population distribution pattern in which most persons employed within an urban community live in and participate in the activities and government of that community.

The Master Plan would approve additional urban scale employment uses on high-value farmland that is geographically isolated from an urban community and residential lands. It therefore is not allowed under this policy and the Goal 2 and Goal 14 rules that it implements.

f. Development of a commercial land use pattern which assures a convenient and adequate supply of goods and services to the resident, transient and trade area population.

The 2026 Master Plan would authorize additional commercial uses isolated from any urban area, contrary to this policy. The proposed office and aviation uses would be more conveniently located at the Salem airport, where they would be more convenient to area residents, transient aviators and passengers who utilize nearby urban amenities such as hotels, rental cars and restaurants, and to the trade area population because the Salem airport is located within a large area zoned for complementary commercial and industrial uses. The Master Plan is inconsistent with this policy and the Goal 14 rules that it implements.

g. Development of commercial areas and employment centers that favor being located in relation to the urban transportation system.

The 2026 Master Plan would authorize new large scale commercial and employment growth well away from the urban transportation system. As noted elsewhere, Airport Rd. is a major rural collector and is not classified as an urban street or developed for the proposed urban uses, contrary to this policy. As written, the Master Plan would seriously frustrate urban-level utilization of lands in Salem and Aurora is therefore not allowed under this policy and the Goal 12 and 14 rules that it implements.

h. Development of industrial land use within urbanized areas unless an industry specifically is best suited to a rural site.

The proposed uses are by definition urban public facilities as LUBA and Marion County previously determined in the prior Goal 14 exceptions. The 2026 Master Plan would allow the use in an agricultural area instead of an urban area as required by this policy. The uses are not best suited to a rural site; they are urban uses which, in Oregon's land use system, are compelled to locate within an urban growth boundary when there is land within a boundary that can reasonably accommodate the use. As described elsewhere, there is aviation land within the urban growth boundaries of Metro and Salem, including

longer runways, that can accommodate the proposed uses. In addition, the comprehensive plan notes the high-value farmland receives greater protection than other rural lands. The Master Plan is inconsistent with this policy and the Goal 3 and 14 rules that it implements.

i. Provision of sufficient areas for future industrial land use.

The 2026 Master Plan is silent on this topic; however, the history of similar applications makes it clear that the county's standard practice is to continue the conversion of high-value agricultural land to industrial uses that qualify as through the fence businesses, one goal exception at a time. The history of land use in the area demonstrates that Marion County has no long range industrial land use plan for this area, which can only occur within an urban growth boundary. The Master Plan for continued expansion of an urban industrial area outside an urban growth boundary through serial goal exceptions is inconsistent with this policy and the Goal 14 rule that it implements. The Master Plan would seriously frustrate urban-level utilization of lands in Aurora.

j. Direct urbanization away from agricultural areas composed of major units of Class I through IV soils.

The subject properties and surrounding lands are Class II soils. The 2026 Master Plan is contrary to this policy because it would allow urbanization of Class 2 agricultural properties, and therefore it is inconsistent with the text of this policy and the Goals 3 and 14 rules that it implements.

Urban Growth Policies

1. The type and manner of development of the urbanizable land shall be based upon each community's land use proposals and development standards that are jointly agreed upon by each city and Marion County and are consistent with the LCDC Goals.

The City of Aurora disagrees with the proposed urban development of the subject properties. The Aurora State Airport and 2026 Master Plan are not consistent with several LCDC Goals, which is why several goal exceptions have been applied for in the past for former airport expansions, and are required for the expansion proposed by the pending Master Plan. By definition, goal exceptions are not allowed under this policy. The Master Plan is therefore inconsistent with this policy and the Goal 2, 3, 11, 12 and 14 rules that it implements.

2. The provision of urban services and facilities should be in an orderly economic basis according to a phased growth plan.

The continued urban development around the airport without urban services such as water, sewer and sidewalks and without a phased growth plan that includes urban services, conflicts with this policy. The 2026 Master Plan would allow additional urban development without urban facilities and services, which is inconsistent with the text of this policy and the Goals 11, 12 and 14 rules that it implements.

3. Development of the urban area should proceed from its center outward.

This policy promotes the growth of cities, with increasing density at their core. The 2026 Master Plan would allow just the opposite; that is, urbanization that proceeds from outside a city toward the City of Aurora, and thus is inconsistent with the text of this policy and the Goal 14 rule that it implements. It also conflicts with the goals of the City of Aurora to extend its UGB in order to accommodate urban development of the subject properties.

4. Development should occur in areas of existing services before extending new services.

The Aurora State Airport is running out of land. New services should be extended from the City of Aurora to support the aviation development proposed in the 2026 Master Plan which is proposed in areas that lack existing public facilities and services. As drafted, the Master Plan omits serious consideration of the need for public services and therefore is not allowed under this policy.

5. Divisions of urbanizable land shall consider the maximum utility of the land resource and enable the logical and efficient extension of services to such parcels.

The airport is not classified as urbanizable land because it is outside an urban growth boundary. The 2026 Master Plan nonetheless proposes to divide economic farm units by expanding the airport and leaving uneconomic remainders in violation of ORS 215.296. This adversely affects the land resource and thus is not consistent with this policy.

6. Generally cities are the most logical providers of urban services. Where special service districts exist beyond the city limits and within the urban growth boundary such as around Salem, all parties shall work towards the development of the most efficient and economical method of providing needed services. Urban services shall not be extended beyond the urban growth boundary, except as provided for in Special District Policies 6, 7 and 8.

The City of Aurora is the logical provider of urban services. The proposed extension of fire suppression water service to the former church camp and other EFU properties south of Keil Rd. is not consistent with Special District Policies 6, 7 and 8. The use of the word "shall" means that this prohibition is mandatory, and therefore the 2026 Master Plan is not allowed under this policy.

7. Urban densities shall be established only within recognized urban growth boundaries unless an exception to Goal 14 (Urbanization) is obtained.

The 2026 Master Plan proposes urban density outside a UGB without Goal 14 exceptions, in violation of this policy. The urban density is clearly illustrated on the Airport Layout Plan, including airport expansion onto EFU land, including tax lots 800 and 900 of map 041W02D known as the former church camp. A prior attempt to develop this property for through the fence uses was rejected by the Court of Appeals and reversed by LUBA, in case number 2020-108. Development of this property for aviation uses is prohibited by the EFU zone, which does not allow urban scale aviation, office, commercial, warehouse, or industrial uses for aviation and aviation-related uses.

The second expansion area is south across Keil Rd onto about 23 acres comprised of the north portions tax lots 500 and 800 of map 041W12B, and tax lots 900, 1000 and 100 of map 041W11A. Policy 7 prohibits use of these lands for the urban airport as identified in the 2026 Master Plan.

9. Sufficient developable land shall be made available to provide choices in the market place.

At the existing Aurora State Airport, there is limited area available for development within the existing airport boundary, which are identified on the Airport Layout Plan Sheet 3 with the symbols 17 for future aircraft storage and 18 for a future FBO. At the Salem airport, there are many vacant acres available, as described in their 2012 master plan. To provide sufficient developable land, the Oregon Aviation Board must coordinate with the City of Aurora to expand the urban growth boundary and thereby convert agricultural land to urbanizable land consistent with Goal 14. As drafted, the 2026 Master Plan is not allowed under this policy and Goals 3, 9, and 14, and their rules, which the policy implements.

6. The creation or expansion of any sewer district as well as the extension of sewer services to lands outside an existing service district's boundaries, unincorporated communities' boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners and an exception to Goal 11 (Public Facilities and Services).

The former church camp application proposed to provide sewer service by pumper truck, for the collection of sanitary and industrial wastewater that cannot be disposed of on site. There is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of sewer service is to be discouraged. The extension of sewer service to the former church camp and properties south of Keil Rd., by whatever means, requires a Goal 11 exception and this policy confirms that "any" extension of new sewer service requires the Goal 11 exception. The 2026 Master Plan is not consistent with this policy, Goal 11, or the Goal 11 rule that the policy implements.

7. The creation or expansion of any water district as well as the extension of water services to lands outside an existing service district's boundaries, unincorporated community's boundaries, urban growth boundaries or city limits shall be discouraged unless the area to be served has demonstrated persistent health hazard problems confirmed by the County Health Department and the State Department of Environmental Quality and needs for which no other practical and reasonable alternative is available. Cost may be a factor in determining whether an alternative is practical and reasonable; however, cost shall not be the only factor or even the primary factor. Any extension shall require the approval of the Marion County Board of Commissioners.

The 2026 Master Plan assumes extension of fire suppression water service to the former church camp and other EFU lands south of Keil Rd; however, there is no information in the record to demonstrate there is a persistent health hazard, and thus the extension of water service is to be discouraged. The 2026 Master Plan does not include cost estimates or civil engineering data, so it lacks an adequate factual base. As noted elsewhere,

the extension of water service to the former church camp or other lands zoned EFU south of Keil Rd. requires a Goal 11 exception. The Master Plan is not consistent with this policy, or the Goal 11 rule that it implements.

8. Consistent with Policy No. 7 above, it is strongly encouraged that the State Water Resources Department examine the need to abandon those wells on properties connecting to the extended water service with the goal of stabilizing aquifers and preventing further decline in groundwater levels.

There is no information in the record to suggest that the 2026 Master Plan has been coordinated with the Water Resources Department to implement this policy, and thus there is not an adequate factual base for showing that this policy is satisfied.

Growth Management Framework Purposes

The purposes of the comprehensive plan's Growth Management Framework are to:

1. Identify common goals, principles, and tools that will lead to more coordinated planning and promote a collaborative approach to developing solutions to growth issues.

The common goals of the Oregon statewide planning system are identified in OAR 660-015. The 2026 Master Plan is not compatible with those goals, as demonstrated by the need for new exceptions to them every time the airport expands. The City of Aurora's identified goal is to bring the Aurora State Airport into the urban growth boundary consistent with the statewide goals for economic development, efficient provision of public services, transportation and urbanization. The Master Plan does not account for the city's goals or acknowledge their consistency with the identified statewide planning goals. Therefore, the Master Plan is inconsistent with this purpose and the purposes of Goals 2, 9, 11, 12, and 14 which it implements.

2. Be consistent with city plans for growth by modifying the growth projections in response to city feedback.

The 2026 Master Plan is not consistent with City of Aurora plans for growth, and does not modify the proposed urban growth on rural land in response, for example by limiting the proposed development to rural scale. The Master Plan is inconsistent with this purpose and the purpose of Goal 2 which it implements.

3. Protect farm, forest, and resource lands throughout the County by considering the existing growth capacity of each community, fostering the

efficient use of land, and evaluating urban growth boundary expansion needs.

The 2026 Master Plan does not protect farm land because it authorizes urban development on Class 2 agricultural land without considering the existing urban growth capacity of Aurora, or of the cities which already have land available inside their urban growth boundaries to reasonably accommodate the proposed aviation uses. The Master Plan does not describe how he proposed development will foster the efficient use of land, nor does it evaluate the urban growth boundary expansion needs of Aurora and how those needs could promote the mandated efficiency of land use. Therefore, the Master Plan is not allowed by the text of this purpose and the purposes of Goals 2, 3, 11, and 14 which it implements.

4. Maintain physical separation of communities by limiting urbanization of farm and forest lands between cities.

The 2026 Master Plan conflicts with this purpose by promoting the growth of urban uses on farm land between the City of Aurora and the City of Wilsonville. It is therefore is inconsistent with the text of this purpose and the purposes of Goals 3 and 14 which it implements.

5. Maintain community identity by encouraging each community to decide how it should grow and by promoting city decision-making control.

The 2026 Master Plan is inconsistent with this purpose because it discourages the City of Aurora, and is contrary to the City's comprehensive plan policy to bring the airport into the urban growth boundary and city limits prior to the approval of additional airport development. It therefore is not allowed by the text of this purpose and the purposes of Goals 2 and 14 which it implements.

6. Support a balance of jobs and housing opportunities for communities and areas throughout the County that contribute to the needs of regional and city economies.

The 2026 Master Plan omits mention of this purpose, and does not include information regarding the balance of jobs and housing in the affected area. It therefore lacks an adequate factual base for finding that this purpose is satisfied.

7. Provide transportation corridors and options that connect and improve accessibility and mobility for residents along with the movement of goods and services throughout the County.

Traffic on Airport Rd. already exceeds the capacity of a rural major collector, and the lack of substantial frontage improvements means that safety and mobility for residents, goods and services are impaired by the proposal. The 2026 Master Plan is therefore is inconsistent with the text of this purpose and the purpose of Goal 12 which it implements.

Growth Management Framework Goals

1. Base decisions on a long-range vision for the area, incorporating both community visions and long-range city plans. Ensure that the effects city decisions have on the surrounding County and neighboring cities are understood and considered, and that identified conflicts are resolved.

The long range vision for the area includes the City of Aurora's intention to expand its urban growth boundary to encompass the airport. This is not understood or considered in the 2026 Master Plan, nor are the land use conflicts identified by the City resolved. As a result, the Master Plan is inconsistent with the text of this goal and the purpose of Goals 2 and 14 which it implements.

2. Foster the use of creativity and innovation in planned growth and development projects to maintain the unique character of all cities.

The properties designated for urban development in the 2026 Master Plan are not planned for urban growth; rather they are planned and zoned for agricultural use. The proposed urban development of this rural land does nothing to maintain the unique character of Aurora, and therefore the Master Plan is inconsistent with the text of this goal and Goals 2 and 14 which it implements.

3. Provide for balanced and managed growth to ensure equity among the cities and allow for more efficient use of our natural resources.

The 2026 Master Plan does not ensure equity among the cities, because it promotes urban development outside of any city or urban growth boundary. The prior letter from the City of Salem emphasizes the ongoing inequity of continued urban growth at the Aurora State Airport. The Master Plan is therefore is inconsistent with the text of this purpose and the purpose of Goals 2 and 14 which it implements.

4. Honor the unique identities of communities and strengthen unique characteristics.

The City of Aurora has formally identified with the airport since it began comprehensive planning in 1983. The airport prefers to continue expanding without regard for the City's comprehensive plan. The 2026 Master Plan does

not honor the City's perspective, and is therefore inconsistent with the text of this purpose and the purpose of Goal 2 which it implements.

The 2026 Master Plan's proposed urban development without the simultaneous provision of urban services in a rural area promotes land use conflicts, which Oregon communities traditionally consider and resolve through utilization of the Goal 14 urbanization procedures, which provide the framework for resolving the rural and urban land use conflicts. Because the Master Plan requires another Goal 14 exception, it is contrary to this purpose and the Goal 14 rule that it implements.

6. Rely on the strengths of city decision-making coordinated with a Countywide vision.

The 2026 Master Plan conflicts with the City of Aurora's decision to formally urbanize the Aurora State Airport, and does not rely on or even acknowledge the strengths of the City's decision making. It is therefore inconsistent with the text of this purpose and the purposes of Goals 2 and 14 which it implements.

7. Ensure long-range coordination among the County, cities, and special districts through monitoring of the cumulative effects of city plans and decisions, and utilization of uniform standards.

The 2026 Master Plan is inadequately coordinated with the City of Aurora, and mere provision of notice pursuant to ORS 197.797 does not satisfy the coordination policy requirements of ORS 197.010(1) and 197.180. The Master Plan does not monitor City plans and decisions, and disregards Goal 14 urbanization procedures in favor of taking repeated goal exceptions to allow urban growth on high-value farmland. It frustrates urban-level utilization of lands in in the City of Aurora and its existing UGB, and therefore is inconsistent with the text of this purpose, the purposes of Goals 2 and 14, and the policies of ORS 197.010(1) and 197.180 which it implements.

Marion County Zoning Code

> "State agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use… in a manner compatible with acknowledged comprehensive plans and land use regulations."

This quotation from ORS 197.180(1)(b) demonstrates the 2026 Master Plan cannot be approved without detailed findings on compatibility with the acknowledged Marion County Rural Zoning Code. As described below, the

Master Plan is not compatible with numerous zoning code provisions. Until the Master Plan is revised to ensure that annexation precedes additional urban development of the airport, it conflicts with this statute.

The principal justifications set forth in the 2026 Master Plan emphasize the economic advantages of expanding the airport, without full consideration of zoning code provisions which mandate that development outside urban growth boundaries must be compatible with surrounding agricultural uses, must mitigate its traffic impacts, and must dispose of its septic effluent on site.

The 2026 Master Plan neither interprets nor applies the rural zoning code of Marion County. It lacks an adequate factual base for doing so, and is inconsistent with the purposes, policies, and text of the referenced zoning code development standards and criteria, and inconsistent with the state land use regulations which the zoning code implements. As a result, the Master Plan proposes new development that is not allowed under the following provisions of the zoning code.

MCC 17.136 EFU Zone

The 2026 Master Plan proposes expansion of the airport into the EFU zone in four separate areas. First, it proposes expansion east onto tax lots 800 and 900 of map 041W02D known as the former church camp. A prior attempt to develop this property for through the fence uses was rejected by the Court of Appeals and reversed by LUBA, in *Schaefer v. Marion County*, LUBA No. 2020-108. Development of this property for aviation uses is prohibited by the EFU zone, which does not allow urban scale aviation, office, commercial, warehouse, or industrial uses for aviation and aviation-related uses.

The second expansion area is south across Keil Rd onto about 23 acres comprised of the north portions tax lots 500 and 800 of map 041W12B, and tax lots 900, 1000 and 100 of map 041W11A. Guideline A.4 of Goal 12 prohibits the division of these existing farm units by the expanding airport, which is a major transportation facility. Land divisions are required for development of these areas for airport uses. Development of this area for aviation uses is also prohibited by the EFU zone, which does not allow urban scale aviation, office, commercial, warehouse, or industrial uses for aviation and aviation-related uses as either permitted or conditional uses. MCC 17.136.040-050. And the minimum lot size in the EFU zone is 80 acres. MCC 17.136.090; ORS 215.780(1)(a). These tax lots are currently less than 80 acres so they cannot be divided. However, the Airport Layout Plan Sheet 12 illustrates that ODAV only intends to purchase from willing sellers the north portions of these tax lots. Such partial sales are prohibited because the areas

slated for purchase are not legal lots of record, and the remainder portions of these tax lots would also become unlawful as they are less than 80 acres. ORS 92.016(2) prohibits the sale of such portions of EFU land as well because the parcels must first be partitioned; but again, the proposed purchases and sales require partitions which are prohibited because the 80-acre minimum lot size is not satisfied.

The third expansion area is onto tax lots 900, 1200, 1500 of map 041W11A and tax lot 201 of map 041W11D for expansion of the Runway Object Free Area and relocation of Keil Rd. The expansion and road relocation violates the EFU zone, and requires Goal 3, 11 and 14 exceptions as LUBA ruled in *Murray v. Marion County*, 23 Or LUBA 268 (1992).

MCC 17.171.030 Conditional Uses

The 2026 Master Plan's proposed uses are not allowed in the EFU zone. The application for conversion of the former church camp proposed 123,000 square feet of office space, although office is not listed as either a permitted use (see MCC 17.171.020) or a conditional use (see MCC 171.17.030) in the Public zone. The word "office" does not appear in the text. The prohibition by exclusion of office from the lists of permitted and conditional uses means there is an affirmative obligation to demonstrate the proposed office is actually airport related. The Master Plan findings should address this discrepancy.

Even assuming a zone change to Public, which has yet to occur, conditional uses must still satisfy three discretionary criteria:

A. That it has the power to grant the conditional use;

B. That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zone;

C. That any condition imposed is necessary for the public health, safety or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.

Criterion A is satisfied because the Board of Commissioners has the requisite authority. Criterion B requires detailed analysis of, and compliance with, the purpose and intent of the Public zone, found in MCC 17.171.010:

> *"The purpose and intent of the P (public) zone is to provide regulations governing the development of lands appropriate for specific public and semi-public uses and to ensure their*

compatibility with adjacent uses. It is intended that this zone be applied to individual parcels shown to be an appropriate location for a certain public or semi-public use. If the use existing at the time the P zone is applied is discontinued or if a proposed use is not established, it is the intent that the land be rezoned to conform to surrounding zoning or be devoted to permitted uses. It is not intended that a property zoned public for one type of use be allowed to change without demonstrating that the proposed conditional use will be compatible with adjacent uses and the property is better suited to the proposed use than alternative locations."

The first purpose "is to provide regulations governing development" and therefore to be in harmony with the purpose and intent of the Public zone, an application must demonstrate compliance with the ten Property Development Standards for the Public zone listed in MCC 17.171.060. In other words, the conditional use criterion makes the purpose statement a criterion, and the purpose statement makes the development standards criteria. The 2026 Master Plan findings must ascribe meaning to the operative phrases "to provide regulations governing development" and "appropriate for specific public and semi-public uses" and describe why large, urban scale office and aviation uses are appropriate in the EFU zone and compatible with adjacent aviation and agricultural uses.

MCC 17.171.060 Property Development Standards

The development standards are land use regulations in the zoning code, which must be addressed in the 2026 Master Plan findings. ORS 197.180(1)(b). There is no language in the text of the Public zone that allows or anticipates postponement of compliance with the use limitations and development standards for any use, much less for a conditional use, nor is there any designated procedure for later review of these requirements. There is not a two-step process for approving conditional uses. Conclusory statements of feasibility with the use limitations of MCC 171.17.020 and .030 and the development standards of .060 are not consistent with their text or the purpose of the Public zone. If the Oregon Aviation Board wishes to interpret and apply these traditional development standards such as building height and septic feasibility differently than those standards have traditionally been interpreted and applied by other land use decision makers, it must articulate an interpretation of why those standards need not be reviewed and evaluated as part of the findings on the Master Plan. The mandate in ORS 197.180(1)(b) indicates otherwise, and does not allow the postponement.

The first sentence of the purpose and intent statement requires the application of development standards to the 2026 Master Plan, and any finding that compliance with the development standards can be postponed to an unspecified future proceeding fails to give effect to the first sentence of the purpose and intent statement, and is therefore unpersuasive.

Findings of compliance with the "regulations governing development" are essential to demonstrating compliance with the purpose and intent of the Public zone, and therefore essential to a finding of compliance with conditional use criterion MCC 17.171.030.B because a proposed use cannot be in harmony with the purpose of the Public zone if it does not satisfy the "regulations governing development" for that zone as described in the purpose statement.

MCC 17.171.060.I Sewage Disposal

Standard I requires "that the development will not exceed the existing carrying capacity of the local sewage disposal system or has an on-site sewage disposal site approved by Marion County or the Department of Environmental Quality." Thus far the 2026 Master Plan has not demonstrated compliance with either of these two options. As a starting point, the Oregon Aviation Board must identify how many square feet of what land uses are being approved in order to know what the septic requirements are. Without specific use descriptions and limitations, it is not possible to know whether the septic system(s) that will be utilized for disposal have sufficient carrying capacity for the additional sewage that will be produced by the development described in the Master Plan, including the identified hangar development area.

The most recent expert information comes from the application materials for the development the former church camp, and the DEQ table of wastewater flows (OAR 340-071-0220 Table 2) which indicates that office and factory workers generate 15 gallons of sewage per shift. The former church camp application proposed 123,000 square feet of office. Deducting a 15% load factor for common areas like elevators, hallways and bathrooms, that leaves 104,550 leasable square feet. Allowing a generous 200 square feet per person, the proposed office buildings have capacity for approximately 522 employees, or 7830 gallons per day. For the proposed hangars and shop spaces, DEQ estimates each factory worker also generates 15 gallons per day. With 158,000 square feet of space for these uses, and assuming 2500 square feet per worker, that means 42 workers and the sewage flow is 630 gallons per day. The total is 8460 gallons per day. Calculated a different way, the site plan includes 489 passenger vehicle parking spaces, which is a reasonable amount for 564 employees.

There is no information in the 2026 Master Plan record to support a finding that the existing carrying capacity of the local sewage disposal system can accommodate 8460 gallons per day from the former church camp, or the additional sewage created by the hangar development area within the existing airport boundary, or the expansion area south of Keil Rd, because the Airport Layout Plan indicates the septic drainfield must be relocated, and fails to identify a replacement area.

With regard to private sewage treatment facilities, the Rural Services and Facilities section of the comprehensive plan states:

> "Basically there are two types of systems: mechanical, which is the most widely used type; and nonmechanical or lagoon systems. These can be designed and used separately or combined to allow the most efficient use of both. All of these are currently experiencing problems ranging from poorly trained operators to inadequately designed systems… Some problems could be eliminated by establishment of local policies dealing with the use of these systems. This would allow the County to evaluate the feasibility of the system prior to approval of the proposed development."

The Rural Service Issues section of the comprehensive plan further notes that:

> "Rural developments must have sufficient land with suitable soil characteristics to provide a viable subsurface disposal system. In areas where soil type or terrain restrict the use of standard subsurface septic systems, private community water or sewage treatment facilities may be provided if enough property will benefit to make construction economically feasible. Experience with privately maintained systems has been mixed as noted above. When difficulties arise the County is not in a position to assume responsibility."

Contrary to the comprehensive plan, the 2026 Master Plan and Airport Layout Plan propose expansion of urban uses without demonstrating that the myriad sewage treatment facilities in the Public zone have the capacity and ability to accept, treat and dispose of the sewage from additional urban development. There is no information regarding nearby land with suitable soil characteristics, nor a site plan showing where the existing or proposed drainfields will be located. The county acknowledges it does not accept responsibility when difficulty arises, and difficulty in this context means pollution from insufficiently treated sewage. There is no information in the

record to show a septic system design that is capable of managing the proposed sewage flows, and no confirmation from DEQ that the concepts set forth by the expert are feasible for the former church camp properties or the other properties designated as hangar development area and airport reserve south of Keil Rd.

The soils on the site and on surrounding properties are Amity silt loam, as shown on the NRCS maps. On November 27, 2018 the expert described the soils as "hydric and considered 'somewhat poorly drained' with a depth to water table being 6-18 inches. The expert also wrote that: "[t]he site does not appear to have soils appropriate for an on-site system, so other DEQ approvable options will likely need to be utilized." The expert's statement is consistent with the Marion County Board of Commissioners' letter. "Also, septic systems are difficult to locate at the airport due to soil conditions." There is no contrary information in the record.

The second option under MCC 17.171.060.I is to show the local sewage disposal system has sufficient carrying capacity for disposal of the wastewater from the proposed development. There is no information in the record that demonstrates there is surplus carrying capacity in a local sewage disposal system. The 2026 Master Plan lacks information that the airport has the right to discharge septic system wastewater on another property. TLM's expert's report indicates: "Easement areas will need to be identified." Identification of new easement area alone is insufficient, and there is no information in the record indicating that a neighboring property owner has the Goal 11 exception necessary to grant an easement for septic drainfield uses.

Compliance with Standard I requires a Goal 11 exception, a written easement, and a demonstration that the carrying capacity will not be exceeded. The surrounding properties, including the state-owned lands around the runway and taxiway, and the adjacent Southend Corporate Airpark, have the same Amity Silt Loam soils. The expert's report acknowledges that use of these lands for disposal "will require further test pits"; however, there is no information that such testing has been done, or approved by the county sanitarian or DEQ, and no information to indicate there is surplus carrying capacity on any adjacent properties.

To evaluate the carrying capacity, both the volume and the strength of the wastewater generated by the proposed development must be analyzed. The volume can be calculated using the standard DEQ Table 2 of OAR 340-071, at the rate of 15 gallons per day per employee. This table and related provisions of the administrative rule described below provide relevant context for interpreting and applying Subsection I.

The 2026 Master Plan proposes a variety of commercial and aviation uses, including office space and aircraft fueling, maintenance and repair, and therefore the development will be classified as "Industrial Waste" for purposes of DEQ regulations. *See* OAR 340-071-0100(85) and OAR 340-045-0010(10). These activities will generate sewage that exceeds residential strength wastewater, such as solvents and oils from the laundry generated by the maintenance shops and FBO. They are classified differently than residential wastewater systems by DEQ, and require compliance with different administrative rules. (OAR 340-045 instead of OAR 340-071.)

The expert's report indicates that "[i]ncidental spills or high strength industrial wastewater will not be discharged on site. Such discharges will be collected via containment facilities, routed to holding tanks for pumping and removal to appropriate treatment facilities." In other words, the application acknowledges that not all of the wastewater will be residential strength, and that wastewater from the proposed industrial uses will be transported by pumper truck to a municipal sewer treatment plant. This is not one of the two options allowed by Standard I. Because Standard I expressly identifies that only two types of sewage disposal are allowed, other types of sewage disposal are prohibited. Therefore the 2026 Master Plan violates MCC 17.171.060.I.

In summary, the 2026 Master Plan does not provide any estimate of sewage flows, any soil test data that shows an area that drains well enough to accommodate a septic drainfield, any location for a septic drainfield or replacement drainfield despite removal of existing drainfields from the ODAV property, any analysis of the carrying capacity of septic systems or drainfields on other properties, any easements to utilize septic systems on other properties, any preliminary septic system design, or any information indicating the county sanitarian or DEQ have reviewed the proposed development and found that either option for disposal of wastewater allowed by Standard I is feasible. The Master Plan has not met its burden of demonstrating that the effluent can be disposed on site or that it will not exceed the carrying capacity of an existing local sewage disposal system which it has an easement right to utilize. The Master Plan omits specific consideration of this issue, and there is no information in the record to support an Oregon Aviation Board finding that the Master Plan is allowed under MCC 17.171.060.I.

MCC 17.171.060.J Traffic Analysis

This criterion requires demonstration that "the development will be consistent with the identified function, capacity, and level of service of transportation facilities serving the site." This criterion is similar to, but separate from, the TPR analysis required for a zone change, and has somewhat

different requirements. The traffic studies and related memoranda in the record show the 2026 Master Plan is not consistent with the identified function of Airport Rd as a rural major collector, and will substantially exceed the capacity and level of service at numerous affected intersections. The Master Plan does not indicate that the airport will make proportional payments or construct any specific intersection improvement, and therefore, absent assurance of road improvements that provide traffic mitigation that is coordinated with affected transportation agencies, the Master Plan will degrade the level of service for all of these intersections.

The traffic study for the development of the former church camp demonstrates the 2026 Master Plan will not be consistent with the identified function, capacity, and level of service for surrounding intersections. The Oregon Aviation Board must explore this issue in detail and describe in the findings how additional traffic generated by the development proposed in the Master Plan will be mitigated.

Currently there is inadequate traffic information in the Master Plan to support a finding that it is consistent with MCC 17.171.060.J. As a starting point, the Oregon Aviation Board should order a traffic study that includes each of the enumerated items in Marion County's Traffic Impact Analysis Requirements.

MCC 17.123.060 Zone Change Criteria

The 2012 Master Plan acknowledged the lack of zoning "suitable for airport-related development recommended in this Master Plan." (page 6-4). The same EFU zoning remains in effect, so the 2026 Master Plan also requires a zone change from EFU to Public for the airport expansion areas. Therefore, the it must be compatible with Marion County's criteria for a zone change, in order to comply with ORS 197.180(1)(b).

A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the goals and policies of the Comprehensive Plan and the description and policies for the applicable land use classification in the Comprehensive Plan; and

The zone change to Public required to implement the Master Plan is not consistent with the goals and policies of the comprehensive plan as described above.

B. The proposed change is appropriate considering the surrounding land uses and the density and pattern of development in the area; and

The proposed zoning change is inappropriate because it places an urban use in a rural area. The land uses and density of surrounding lands on all four sides of the airport are zoned EFU, and it is not appropriate to continuously grow an exception area that is surrounded by EFU land.

C. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property; and

The airport lacks municipal services, which is especially important because the soils in the exception area are not suitable for on-site septic systems as required by MCC 17.171.060(I). Compliance with this criterion could only occur if annexation precedes development, which will ensure the necessary public services are provided.

Compliance with this criterion requires identification of an available method for providing adequate sewage disposal and domestic water service to the proposed development that is reasonably certain to comply with applicable standards, including MCC 17.171.060(I).

The absence of traffic analysis in the 2026 Master Plan does not demonstrate that adequate transportation facilities are in place, and mitigation is not proposed. Therefore, the Master Plan violates ORS 215.296 and OAR 660-012-0065(5)(b)(ii).

Adequate public facilities are not available, and the Marion County Board of Commissioners emphasizes that "the City of Aurora would address these deficiencies". The 2026 Master Plan is not allowed under this criterion.

D. The other lands in the county already designated for the proposed use are either unavailable or not as well suited for the anticipated uses due to location, size or other factors; and

Even if a demand for the use is identified, there is no demand for the use at the proposed location if there are other appropriately zoned parcels on which the use may be built. There are appropriately zoned parcels at the Salem Airport, which are better suited for the proposed use because they are served by adequate public facilities including sanitary sewer. These parcels include, without limitation, tax lots 100 on map 083W01; tax lots 100 and 500 of map 083W12A; tax lot 100 of map 083W01A; and tax lot 100 of map 073W36CC. Moreover, the runway at McNary Field is much longer and avoids the limitations of constrained operations. Those lands are also available in a variety of sizes and at locations with runway access and locations without runway access but zoned for commercial use. "Not as well suited" should not be interpreted to mean less than ideal, but rather it must be weighed in the

context of conversion of Class 2 agricultural lands. McNary Field and the surrounding land at the Salem Airport provide all the essential characteristics for aviation and aviation-related uses and therefore is capable of being used for the proposed uses.

E. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the new zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.

The Public Zone allows unlimited building sizes and development density at the Aurora Airport. MCC 17.171.040.C. This zoning, and the urban uses it facilitates, will significantly and adversely affect the farm uses on adjacent EFU lands. The application for conversion of the former church camp explains why the proposed aviation uses interfere with traditional farm practices. "Any farming activity could not produce dust because it would reduce visibility in the area and potentially damage sensitive equipment already located at the Airport."

Externalities from farm or forest operations such as dust, spray, smoke and noise are inherent aspects of rural life in agricultural zones. In the event of a land use conflict with traditional farm practices that produce dust or otherwise limit visibility on EFU land and other nearby land uses, other uses cannot impose significant adverse effects on farm practices. ORS 215.296(1).

The 2026 Master Plan is not consistent with the criteria for a zone change from EFU to Public, and therefore it does not meet the requirements of ORS 197.180(1)(b).

As noted in the March 20, 2019 Marion County staff report for the former church camp, the "addition of 16.54 acres of land in airport use to the existing 298 acres of airport will result in more aircraft being based at the Aurora Airport and increase the number of takeoffs and landings at the airport." The same is true for expansion of the airport south of Keil Rd as illustrated on the Airport Layout Plan. That increase in aviation activity requires a comprehensive plan amendment and new goal exceptions for the existing airport pursuant to OAR 660-004-0018(1).

In summary, the 2026 Master Plan requires zone changes that cannot satisfy the criteria, and therefore it is not allowed.

Conclusion

The aerial photos and the 2026 Master Plan and Airport Layout Plan illustrate the accelerating development of the Aurora State Airport, which relentlessly continues with a casual indifference toward the land use regulations that preclude urban uses on rural land. The Marion County Board of Commissioners frankly acknowledges the consequences and then presents the compliant solution. "Wells at the airport have, at times, been insufficient to provide the water necessary for businesses located at the airport. Also, septic systems are difficult to locate at the airport dues to soil conditions. The provision of water and sewer service from the City of Aurora would address these deficiencies in rural services."

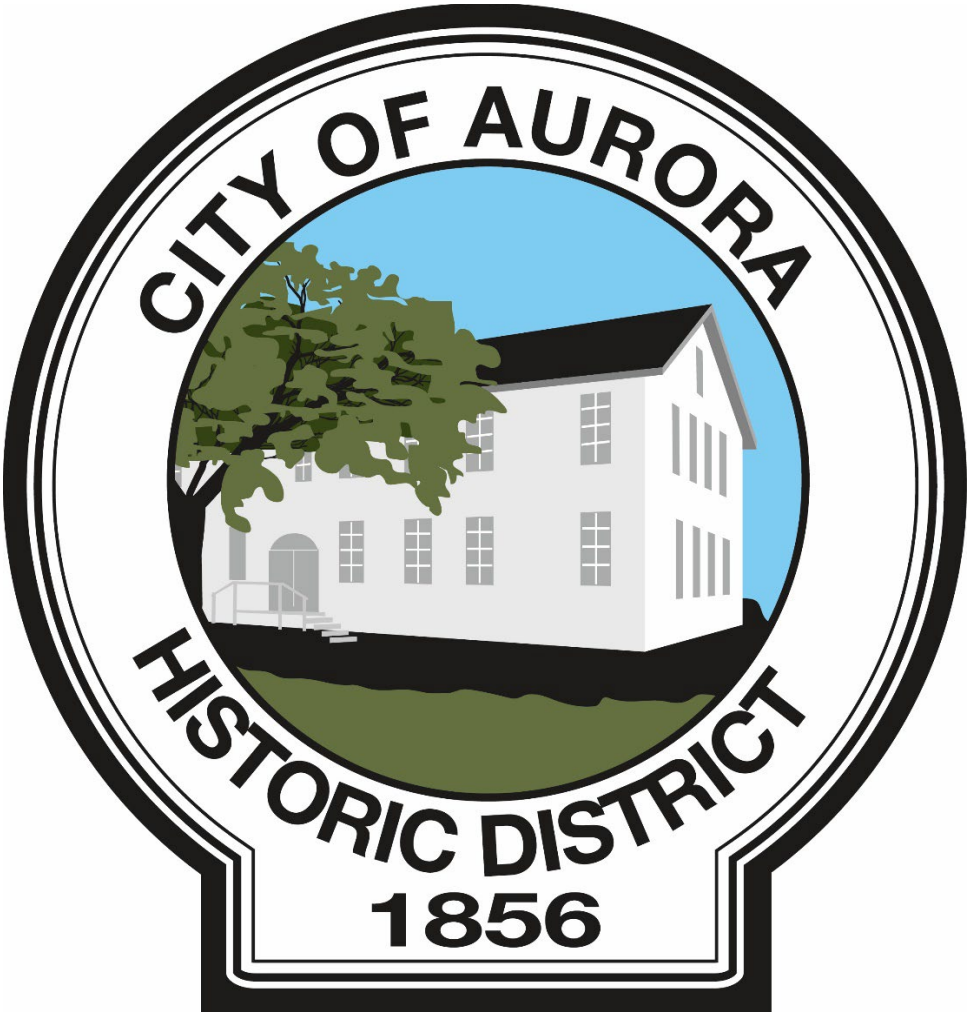
The 2026 Master Plan and its Airport Layout Plan overlook these deficiencies and the land use violations created by the ongoing expansion of urban uses outside an urban growth boundary. The City of Aurora is the solution to these land use conflicts, and looks forward to the timely annexation, extension of municipal services and an orderly and efficient transition from rural to urban land use.

Best regards,

David James Robinson

David Robinson, City Attorney

On behalf of the City of Aurora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