

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3 DONALD and LAURA GORDON,)
 husband and wife; and ROBERT)
4 and MARY SCHUEBEL, husband)
 and wife; NOPE in Mulino, Inc.,)
5 an Oregon non-profit)
 corporation, and MULINO AREA)
6 NEIGHBORHOOD ASSOCIATION)
 (MANA),)

LUBA No. 83-115

7)
 Petitioners,)
8)

FINAL OPINION
AND ORDER

9)
 vs.)
10)

11 CLACKAMAS COUNTY, and THE)
 PORT OF PORTLAND,)
)

12)
 Respondents.)

13)
 Appeal from Clackamas County.

14)
 Richard C. Stein, Salem, filed the Petition for Review and
15 argued the cause on behalf of Petitioners. With him on the
16 brief were Ramsay, Stein, Feibleman & Myers.

17)
 Michael Judd, Oregon City, filed the brief and argued the
18 cause on behalf of Respondent County.

19)
 Susan M. Quick and Stephen T. Janik, Portland, filed the
20 brief and argued the cause on behalf of Respondent Port of
21 Portland. With them on the brief were Ball, Janik & Novack.

22)
 BAGG, Chief Referee; DUBAY, Referee; KRESSEL, Referee;
23 participated in this decision.

24)
 REMANDED 03/16/84

25)
 You are entitled to judicial review of this Order.
26 Judicial review is governed by the provisions of Oregon Laws
1983, ch 827.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal the following land use decisions of
4 Respondent Clackamas County: a comprehensive plan map change
5 from Agricultural to Rural, including exceptions to LCDC Goals
6 3 and 4; a zone change from EFU-20 to RRFF-5;¹ a
7 comprehensive plan map change from Rural to Agricultural and
8 zone changes from RRFF-5 to EFU-20; a comprehensive plan map
9 change from Rural Center to Rural and a zone change from RA-1
10 to RA-2;² a conditional use permit for an airport use,
11 administrative approval of a lot line adjustment, and
12 administrative approval of a Principal River Conservation Area
13 assessment.

14 These decisions facilitate the expansion of airport
15 facilities near Mulino, Oregon. Petitioners ask LUBA to
16 reverse the decisions.

17 FACTS

18 In March of 1982, the Port of Portland applied to Clackamas
19 County to expand the Mulino Airport. The expansion would make
20 the Mulino Airport into a "General Utility" (GU) airport with
21 space for 179 permanently based aircraft. Presently, the
22 airport has three hangers and bases about 40 aircraft. Plans
23 included further expansion which would turn the Mulino Airport
24 into a "Basic Transport" (BT) facility with space for 350
25 permanently based aircraft. However, the land use decisions
26 made by Clackamas County do not include any provisions for this

1 second expansion.³

2 The property is about 6.9 miles south of the Metropolitan
3 Service District Regional Urban Growth Boundary and is
4 southwest of the Mulino Rural Center. It is bordered on the
5 east by state Highway 213, to the west by agricultural and
6 forest lands, to the north by a ridge line with residences and
7 to the south by a golf course. Portions of the project lie
8 within the Molalla River Corridor and an area known as the
9 "Principal River Conservation Area." The soils on the property
10 are listed as Class II SCS Soils and bear a Douglas Fir Site
11 Index of 128.

12 The Port did not receive consent for its proposal from all
13 affected property owners in the area. Lacking unanimity, the
14 Port asked the Clackamas County Planning Commission to initiate
15 the proceeding for all affected lands, some 14 individual
16 parcels. The planning commission denied the Port's request,
17 and the Port made the same request to the Clackamas County
18 Board of Commissioners. The board granted the request.

19 The planning commission held a series of public hearings
20 and recommended approval of the comprehensive plan changes and
21 the zone changes along with the conditional use permit. The
22 county's planning division approved a lot line adjustment⁴ in
23 a letter of June 21, 1983, and issued the notice of the
24 decision approving the assessment of the Principal River
25 Conservation Area. Petitioners herein appealed these decisions
26 to the board of county commissioners. The board held hearings

1 on July 19 and July 21, 1983. A final order approving all land
2 use decisions was entered November 2, 1983. This appeal
3 followed.

4 ASSIGNMENT OF ERROR NO. 1

5 "THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS DID NOT
6 HAVE THE AUTHORITY TO INITIATE A QUASI-JUDICIAL LAND
7 USE ACTION ON BEHALF OF A PARTY TO THE SUBSEQUENT
8 PROCEEDING."

9 ASSIGNMENT OF ERROR NO. 2

10 "THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS AND
11 PLANNING COMMISSION WERE WITHOUT JURISDICTION TO HEAR
12 THE LAND USE ACTION CHALLENGED HEREIN."

13 Petitioners argue the Clackamas County Board lacks
14 authority to initiate any quasi-judicial action. According to
15 petitioners, the county may only initiate legislative changes.
16 Petitioners characterize the land use decisions on appeal here
17 as quasi-judicial in nature.

18 Petitioners cite Fasano v. Board of County Commissioners of
19 Washington County, 264 Or 574, 507 P2d 23 (1973) in support of
20 an additional argument to the effect that the county board was
21 not impartial in this matter. In that case, argue petitioners,
22 the supreme court held that parties to a quasi-judicial land
23 use proceeding were entitled to an impartial tribunal. When a
24 board of county commissioners initiates a quasi-judicial change
25 "certainly at a minimum the appearance of impartiality is
26 lost." Petition for Review at 9.

The Board agrees with Respondents Port of Portland and
Clackamas County that the county has the authority to initiate

1 quasi-judicial (or legislative) plan and zone changes at the
2 request of any interested person. Under §3.1 of the
3 "Amendments and Implementation" Section of the Clackamas County
4 Comprehensive Plan, amendments may be initiated only by the
5 board of commissioners, the planning commission, the planning
6 director or the owner of the subject property. Under §3.2 an
7 individual or organization may request initiation of a plan
8 amendment. The only way Policy 3.1 and 3.2 make sense is if
9 read to allow the county board to initiate amendments if
10 requested by a planning organization or individual. Under
11 §3.4, the plan recognizes that plan amendments may be
12 quasi-judicial.⁵ Finally, we note as to the conditional use
13 permit and administrative approvals, that §1300 of the
14 Clackamas County Zoning and Development Ordinance provides that
15 an "administrative action" may be initiated by the county board
16 of commissioners. An administrative action is defined as a
17 quasi-judicial proceeding. See §1301.03(A) and §1301.01(A) of
18 the Clackamas County Zoning Ordinance.⁶ We conclude that as
19 the conditional use permit is a quasi-judicial proceeding, it
20 falls within the "administrative action" section of the zoning
21 ordinance. Under §1300 of the zoning ordinance, the board of
22 commissioners may initiate such action.

23 As to the notion the board lost its impartiality through
24 this procedure, we agree with the Port that the fact the county
25 board initiated the changes does not mean it or its members are
26 predisposed to a particular outcome. Public officers are

1 presumed to perform their duties properly. Christie v.
2 Tillamook Co., 5 Or LUBA 256 (1982); 3 McQuillan, Municipal
3 Corporations, §12.126 (3d ed. 1973). See also, Eastgate v.
4 Washington County, 37 Or App 745, 588 P2d 640 (1978).

5 Assignments of Error 1 and 2 are denied.

6 ASSIGNMENT OF ERROR NO. 3

7 "THE BOARD OF COMMISSIONERS FAILED TO FOLLOW THE
8 APPLICABLE PROCEDURE BY ADMITTING THE PORT OF
9 PORTLAND'S NOISE ENGINEERING DATA TO THE RECORD AND
10 RELYING THEREON WHEN SAID ENGINEERS WERE NOT
11 REGISTERED IN OREGON, NOR DID SAID DOCUMENTS HAVE
12 ENGINEERING STAMPS AND SIGNATURES, AS PROVIDED BY LAW."

13 ASSIGNMENT OF ERROR NO. 4

14 "THE BOARD OF COMMISSIONERS' FINDINGS ON NOISE IMPACTS
15 ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE."

16 Under these two assignments of error, petitioners advise
17 that the consulting engineers hired to examine the noise
18 impacts associated with the airport were not registered in
19 Oregon to practice engineering. Further, the record shows
20 their reports were not stamped and signed by a registered
21 Oregon engineer. Petitioners point to ORS 672.005(1)(b)
22 defining the practice of engineering and ORS 672.020(1)
23 providing that

24 "[i]n order to safeguard life, health and property, no
25 person shall practice or offer to practice engineering
26 in this state unless he is registered and has a valid
certificate to practice engineering under ORS 672.002
to 672.325."

27 Petitioners claim that because noise studies constitute the
28 practice of engineering, the county board was mistaken to

1 accept the evidence. Petitioners support their argument by a
2 citation to Herron v. Oregon State Penitentiary, Corrections
3 Division, 48 Or App 597, 617 Pld 320 (1980), a criminal case,
4 wherein the Court of Appeals refused to admit evidence of a
5 polygraph examination where the polygraph operator was not
6 licensed in the state. See ORS 703.050 providing for licensing
7 of polygraph examiners.

8 Petitioners go on to complain that there was no provision
9 for cross-examination. The only opportunity petitioners had to
10 challenge the evidence of the unlicensed engineers was to
11 present rebuttal testimony.

12 The Board is not convinced by petitioners' argument. The
13 case cited by petitioners is a criminal case, and a holding
14 about evidence which may be used in a criminal trial is not
15 necessarily relevant to the question of whether or not a local
16 government can accept the testimony of individuals or experts
17 (licensed or not) about noise levels. The question is whether
18 or not the evidence offered was substantial evidence to support
19 a finding of compliance with DEQ noise regulations. We believe
20 the testimony of the non-registered engineers was suitable for
21 that purpose.

22 As to petitioners' claim that error was committed because
23 it had no right to cross-examination of the experts, we agree
24 with the Port that there is no right under Oregon law to
25 cross-examination in a land use proceeding. Clinkscates v.
26 City of Lake Oswego, supra.

1 Lastly, petitioners do not explain to us how the extensive
2 evidence given on the matter of noise was erroneous or
3 incredible. The record in this case contains considerable
4 evidence on noise, and we find the county was entitled to rely
5 on this evidence as substantial evidence to support its
6 conclusions.

7 Assignments of Error 3 and 4 are denied.

8 CHALLENGES TO COMPLIANCE WITH LCDC GOALS

9 ASSIGNMENT OF ERROR NO. 5

10 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
11 REGARDING SUBSECTIONS (a) to (d) OF THE LCDC GOAL 2
EXCEPTIONS PROCESS."

12 ASSIGNMENT OF ERROR NO. 6

13 "THE BOARD OF COMMISSIONERS IMPROPERLY APPLIED THE
14 APPLICABLE LAW REGARDING SUBSECTIONS (a) to (d) OF THE
LCDC GOAL 2 EXCEPTIONS PROCESS."

15 INTRODUCTION

16 The parties do not dispute that an exception to statewide
17 planning Goals 3 and 4 was necessary in this case.⁷
18 Petitioners correctly state that it is first necessary to
19 decide whether the exceptions standards articulated in LCDC
20 Goal 2, Part II apply or whether new exceptions criteria found
21 in ORS 197.732 apply to this exception.⁸ In this case, the
22 Clackamas County Board made an oral decision approving the
23 changes needed for the airport project before August 9, 1983,
24 the date the new exceptions criteria in ORS 197.732 became
25 effective. Petitioners argue first that the county was
26 obligated to apply the LCDC Goal 2, Part II exceptions

1 criteria. Petitioners say use of the new and relaxed statutory
2 criteria violates petitioners' right to due process of law
3 because petitioners were denied the opportunity to be heard on
4 the important issue of how the new law should be applied in
5 this case.

6 The decision in this case was made on November 2, 1983. It
7 was on that date the order making the changes necessary to
8 allow the airport expansion was signed and the supporting
9 findings of fact and conclusions of law adopted. The Board
10 does not believe a decision is final until it contains
11 necessary signatures and is accompanied by written findings.
12 Thede v. Polk County, 1 Or LUBA 339 (1980). See also Heilman
13 v. City of Roseburg, 39 Or App 71, 591 P2d 390 (1979) and an
14 Order Denying Motion to Dismiss in Ludwick v. Yamhill
15 County, ___ Or LUBA ___ (LUBA Nos. 83-117/118/119, 2/22/84); OAR
16 661-10-010(3). The Board concludes, therefore, that the date
17 of the oral decision (or announcement of a decision) is not
18 effective to establish an effective date for the decisions.
19 The effective date of the decision for appeal and all other
20 purposes was the date of the written order, November 2, 1983.

21 It is worth mentioning the respondents point out 1983 Or
22 Laws, ch 827, §19(b) provides that after the effective date of
23 the act, an exception shall be taken only in accordance with
24 §19a (Section 19a provides the standards now codified in ORS
25 197.732(1)(c)). Respondent Port says, and we agree, that had
26 the legislature intended the act not to apply to proceedings

1 already underway, it would have included language to that
2 effect. See, for example, Whipple v. Houser, 291 Or 475, 632
3 P2d 782 (1981) and Hall v. Northwest Outward Bound Schools,
4 Inc., 280 Or 655, 572 P2d 1007 (1977).⁹

5 We also agree with the Port's argument that application of
6 the new exceptions criteria does not adversely affect
7 petitioners' rights. The new law sets forth a less strict
8 burden of proof than that contained in Goal 2, Part II. No
9 longer must an exception be shown by "compelling" reasons and
10 facts, but by substantial evidence.¹⁰ While the Board can
11 understand petitioners' desire to offer argument as to what the
12 new standard means, it is the county's responsibility to
13 formulate its own view and to apply the new standard. Were the
14 criteria to become more stringent or change to include
15 substantially different areas of inquiry, our conclusion might
16 well be different. Also, because the decision is on appeal
17 here and because part of our job is to determine whether the
18 county correctly applied the applicable law, petitioners may
19 make their arguments to us. ORS 197.835(8)(a)(D).

20 We now turn to the particular exception's criteria
21 petitioners say are violated by the decisions under review.

22 A. "Reasons" justifying an exception to statewide planning
Goals 3 and 4.

23 The county's findings state the basing limits for the three
24 Port of Portland owned airports in the region "are being
25 approached and their capacities are anticipated to be reached
26

1 within six years." Record, Vol. I, p. 27. The findings go on
2 to recite there is evidence in the record that privately owned
3 and operated airports are not able to expand "due to financial
4 capabilities to sufficiently accommodate demand." Id. The
5 county says the airport must be located away from intensive
6 development to avoid noise and safety difficulties, and while
7 the county recognizes that agricultural land will be taken for
8 this use, the county does not view the siting of the airport to
9 cause a proliferation of airports on agricultural land. The
10 county states that its projection shows there is a need for
11 only one reliever airport in the next 20 years. Record, Vol.
12 I, p. 28. The findings state that space for 848 more aircraft
13 will be needed by the year 2002, and even with the expansion of
14 privately owned airports in Clackamas County, there will still
15 be a need for 502 bases for individual aircraft. The county
16 finds the present proposal will accommodate 350 of this 502
17 aircraft total, and the county concludes that this space cannot
18 be obtained at existing airports. Record, Vol. I, p. 29.

19 In support of its need projections, the county points to
20 the testimony of Dr. William Rabiega, of Portland State
21 University, whom the county recognizes as an expert in the
22 matter of transportation demand forecasting. See Record, Vol.
23 III, pp. 1374, 1380.

24 Petitioners argue that the Clackamas County Board finding
25 of a need to base 842 more aircraft in the region by the year
26 2002 is erroneous.¹¹ Petitioners go on to say that even if

1 there is a need for more aircraft basing space, sufficient
2 basing capacity exists at other airports to absorb all demand.
3 Petitioners point to evidence in the Port's own airport study
4 stating that some 348 aircraft can be absorbed at existing
5 private airports in Clackamas County. See Item 59, p. 142. We
6 understand petitioners to argue the remaining need for aircraft
7 basing can be found within the region and outside the Mulino
8 Airport.

9 According to petitioners, 264 aircraft can be based at the
10 Hillsboro Airport and the Troutdale Airport, both operated by
11 the Port of Portland. Petitioners argue that a "basing lid"
12 placed on these two airports by the Port and precluding their
13 use to base more aircraft is arbitrary. Petitioners posit the
14 county was required to make a finding that the basing lids
15 could not be modified to accommodate increased demands citing
16 Norvel v. Portland Local Government Boundary Commission, 43 Or
17 App 849, 604 P2d 896 (1979). Petitioners add the county
18 findings of "environmental operational and aeronautical
19 constraints" to expansion of the basing at Hillsboro and
20 Troutdale are not supported by substantial evidence in the
21 record. See Record, Vol. I, p. 30.

22 It is important to keep in mind the requirement under ORS
23 197.732(1)(c)(A) is that the local government state "reasons"
24 which "justify why the state policy embodied in the applicable
25 goal should not apply." The "reasons" must be justified by
26 substantial evidence. ORS 197.732(6)(a). The Board believes

1 this criterion does not mean any reason whatever will suffice.
2 The reason must take into account the very strong state policy
3 embodied in LCDC goals generally, and particularly in the
4 resource goals applicable here, to preserve resource lands for
5 resource uses. In deciding whether the "reasons" offered
6 indeed justify the exception, the county and a reviewing body
7 must consider the other three criteria in the statute. That
8 is, whether or not reasons are adequate to justify an exception
9 includes some inquiry into whether other areas are available to
10 accommodate the desired use, what the consequences of the use
11 might be and whether the use is compatible with other adjacent
12 uses. See ORS 197.732(1)(c)(B, C, D) quoted in Footnote 8.

13 The Board concludes the county has adequately established a
14 reason for a reliever airport by finding a need exists for
15 additional aircraft basing in the region before the year 2002,
16 but this reason may not be sufficient justification when the
17 facts are measured against all exceptions criteria.

18 Both petitioners and the county treat the question of
19 whether the aircraft population can be based at other existing
20 airports as part of the analysis under ORS 197.732(1)(c)(A).
21 We conclude this analysis is more properly part of the inquiry
22 under ORS 197.732(1)(c)(B). However, whether other space is
23 available bears on the adequacy of the "reasons" justifying the
24 exception, as we have just noted.

25 The county made the following findings about other possible
26 places to accommodate the expected increase in aircraft:

1 "The basing limits for the three Port-owned airports
2 in the region are being approached and their
3 capacities are anticipated to be reached within six
4 years. There is evidence in the record that privately
5 owned and operated airports in the County are unable
6 to expand due to financial capabilities to
7 sufficiently accommodate demand....

8 "Some evidence was presented that the privately owned
9 public-use airports in Clackamas County can
10 accommodate the need for basing capability at Mulino.
11 However, of the eight public use airports, several
12 have failed to obtain permits for expansion and some
13 are for sale. A publicly owned public-use airport
14 will provide a more permanent high quality general
15 aviation facility in Clackamas County capable of
16 serving the non-recreational flying public.

17 "The opposition alleged that regional public airports
18 have a surplus capacity to accommodate the need for
19 Mulino. Although there may be physical capability of
20 expanding the facilities at both Hillsboro and
21 Troutdale, the basing lids at Hillsboro and Troutdale
22 airports are based on environmental, operational and
23 aeronautical constraints. The cities of Hillsboro and
24 Troutdale have incorporated these basing lids into
25 their comprehensive planning processes. Therefore,
26 the Board finds the need for basing capacity cannot be
met by the expansion of the existing reliever
airports." Record, Vol. I, pp. 30-31.

17 The Board is not clear on what the county means when it
18 says privately owned and operated airports "are unable to
19 expand due to financial capabilities to sufficiently
20 accommodate demand." Record, Vol. I, p. 27. Perhaps the
21 county is saying private airports do not have the funds to
22 expand. The statement is a conclusion for which the Board is
23 unable to find supporting findings of fact. Additionally, we
24 are not cited to evidence in the record that would support this
25 conclusion.

26 Similarly, the statement that Hillsboro and Troutdale have

1 basing lids which are based on "environmental, operational and
2 aeronautical constraints" is conclusional. Tierney v. Duris,
3 21 Or App 613, 536 P2d 435 (1975). There are no facts in the
4 findings advising the reader as to the basis for this
5 conclusion. Basic facts are necessary. Sunnyside Neighborhood
6 League v. Clackamas County, 280 Or 3 569 P2d 1063 (1977).
7 There is no explanation defining the environmental, operational
8 and aeronautical constraints. The statement that the cities
9 of Hillsboro and Troutdale have included the basing lids in
10 their comprehensive planning process does not provide a factual
11 basis for the conclusion that the basing need cannot be met by
12 expanding existing airports.

13 The Board also questions whether conclusions that privately
14 owned airports are not able to expand because of "financial
15 capabilities to sufficiently accommodate demand" (see Record,
16 Vol. I., p. 27) and that there are "environmental, operational
17 and aeronautical constraints" at Portland and Troutdale are
18 reasons which justify taking an exception to Goals 3 and 4.
19 These statements, particularly the statement about financial
20 problems may be reasons why it may be inconvenient or perhaps
21 risky to place additional aircraft at these airports.
22 Inconvenience and financial difficulties do not justify a
23 decision to avoid state policies to preserve resource lands for
24 resource uses. These same reasons could be used to support
25 taking resource land for non-resource uses simply because
26 resource land tends to be less costly than other land suitable

1 for development. We do not view the new exceptions criteria to
2 set such a standard.

3 The Respondent Port cites us to several places in the
4 record where it claims we can find evidence of "environmental,
5 operational and aeronautical constraints." Even if we look to
6 the record to supply the missing findings, we find the
7 citations only provide evidence about the existence of the
8 basing lids. There is no evidence about why the lids may not
9 be raised. For example, Record, Item 59, Appendix D at p. 26
10 states that growth management policies were established for
11 Hillsboro in 1974 and for Troutdale in 1979. The basing limits
12 were established at Hillsboro to reflect "capacity limitations
13 of a single runway and recognition of the need to limit the
14 airport's impact on the community. The 300 aircraft basing
15 limit at Troutdale reflects the fact that the airspace for
16 Troutdale and Portland International overlap." Id. The record
17 also includes a statement that the limits serve to recognize
18 the need to minimize impact on the community. Id.

19 To begin, we note the record does not support the claim
20 that Hillsboro has a single runway. See map following p. 63 in
21 Item 31, Exhibit 162 showing two intersecting runways.
22 Additionally, the limits for Hillsboro are ten years old. They
23 are four years for Troutdale. The Board is cited to no current
24 analysis in the record of the effect of raising the basing lids
25 at these two airports.¹²

26 While the citations by the Port show the basing lids exist

1 and include reasons why they were established, there is no
2 analysis why they can not be raised. What is offered is a
3 conclusion by the Port that raising the lids would "not be
4 acceptable to those communities, anymore than a violation of
5 trust would be acceptable to the citizens of Mulino or
6 Clackamas County." Violation of trust is not a criterion for
7 taking an exception. The Port's numerous record citations do
8 not provide the missing rationale or facts to resolve this
9 issue in the Port's favor. See Item 31, Exhibit 162, p. 41.
10 See, also, Item 59, Appendix D, pp. 25-26; Appendix G, p. 3-2,
11 Appendix J; Record, Vol. II, p. 803 and Vol. III, p. 1556.¹³

12 Also, it is not clear how overlapping the airspace (or
13 space for aircraft use) between various airports justifies a
14 new airport. There is no analysis of the effect on airspace of
15 raising the basing lids and spreading the aircraft basing needs
16 among other airports. The Board believes that under ORS
17 197.732(1)(c)(A), the reasons for taking an exception must
18 include an analysis of whether other facilities are available
19 to assume the needed expansion of aircraft basing. Part of
20 that analysis necessarily includes an analysis of whether
21 changes might be made in existing basing lids. Reference to
22 the existence of the lids, the reason for their enactment and
23 mere conclusions about what might happen if they are raised are
24 not sufficient to support the need for an exception. The state
25 policy existing in the goals applicable here, the agricultural
26 lands goal and the forest lands goal, is to preserve resource

1 lands for resource uses. While it is no longer true that a
2 local government must be compelled by circumstance to convert
3 resource lands for other uses, there nonetheless must be
4 reasons which justify the exception and the reasons must be
5 supported by substantial evidence.

6 We conclude the record contains substantial evidence to
7 support the county's conclusion that more places for aircraft
8 are necessary. See Record, Vol. III, pp. 1374, 1380. The
9 county's discussion of why this need for more basing space
10 requires exceptions to Goals 3 and 4 is not supported.

11 B. "Alternatives," or why other areas not requiring an
12 exception can not reasonably accommodate the use.

13 In addition to the complaints made under "A," supra, about
14 other basing sites, petitioners assert that ORS
15 197.735(1)(c)(B) is violated because the county failed to find
16 an alternative site within an established urban growth
17 boundary. We note again that this criterion and that in ORS
18 197.732(1)(c)(A) are intertwined.

19 Petitioners point to Cale v. Deschutes County, 1 Or LUBA
20 329 (1980) wherein the Board (and LCDC) held that an airport
21 serving a major urban area is an urban use.¹⁴ Petitioners
22 argue Goal 14 requires the urban use to be within an urban
23 growth boundary,¹⁵ and say that land within in the
24 Metropolitan Service District Urban Growth Boundary should be
25 examined for alternatives.

26 Petitioners then say the National Airport System Plan

1 (NASP) of the Federal Aviation Administration identifies sites
2 in Clark County, Washington, Washington, Clackamas and Yamhill
3 Counties as appropriate sites for regional reliever airports.
4 See Record, Item 47, p. 3-28, the NOPE "Impact Analysis."
5 Petitioners claim the highest demand for basing exists in
6 southern Clark County, Washington and western Multnomah and
7 Washington Counties. Item 47, Appendix C, p. 29; Record, Vol.
8 II, p. 1028. This demand is not met by a reliever facility at
9 Mulino, according to petitioners.

10 Petitioners also take issue with the county's view that
11 there must be "a large block of unallocated airspace." The
12 Board understands this reference to be to airspace that is not
13 set aside for particular areas. See Record, Vol. I, p. 33.
14 Petitioners claim that airspace "boxes" are not requirements,
15 but are planning tools. Petitioners say an increased number of
16 aircraft based at a particular field does not necessarily mean
17 there will be an increase in aircraft operations. Petitioners
18 deny the county's claim that there must be clear airspace
19 around airports because of airspace conflicts between all
20 existing metropolitan airports. See Item 31, Exhibit 162, map
21 following, p. 63; Record, Vol. II, pp. 1065, 1067; Item 47, pp.
22 3-21, Figure 3-7. Indeed, at Record, Vol. II, p. 1065 Mr.
23 Beisse of the FAA stated that

24 "[t]he number of based airplanes really has no
25 relationship to the amount of what we call airspace
26 that we need blocked out conditions. It really
depends on the type of NAV aid and the location of the
runway."

1 In other words, the number of aircraft based at a particular
2 site does not have a relationship to the demand for airspace.
3 What causes the demand for airspace is the kind of navigational
4 aids and runway location.

5 Finally, petitioners note three alternative sites which the
6 county found, for one reason or another, to be inadequate. The
7 I-5/I-205 site was ruled out because of airspace conflicts and
8 because of the hilly terrain in the vicinity make it "highly
9 unlikely" that the area is an adequate site. Record, Vol. I,
10 p. 38. The Hillsboro and Troutdale Airports were ruled out for
11 the reasons discussed, supra. The McMinnville Airport was
12 ruled out because of its distance from Portland International
13 Airport and because it has airspace conflicts with both
14 Hillsboro and Portland International Airports. Record, Vol. I,
15 p. 39. Petitioners claim all of these alternatives are
16 available, contrary to the county's findings. Petitioners add
17 the evidence does not "compel" the conclusion these airports
18 could not act as alternatives to Mulino at least to some
19 extent. Petitioners add that a combination of sites could be
20 used to share the need for additional aircraft bases.
21 Petitioners conclude that alternatives simply have not been
22 adequately explored.

23 We do not find the Cale case establishes a prohibition
24 against airports outside urban growth boundaries. As long as a
25 valid exception is taken, the airport may be located on
26 resource land. The question, of course, is the adequacy of the

1 exception.

2 The search for a site for a new reliever airport
3 encompassed all the territory in the Port district. Record,
4 Vol. I, p. 38. The county reviewed the Aurora, Scappoose,
5 McMinnville and Clark County Airports, including Pearson, Camas
6 and Evergreen, and a site at the I-5/I-205 freeway
7 interchanges. Record, Vol. I, p. 38. The county rejects each
8 of the alternatives for a number of reasons including airspace
9 conflicts, topographical conflicts and, in the case of Aurora,
10 noise conflicts. The county made a finding at Vol. I, p. 39
11 that

12 "Aurora is not a feasible alternative because it would
13 impact more agricultural land than Mulino and over ten
14 times more homes would be within the 55 Ldn contour."

15 The Board understands the 55 Ldn contour to be a noise limit
16 above which the noise from airport operations would be
17 unacceptable.

18 The county also found that some of the airports were too
19 far away from Clackamas County. Scappoose, McMinnville and the
20 Clark County airports have this characteristic. Ibid, pp. 39
21 and 40.¹⁶

22 The county's analysis of these possible alternatives
23 discusses relevant criteria and offers reasons which, on their
24 face, seem to justify their exclusion as reasonable
25 alternatives for a single reliever airport. See also Record at
26 Item 31, Exhibit 162, pp. 63-64; Item 29, pp. 31-36; Record,
Vol. III, pp. 1426-27; Vol. I, pp. 29, 61. However, as we have

1 said, the discussion of their alternative of raising the basing
2 lids at Hillsboro and sharing the need for more space among the
3 various airports within the region, is not adequate.¹⁷

4 We wish to stress again that facts showing compliance with
5 these first two of the four exceptions criteria in ORS 197.732
6 must be contained in the findings. It is not sufficient to
7 make conclusional statements of need and lack of alternatives
8 and leave it to the Board to search the record to find facts,
9 which should have been included in the findings, to support the
10 conclusions. South of Sunnyside Neighborhood League v.
11 Clackamas County, 280 Or 3, 569 P2d 1063 (1977); Tierney v.
12 Duris, 21 Or App 613, 536 P2d 435 (1975).

13 C. Consequences.

14 D. Compatiblity.

15 The Board understands petitioners to argue that the county
16 has failed to show compliance with the last two of the four
17 criteria for an exception in ORS 197.732(1). These last two
18 criteria require an analysis of the

19 "long term environmental, economic, social and energy
20 consequences resulting from the use of the proposed
21 site with measures designed to reduce adverse impacts
22 are not significantly more adverse than would
23 typically result from the same proposal being located
24 in areas requiring a goal exception other than the
25 proposed site; and

26 "D. The proposed uses are compatible with other
adjacent uses or will be so rendered through measures
designed to reduce adverse impacts."

27 However, the petitioners do not explain clearly how it is that
28 these last two criteria are violated. Petitioners simply say

1 these issues are discussed at various other places in the
2 remaining assignments of error. The Board declines to pick
3 through all 24 assignments of error to find challenges. See,
4 OAR 661-10-030(3).

5 ASSIGNMENT OF ERROR NO. 7

6 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
7 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE TO JUSTIFY AN
8 EXCEPTION TO LCDC GOAL 3."

8 ASSIGNMENT OF ERROR NO. 8

9 "THE BOARD OF COMMISSIONERS ERRED IN APPLYING THE
10 APPLICABLE LAW UNDER LCDC GOAL 3."

11 In these assignments of error, petitioners say that because
12 the Goal 2 exceptions process was not adequately addressed,
13 placing the airport on agricultural soils as defined in
14 statewide planning Goal 3, violates Goal 3.

15 The Board has already discussed the adequacy of the
16 findings for the exception. Without an adequate goal
17 exception, the use may not be approved. City of Eugene v. Lane
18 County, 2 Or LUBA 330 (1981).

19 Assignments of Error 7 and 8 are sustained.

20 ASSIGNMENT OF ERROR NO. 9

21 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
22 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE THAT THE AIRPORT
23 PROPOSAL SATISFIES LCDC GOAL 4."

23 ASSIGNMENT OF ERROR NO. 10

24 "THE BOARD OF COMMISSIONERS ERRED IN APPLYING THE
25 APPLICABLE LAW UNDER LCDC GOAL 4."

26 This argument is similar to the argument in Assignments of

1 Error 7 and 8. Our comments under Assignment of Error 7 and 8
2 apply here.

3 Assignments of Error 9 and 10 are sustained.

4 ASSIGNMENT OF ERROR NO. 11

5 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
6 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE THAT THE AIRPORT
7 PROPOSAL IS IN COMPLIANCE WITH LCDC GOAL 6."

7 ASSIGNMENT OF ERROR NO. 12

8 "THE BOARD OF COMMISSIONERS ERRED IN APPLYING THE
9 APPLICABLE LAW UNDER LCDC GOAL 6."

10 We understand petitioners to say that statewide planning
11 Goal 6 is violated because the findings about noise are
12 inadequate and are not supported by substantial evidence.
13 Goal 6 provides, in part, that "waste and process discharges"
14 must not threaten to violate or violate applicable state or
15 federal environmental quality statutes, rules and standards.
16 Noise is defined in the goal as a waste and process discharge.
17 The county found the airport would not adversely affect
18 adjacent uses. Record, Vol. I, pp. 42-47. Part of this
19 conclusion rests on findings that the impact of the noise
20 generated by the airport on rural uses or farm uses would be
21 inconsequential. See Record, Vol. I, pp. 44-45, see also Item
22 59, pp. 198-200, Item 31, Exhibit 162, pp. 82-85. The findings
23 discuss numerous noise analyses, and the Board believes the
24 findings are adequate to show noise standards will not be
25 violated. See Item 59, Appendix D, pp. 159-167; Record, Vol.
26 III, pp. 1434-1435, 1437-38.

1 Goal 6 does not demand there be no noise impact whatever.
2 The goal simply requires that applicable standards not be
3 violated. Jil Ranch Enterprises v. Wallowa County, ___ Or
4 LUBA ___ (LUBA No. 83-108, 1984). Also, petitioners' argument
5 that there has been no showing that commercial and industrial
6 establishments at the airport will meet noise standards, is not
7 well taken. Petitioners do not specify what commercial and
8 industrial uses might violate noise standards. Petitioners do
9 not tell us what kinds of commercial and industrial uses will
10 (or even may) come to the airport. We will not search the
11 record to come up with the necessary information to complete
12 petitioners' argument.

13 Assignments of Error 11 and 12 are denied.

14 ASSIGNMENT OF ERROR NO. 13

15 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
16 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE TO SHOW
COMPLIANCE WITH LCDC GOAL 11."

17 ASSIGNMENT OF ERROR NO. 14

18 "THE BOARD OF COMMISSIONERS ERRED IN APPLYING THE
19 APPLICABLE LAW BY ALLOWING A PUBLIC FACILITY URBAN IN
NATURE TO BE BUILT IN A RURAL AREA, WHICH IS NOT
20 LIMITED TO THE NEEDS OF THE RURAL AREA CONTRARY TO
LCDC GOAL 11."

21
22 Petitioners cite a portion of Goal 11 as follows:

23 "urban and rural development shall be guided and
24 supported by types and levels of urban and rural
public facilities and services appropriate for, but
25 limited to, the needs and requirements of the urban,
urbanizable and rural areas to be served." LCDC Goal
11.

26 Petitioners urge that this proposed facility will serve the

1 Portland Metropolitan region and is therefore in violation of
2 Goal 11. Presumably, petitioners would argue that an airport
3 sited in a rural area should serve only rural needs.

4 Petitioners add that they told the county of water service
5 problems, and say no findings exist as to how the proposal will
6 affect water service to the rural area. See Item 47, p. 214,
7 Appendix F-47.

8 Goal 11 does not prohibit the siting of a facility such as
9 an airport in a rural area. Airports by their nature require
10 open space. Further, this airport is to serve both urban areas
11 and rural areas. The airport, then, providing that it meets
12 other applicable criteria, is "appropriate for" and is limited
13 to "the needs and requirements of the urban, urbanizable and
14 rural areas to be served." This is not a case where an urban
15 level of services is provided to a rural area only.

16 Also, the evidence cited by petitioners about water service
17 problems does not state clearly that there will be water
18 service problems as a result of the Mulino Airport expansion.
19 The report from the engineer testifying for petitioners only
20 says that more information is needed before a determination as
21 to whether there will be water service difficulties can be
22 made. See Item 47, p. 214, Appendix F, p. 47. Given the
23 vagueness of this challenge and the nature of the evidence
24 petitioners use to support the challenge, we do not find the
25 challenge sufficiently detailed to overcome the county's
26 finding that the water system is adequate. See Record, Vol. I,

1 p. 80; Item 31, Exhibit 162, pp. 115-116 and attachment.

2 ASSIGNMENTS OF ERROR NO. 15

3 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
4 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE REGARDING
5 COMPLIANCE WITH LCDC GOAL 12."

5 ASSIGNMENT OF ERROR NO. 16

6 "THE BOARD OF COMMISSIONERS ERRED IN APPLYING THE
7 APPLICABLE LAW UNDER GOAL 12."

7 ASSIGNMENT OF ERROR NO. 17

8 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
9 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE TO SHOW
10 COMPLIANCE WITH LCDC GOAL 13."

10 Petitioners here say that while the county found the
11 proposed airport complied with Goal 12 (Record, Vol. I, pp.
12 100-105) the findings do not adequately consider "Sub-goals, 2,
13 5, 6, and 9" and are not supported by substantial evidence. By
14 sub-goals, petitioners mean the numbered considerations in Goal
15 12 which form the basis for a "transportation plan."

16 Goal 12 states:

17 "GOAL: To provide and encourage a safe, convenient and
18 economic transportation system.

19 "A transportation plan shall (1) consider all modes of
20 transportattion including mass transit, air, water,
21 pipeline, rail, highway, bicycle and pedestrian; (2)
22 be based upon an inventory of local, regional and
23 state transportation needs; (3) consider the
24 differences in social consequences that would result
25 from utilizing differing combinations of
26 transportations 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

1 regional comprehensive land use plans. Each plan
2 shall include a provision for transportation as a key
facility."

3 Petitioners allege "sub-goal" or consideration 2 is
4 violated because there is no need for the airport;
5 Consideration 5 is violated because there was inadequate
6 consideration of alternative airports, and the costs to the
7 users of the Mulino Airport do not justify the project;
8 sub-goal 6 is violated because of the vehicle miles generated
9 going to and from the airport (assuming the users would live in
10 the Portland area); and sub-goal 9 is violated because the
11 decision does not conform with the Clackamas County
12 Comprehensive Plan.¹⁸

13 Petitioners then turn to the guidelines in Goal 12.

14 Petitioners quote Guidelines 2 and 3 as follows:

15 "2. Transportation systems, to the fullest extent
16 possible, should be planned to utilize existing
17 facilities and rights-of-way within the state
provided that such use is not inconsistent with
18 the environmental, energy, land-use, economic or
social policies of the state.

19 "3. No major transportation facility should be
20 planned or developed outside urban boundaries on
Class I and II Agricultural Land, as defined by
the U.S. Soil Conservation Service unless no
21 feasible alternative exists."

22 Petitioners claim Guideline 2 requires the Port to use
23 existing facilities and to raise the basing lids unless to do
24 so would not be consistent with state policies. In both
25 Guideline 2 and 3 there is a statement that new major
26 transportation facilities such as planned for Mulino should be

1 placed within an urban growth boundary, according to
2 petitioners. Implementation Guideline 1 in Goal 12 provides

3 "the planning and development of transportation
4 facilities in rural areas should discourage urban
5 growth while providing transportation service
6 necessary to sustain rural and recreational uses in
7 those areas so designated in the comprehensive plan."

8 This implementation guideline supports the view that the use is
9 really to serve the Portland Metropolitan Area and not the
10 rural area and is also by definition an urban use, according to
11 petitioners.

12 Petitioners conclude Goal 12 is violated because the county
13 failed to make adequate findings supported by substantial
14 evidence showing how this urban use in a rural area complies
15 with Goal 12.

16 Petitioners' argument about Goal 13 simply is that the
17 airport proposal does not conserve energy, but wastes it.
18 Travel to and from the Mulino Airport will cost fuel.¹⁹

19 The county's findings on Goal 12 are summed up by a
20 conclusion appearing at Record, Vol. I, p. 100 as follows:

21 "The Board finds the location of a sophisticated
22 airport facility will help facilitate the flow of
23 goods and services in Clackamas County by providing
24 air services for business and industry."

25 The county supports this finding by stating that while the
26 Mulino Airport site includes Class II soils, it has low
27 productivity potential for agriculture.²⁰ The county goes on
28 to state, however, that there is no feasible alternative in the
29 Clackamas County region for the location of a reliever

1 airport. Ibid, p. 101. The county explains that the analyses
2 done by the Port and others shows a need for the facility and
3 the site chosen helps prevent congestion and delay at Portland
4 International Airport. Ibid, pp. 103-104. Additionally, this
5 site will relieve fuel consumption by large aircraft by
6 minimizing congestion. Id.

7 The county discusses Goal 13 in its findings. The
8 discussion includes a finding there will be a reduction in fuel
9 consumption through a reduction in delays and take-offs and
10 landings which result from a mix of general aviation and
11 commercial carrier aircraft. Ibid, p. 106. The county also
12 notes, in another section, that the Port has stated it will
13 recycle aviation oils, employ energy efficient design and
14 construction techniques and coordinate with Tri-Met to provide
15 a park and ride facility and encourage bus transportation.
16 Ibid, p. 68. While the county agrees there may be some
17 increase in automobile fuel consumption through travel from the
18 site to downtown Portland, there will not be so much increase
19 in automobile fuel consumption to offset the greater savings in
20 aviation fuel. Id. Record, Vol. II, pp. 815, 819-820,
21 878-879, 783-787, 810, Record, Vol. III, pp. 1221-1223, Record,
22 Item 59, pp. 62-63, 132, 158-160, 196-198; Record, Item 31,
23 Exhibit 162, pp. 69-70. See also Item 59, pp. 150-160
24 discussing safety margins and ground delays incurred by the
25 mixing of air carrier and general aviation traffic.

26 Goal 12, even as interpreted through the guidelines cited

1 by petitioners, does not mandate that no major transportation
2 facility be developed on agricultural land where there has been
3 a showing of need to utilize that particular site. In other
4 words, if the exception to Goals 3 and 4 is adequate, there is
5 no violation of Goal 12. The Board does not believe a facility
6 such as an airport, which is designed to serve not only the
7 local but the regional community, violates Goal 12, per se, as
8 petitioners seem to be arguing. Indeed, the second numbered
9 criterion in Goal 12 requires that a transportation plan
10 consider an inventory of local, regional and state
11 transportation needs. This consideration has lead to approval
12 of the project which serves, at least according to the county,
13 local, regional and state needs.

14 In sum, the county's analysis of compliance with Goal 12 is
15 adequate. The problem with the decision is that the county has
16 not demonstrated there is no feasible alternative to placing
17 the facility on the Class II agricultural land at Mulino. This
18 fact places the county in the position of failing to comply
19 with a goal that has been interpreted through its guidelines to
20 say that no major transportation facility should be located on
21 SCS Class I and II lands unless there is no alternative.²¹
22 The showing of whether there is no feasible alternative has not
23 been made in this case. The Board concludes, therefore, that
24 "sub-goal" or Consideration 2 in Goal 12, that transportation
25 plans be based on an inventory of local, regional and state
26 transportation needs, has not been met.

1 The Board does not find any Goal 13 violation. The goal
2 simply requires development to be managed and controlled so as
3 to maximize conservation of energy. That conservation,
4 however, must be based "upon sound economic principals." The
5 county has found a savings in aviation fuel. It balanced these
6 savings against the increase in automobile trips and fuel
7 consumption. The goal does not require the county to do more.

8 Assignments of Error 15 and 16 are sustained, Assignment of
9 Error 17 is denied. We note that if the county on remand is
10 able to demonstate the appropriateness of an exception to Goals
11 3 and 4, our objection to compliance with Goal 12 will no
12 longer be valid.

13 ASSIGNMENT OF ERROR NO. 18

14 "THE BOARD OF COMMISSIONERS MADE INADEQUATE FINDINGS
15 NOT SUPPORTED BY SUBSTANTIAL EVIDENCE TO SHOW
16 COMPLIANCE WITH LCDC GOAL 14."

17 ASSIGNMENT OF ERROR NO. 19

18 "THE BOARD OF COMMISSIONERS ERRED IN APPLYING THE
19 APPLICABLE LAW UNDER GOAL 14."

20 Petitioners remind us that Goal 14 controls urban growth
21 and requires urban uses to be placed within urban growth
22 boundaries. An urban facility such as a regional airport must
23 be located within an urban growth boundary, according to
24 petitioners. Without requiring the facility to be within an
25 urban growth boundary, petitioners argue there will be
26 "leap-frog" development over a period of time.

 This argument presumes the airport will attract additional

1 uses and cause a kind of urban sprawl to occur around the
2 airport. The Board does not find this conclusion justified
3 from the findings or the record. The comprehensive plan still
4 controls commercial growth in the Mulino area, and the land use
5 pattern for the area is not necessarily altered by the
6 placement of the airport facility. See Record, Vol. I, pp.
7 55-56.

8 The Board concludes that the goals, including Goal 14, do
9 not prohibit the placement of an airport outside of an urban
10 growth boundary, as alleged by petitioners in this case.

11 Assignments of Error 18 and 19 are sustained only insofar
12 as placement of this use is dependent upon an adequate
13 exception. With an inadequate exception, placement of an urban
14 use outside an urban growth boundary does violate Goal 14.
15 Again, when the county is able to demonstrate the adequacy of
16 the exception, the objection to compliance with Goal 14 will no
17 longer be valid.

18 CHALLENGES TO COMPLIANCE WITH THE CLACKAMAS COUNTY

19 COMPREHENSIVE PLAN AND IMPLEMENTING ORDINANCES

20 ASSIGNMENT OF ERROR NO. 20

21 "THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS' FINDINGS
22 THAT THE PROPOSED AIRPORT WOULD BE IN COMPLIANCE WITH
23 THE COUNTY'S COMPREHENSIVE PLAN WATER RESOURCES GOALS
WERE INADEQUATE AND NOT SUPPORTED BY SUBSTANTIAL
EVIDENCE."

24 ASSIGNMENT OF ERROR NO. 21

25 "THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS' FINDINGS
26 THAT THE PROPOSED AIRPORT WOULD BE IN COMPLIANCE WITH
THE GOALS OF THE MOLALLA RIVER PRINCIPLE [sic] RIVER

1 CONSERVATION AREA (PRCA) WERE INADEQUATE AND NOT
2 SUPPORTED BY SUBSTANTIAL EVIDENCE."

3 First, petitioners point to Policy No. 3 of the water
4 resources policies of the comprehensive plan. Policy 3.0
5 provides, in part

6 "preservation of a buffer or filter strip of natural
7 vegetation along all river and stream banks (excluding
8 intermittent streams), the depth of which will be
9 dependent upon the proposed use or development, width
10 of river or stream, steepness of terrain, type of
11 soil, existing vegetation, and other contributing
12 factors, but will not exceed 150 feet."

13 Petitioners say there are no findings showing compliance
14 with this policy. Petitioners advise this policy was made the
15 subject of considerable testimony. See Record, Item 47.

16 Petitioners turn to Policy 10.2(a) of the "Principal River
17 Conservation Area" (PRCA) provisions in the plan which require
18 maintenance of a vegetative fringe areas along rivers free of
19 structures, grading and tree cutting. Petitioners say the
20 findings on this matter state there will have to be some
21 trimming of trees. Record, Vol. I, p. 61. While the county
22 has taken mitigation steps, petitioners argue this policy does
23 not allow any vegetative removal or topping of trees unless the
24 trees are diseased or in danger of falling.

25 Respondents argue that implementation of the cited plan
26 policy is through specific standards in the zoning and
development ordinance. Clackamas County points to Policy 6 of
its comprehensive plan, "Amendments and Implementation," which
provides the county will implement its plan through appropriate

1 ordinances and actions. Further, §102 of the zoning and
2 development ordinance recognizes that the zoning and
3 development ordinance is enacted to implement the comprehensive
4 plan. Respondent County goes on to note that §704 of the
5 Clackamas County Zoning Ordinance implements the plan
6 provisions about vegetative buffer along the Molalla River.
7 The county made findings about §704. See Record, Vol. I, pp.
8 3-13.

9 The county also points out a "public use" exception to some
10 of the standards in the ordinance. Where, as here, a public
11 use exists, the prohibition on tree cutting and grading in the
12 PRCA is not applicable. See §704.05(B)(2). Respondent Port
13 and the county argue that the county has interpreted its
14 ordinance to view the Mulino Airport as a public use facility.
15 That interpretation is reasonable and not contrary to the terms
16 of the ordinance and should therefore be upheld, argue
17 respondents. Alluis v. Marion County, 7 Or LUBA 98 (1983).

18 The structure of the Clackamas County plan and ordinance
19 clearly provides the zoning ordinance implements the plan.
20 However, there is an apparent inconsistency between the plan,
21 which calls for no cutting, and the zoning ordinance, which
22 allows cutting for public uses. While we can agree that the
23 proposed airport is a "public use," we can not say the county
24 is free, as its ordinance seems to suggest, to violate a plan
25 policy. In the recent case of Philippi v. Sublimity, 294 Or
26 730, 662 P2d 325 (1983), the court held the plan to have "the

1 preeminent position in its [a local government's] land use
2 powers and responsibilities." Philippi, 294 Or at 735. Given
3 this preeminence, we are doubtful the county can rely on a
4 zoning ordinance provision which seems contrary to the express,
5 absolute terms of the plan. See also, Liles v. City of
6 Gresham, 66 Or App 59, ___ P2d ___ (1983).

7 We note tht the word "cutting" in Policy 10.2(a) appears in
8 a context suggesting the term may really mean tree felling or
9 removal. It may be that tree trimming may be distinguished
10 from "cutting." We note also that Policy 10.2(a) refers back
11 to Policy 3.0. Policy 3.0 recognizes the existence of
12 commercial forest activities and harvesting practices and
13 simply states such activities will provide for vegetation
14 buffers, shading and soil stablization. The Board believes
15 these provisions, when read together, may not absolutely
16 prohibit all tree cutting activities anywhere along the river.
17 However, an analysis of how the policies work together is up to
18 the county to conduct on remand.

19 Next, petitioners cite Policy 10.2.b which provides a goal
20 in the PCRA to

21 "minimize erosion and sedimentation through drainage
22 control techniques, revegetation of cleared/disturbed
23 areas, phasing of vegetation removal,..."

24 Petitioners argue the finding on this policy, which simply
25 states that development will not cause "any increased erosion,"
26 is inadequate because it does not explain how erosion will be
27 minimized. See Record, Vol. I, p. 59. As far as drainage and

1 erosion, the county findings at Record, Vol. I, p. 58-62
2 discuss erosion measures. A storm drainage plan was provided
3 as part of the environmental impact statement. See Item 59,
4 pp. 44-45, 87-88, Environmental Impact Statement, Appendix G,
5 5-61-62. See also Record, Vol. III, pp. 1343, 1352.

6 The Board finds the county's discussion about erosion to be
7 adequate. As noted above, a storm drainage plan was provided
8 as part of the environmental impact statement, and there is
9 adequate evidence in the record to support the county's
10 conclusion that erosion and sedimentation will be minimized.
11 Minimization of erosion, after all, is all the policy requires.

12 Next, petitioners point to Policy 13.1 which relates to the
13 Molalla River Design Plan Policies and includes a goal to

14 "[i]mplement the design plan for the Molalla/Pudding
15 Rivers according to the following map which
16 illustrates uses. Management activities and land
17 classification is shown on the map are consistent with
18 land use policies and designations in the Land Use
19 Chapter...."

20 Petitioners here claim that because the county did not
21 adequately consider conflicts between the airport and
22 agricultural and forestry preservation, finding of compliance
23 with Policy 13.1 is inadequate.

24 The Board does not find Policy 13.1 is violated. Part of
25 the decision on appeal changes the designation of the Molalla
26 River Design Plan from natural resource to low intensity
rural. The rural designation allows airports as conditional
uses. That change is effective for the portion of the airport

1 which borders the Molalla River. See Record, Vol. I, p. 108.
2 In other words, the land classification shown on the map is
3 "consistent with land use policies and designations in the land
4 use chapter...." The Board finds no violation.

5 Lastly, under this sub-assignment of error, petitioners
6 point to Policy 16 which states that it is the county's policy
7 for wetlands to

8 "prevent disturbance of natural wetlands (marshes,
9 swamps, bogs) associated with river and stream
10 corridors or otherwise identified as Open Space on the
11 Urban Land Use Map. Adjacent development shall not
12 substantially alter normal levels or rates of runoff
13 into and from wetlands. Site analysis and review
14 procedures specified in the Land Use Chapter shall
15 apply (see Wildlife Habitats and Distinctive Resource
16 Areas)."

17 Petitioners point to evidence showing the proposed airport
18 will eliminate wetlands by filling them. See Item 47, p. 4-2.

19 As to the matter of wetland protection, the respondents
20 point to Record, Vol. I, p. 60 wherein the county found that a
21 detailed study conducted by the Port of Portland along with the
22 Corps of Engineers adequately addresses wetlands. See also,
23 Item 59, Appendix G, p. 5-72. According to Respondent County,
24 it was justified in its reliance on the Corps of Engineers, the
25 United States Department of Interior, Fish and Wildlife Service
26 and the findings made in the Environmental Impact Statement to
27 find that the wetlands will not be eliminated or filled as
28 alleged by petitioners.

29 As to wildlife, the county found a biological inventory
30 prepared by the Port of Portland addresses the issue. Record,

1 Vol. I, pp. 66-67. The Port proposed mitigation measures which
2 the county found to be adequate. See Record, Vol. I, 61-62;
3 Item 59, Appendix G, pp. 5-67-70.

4 The board believes the county's findings and conclusions
5 and the evidence supporting them are adequate. The
6 petitioners' claims appear to be based on the assumption there
7 can be no impact on wetlands and wildlife habitat, whatsoever.
8 However, the comprehensive plan does not establish a
9 prohibition as claimed by petitioners. The policy prevents
10 development from "substantially" altering levels of runoff to
11 and from wetlands, and we are cited to no wildlife habitat
12 policy that prohibits intrusions into the habitat.

13 Finally, petitioners allege conditions imposed to insure
14 compliance with §704 of the zoning ordinance to be "after the
15 fact" conditions which are impermissible. Petitioners urge the
16 Board to hold the county in violation of §704 for failure to
17 make findings showing absolute compliance with provisions of
18 §704.²² Additionally, petitioners tack on claims that the
19 noise generated by the aircraft will reduce the quality of
20 recreation and wildlife habitat within the PRCA and that the
21 runway lights may injure wildlife habitat and complain that
22 there are not findings about the intrusion of runway lights
23 into the river corridor.

24 The Board does not find these challenges to be
25 sustainable. The conditions imposed by the county are not
26 conditions which impermissibly take the place of required

1 findings of fact. Margulis v. City of Portland, 4 Or LUBA 89
2 (1981); Rockway v. Stephani, 23 Or App 639, 543 P2d 1089
3 (1975). The conditions do no more than insure that only the
4 minimum disturbance of vegetation will occur as is necessary to
5 allow the airport development.

6 As to noise, the Board has already discussed the matter as
7 part of petitioners' challenge to Goal 6. The Board notes,
8 however, that petitioners do not cite to any evidence or make
9 any argument other than the bald statement that the noise level
10 generated will injure the quality of recreation of wildlife
11 habitat. This is a relatively technical issue, and petitioner
12 must do more than say that the environment will be damaged
13 before the Board can agree.

14 As to the issue of runway lights and its effect on
15 wildlife, we note the county found the runway lights are at a
16 different elevation than the vegetative corridor. The impact
17 of the lights "if any, will be minimal." Vol. II, p. 4. See
18 also, Item 59, p. 11. The Board does not believe the county
19 can be held to address issues for which there appears to be no
20 credible basis in fact. That is, petitioners must do more than
21 simply say a policy is violated or an environment damaged,
22 particularly where the county has made findings stating the
23 opposite. Siegel v. Josephine County, 6 Or LUBA 30 (1982).

24 Assignments of Error 20 is denied. Assignment of Error 21
25 is sustained, insofar as the county has not shown compliance
26 with Principal River Conservation Area Policy 10.2(a).

1 ASSIGNMENT OF ERROR NO. 22

2 "THE BOARD OF COMMISSIONERS' FINDINGS THAT THE
3 PROPOSED AIRPORT COMPLIES WITH THE RURAL SECTION AND
4 POLICIES OF THE CCCP ARE INADEQUATE AND NOT SUPPORTED
5 BY SUBSTANTIAL EVIDENCE."²³

6 Under this assignment of error, petitioners say this
7 decision redesignates 59.5 acres from agricultural to rural and
8 3.5 acres from rural center to rural. The reason for the
9 change is because only the RA-2 and RRFF-5 Zones allow airports
10 as conditional uses. See Footnote 1, supra. Petitioners argue
11 that the goal of the "rural" designation is to provide rural
12 residential housing. There is nothing to explain how this
13 urban use will perpetuate a rural atmosphere, or how the
14 construction of an airport with a resultant loss of 10 rural
15 residences meets the need for rural residences.

16 Petitioners go on to argue that Policy 2.0 in the "Rural"
17 section of the comprehensive plan requires a showing why
18 additional rural land is needed or should be provided, and
19 Policy 2.0(b) requires an evaluation of alternative areas.
20 Petitioners argue that one of the goals of the "Rural"
21 comprehensive plan section is to perpetuate a rural atmosphere,
22 and it is not explained how an urban use perpetuates a rural
23 atmosphere. Petitioners argue Policy 2(b) requires a finding
24 evaluating alternative areas of the county suitable for a rural
25 designation and a statement as to why the area chosen is more
26 suitable than another available area. The Board understands
petitioners to complain the county's findings do not adequately

1 address these policies.²⁴

2 Petitioners go on to challenge Policies 6.0, 7.0, and 10.0
3 on the grounds that no effort was made to identify other areas
4 with marginal or unsuitable agricultural soils; the new airport
5 is not consistent with the rural character of the area and the
6 Port is developing its own sewer system in violation of Policy
7 10.0.²⁵

8 Policy 2.0 in the "Rural" section of the comprehensive plan
9 sets out criteria for designation of additional rural lands.
10 The criteria mirror the exceptions criteria in ORS 197.732.
11 The Board agrees with petitioners that to the extent the county
12 has not shown compliance with subparagraphs A and B of ORS
13 197.732(1)(c), the county has similarly not shown compliance
14 with Policy 2.0(a) and (b) of the "Rural" section of its plan.
15 That is, the county has not adequately demonstrated why
16 additional rural land is needed or should be provided, and the
17 county has not adequately demonstrated why the Mulino Airport
18 is more suitable than other potential alternative sites or
19 methods for basing additional aircraft.

20 The Board does not agree that Policies 6.0 7.0 and 10.0 are
21 violated. Policy 6 simply calls for a priority in rural
22 development to be given to areas with marginal agricultural
23 soils. That policy does not prohibit a development on
24 agricultural land. Similarly, Policy 7 only urges the county
25 to expand or develop public services when it can do so
26 consistent with maintaining rural character of an area. This

1 policy is not a prohibition, but a requirement that the county
2 attempt, as much as possible, to maintain the rural character
3 of an area.

4 The Board agrees with the county that Policy 10 is not
5 violated. The Port is establishing a septic tank system which
6 is the only kind of system Policy 10 will allow. See, Vol. I,
7 p. 79. Policy 10 prohibits sewer systems unless they are run
8 by a service district or a city. The county has interpreted
9 its ordinance to distinguish sewer systems from private septic
10 tank systems. Since the Port is developing a septic tank
11 system and not a sewer system, there is no violation of Policy
12 10. The Board agrees the county has interpreted its ordinance
13 reasonably, and the Board will defer to that interpretation.
14 Alluis v. Marion County, supra.

15 Assignment of Error 22 is denied.

16 ASSIGNMENT OF ERROR NO. 23

17 "THE BOARD OF COMMISSIONERS' FINDINGS CONCERNING THE
18 ZONE CHANGE REQUESTS ARE INADEQUATE AND NOT BASED ON
19 SUBSTANTIAL EVIDENCE."

19 ASSIGNMENT OF ERROR NO. 24

20 "THE BOARD OF COMMISSIONERS' FINDINGS CONCERNING THE
21 CONDITIONAL USE REQUESTS ARE INADEQUATE AND NOT BASED
22 ON SUBSTANTIAL EVIDENCE."

22 A. Compliance With Zoning Ordinance §813.

23 Petitioners attack the zone changes for compliance with
24 Clackamas County Zoning Ordinance §1202.01, and petitioners
25 attack the conditional use permits under §308.05 and §309.05 of
26 the zoning ordinance. Petitioners point out the conditional

1 use permits must be in compliance with §1203 and §816 of the
2 zoning ordinance, or they can not be granted.

3 Section 816 refers to aircraft landing areas and contains
4 minimal standards including a requirement that noise not exceed
5 standards set by the Department of Environmental Quality.

6 Section 816.03(b). Petitioners allege this standard is
7 violated for the same reasons discussed supra at Assignment of
8 Error No. 3. For the reasons discussed earlier, we reject this
9 notion.

10 Petitioners also attack compliance with §816.03(d)
11 requiring that no use of land or water be made which would
12 interfere with radio navigation aids or radio communication or
13 make it difficult for a pilot to distinguish between airport
14 lights and other lights, impair visibility, create bird hazards
15 or otherwise endanger aircraft take-offs and landings.

16 Petitioners claim the county made no findings on bird strikes,
17 and point to evidence showing there are numerous varieties of
18 birds in the area.

19 Under these circumstances, the Board does not find error.
20 Section 816.03(d) prohibits any use of land or water within an
21 approach or departure zone which would "create bird strike
22 hazards, or otherwise in any way endanger or interfere with the
23 landing, take-off, or maneuvering of aircraft intending to use
24 the airport." This prohibition is not phrased to say an
25 airport may not be placed in a particular area, the prohibition
26 is phrased to prohibit uses of land that would create such

1 hazards within an airport approach or departure zone. In other
2 words, the prohibition is not on the placement of an airport
3 but on uses which may be placed around an airport. The Board
4 finds no violation of this provision.

5 B. Compliance With Zoning Ordinance §1203 "Conditional
6 Use" Standards.²⁶

7 Petitioners say §1203.01(A) is violated. Section
8 1203.01(A) requires that the use proposed be listed as a
9 conditional use in the underlying district. Because the zone
10 changes are alleged to be invalid, and because an airport is
11 not a conditional use in the original underlying zones,
12 §1203.01 has not been met, according to petitioners.

13 To the extent the rural zoning necessary for the placement
14 of the airport is invalid because it relies, in part, on an
15 invalid exception, the Board must agree that §12.03.01(A) of
16 the zoning ordinance is violated.

17 Petitioners next say the county violated §1203.01(B)
18 requiring that the characteristics of the site be suitable for
19 the proposed use. Petitioners claim the county commissioners
20 improperly deferred this decision about topography and site
21 characteristics to the Port of Portland. Petitioners advise
22 the county board made a finding that the Port had expertise in
23 planning. Petitioners consider this recognition to be a
24 delegation of responsibility to the Port which is not
25 permissible. See Record, Vol. I, p. 89.

26 The Board agrees with the respondents that no delegations

1 occurred. The county made its own findings showing compliance
2 with siting criteria.²⁷ The fact that the county board
3 stated the Port had particular expertise in planning this kind
4 of facility does not mean the county board has abdicated its
5 responsibilities.

6 Petitioners then attack the findings under §1203.01(C)
7 which requires that the development be timely considering the
8 adequacy of transportation and other public facilities.

9 Petitioners here echo their discussion about the matter of
10 water storage. We have already discussed their complaint. See
11 pp. 27-28, supra.

12 Next petitioners attack compliance with §1203.01(D) and (E)
13 on the grounds that the character of the area will be altered
14 and the policies of the comprehensive plan have not been
15 complied with. Petitioners allege §1203.01(D) requires that no
16 alteration of the character of the area occur and that the use
17 of surrounding properties for the uses listed in the underlying
18 district not be precluded. See Record, Vol. I., p. 90. The
19 petitioners cite evidence that some members of the community
20 will have to relocate, and petitioners also claim there will be
21 noise impacts.

22 The Board has discussed the matter of noise impact under
23 petitioners' claims about Goal 6. The Board will not repeat
24 that discussion here.

25 As to the issue of persons having to relocate, the Board
26 notes that §1203.01(D) does not impose an absolute prohibition

1 on a use which alters the character or other uses of the
2 surrounding properties. The provision simply requires that the
3 use not alter the character of the surrounding area in a way
4 which "substantially limits" surrounding uses allowed in the
5 underlying zone. Neither the petitioners nor respondents
6 define what that area is, but the Board believes it is only
7 reasonably to consider the area to be larger than that
8 immediately effected by new construction at the airport. The
9 Board concludes that dislocation of persons immediately
10 adjacent to the proposed use does not violate §1203.01(D).

11 Lastly, the Board notes §1203.01(E) simply echos the
12 requirement found elsewhere in the ordinance that the
13 comprehensive plan be complied with. Petitioners have restated
14 their earlier arguments about the comprehensive plan, and the
15 Board believes these issues have been adequately discussed.

16 Assignment of Error 24 is sustained only insofar as
17 petitioners have alleged that because the exception to Goals 3
18 and 4 is inadequate, the county was unable to make the zone
19 changes necessary to make the airport a conditional use.

20 The decisions of Clackamas County are remanded for further
21 proceedings not inconsistent with this opinion. The Board
22 believes the county is required to explain in greater detail
23 how the proposal to enlarge the airport at Mulino is an action
24 justifying why state policies embodied in Goals 3 and 4 should
25 not apply. Part of this explanation will necessarily include
26 an analysis of why existing airports cannot accommodate the

1 need for the additional aircraft basing need. There must be an
2 analysis as to why existing airports, including Hillsboro and
3 Troutdale, "can not reasonably accommodate" expanded aircraft
4 basing. ORS 197.732(1)(c)(A)(B).

5 In addition, the county should provide an explanation of
6 the apparent conflict between plan Policy 10.2(a), the
7 "Principal River Conservation Area" policy and §704.05(13)(2),
8 or otherwise show how the decisions are consistent with Policy
9 10.2(a).

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FOOTNOTES

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1 EFU-20 is an "Exclusive Farm Use" Zone with a 20 acre minimum lot size. The RRFF-5 Zone is a Rural Residential, Farm/Forest Zone with a 5 acre minimum lot size.

2 The RA-2 Zone in Clackamas County is a Rural Area Single Family Residential Zone with a two acre minimum lot size.

3 This possible further expansion is referred to as "Phase II" in the record.

4 The lot line adjustment was to comply with federal regulations about airport runways, airspace and obstructions to runways.

5 Section 3.4 reads as follows:
"If the proposed amendment is quasi-judicial, all property owners within 250 feet of the requested change shall be notified of the hearing date and the requested amendment at least 20 days prior to the first scheduled hearing. The CPO Community Planning Organization in the effected area shall be notified 35 days prior to the first hearing."

The Board notes §3.5 appears to recognize that plan amendments may be legislative also.

"If the proposed amendment is legislative, notice of public hearing, together with a copy of the proposal, will be mailed to all recognized CPO Community Planning Organizations at least 35 days prior to the scheduled public hearing."

6 Also, ORS 215.050, the statute authorizing counties to adopt plans "part by part or by geographic area," makes no distinction between a legislative enactment and a

1 quasi-judicial proceeding resulting in a plan adoption or
2 change.

3 _____
4 7 Indeed, the parties do not dispute the goals are generally
5 applicable to this case.

6 _____
7 8 Goal 2, Part II provides as follows:

8 Exceptions: When, during the application of the statewide
9 goals to plans, it appears that it is not possible to apply
10 the appropriate goal to specific properties or situations,
11 then each proposed exception to a goal shall be set forth
12 during the plan preparation phases and also specifically
13 noted in the notices of public hearing. The notices of
14 hearing shall summarize the issues in an understandable and
15 meaningful manner. If the exception to the goal is
16 adopted, then the compelling reasons and facts for that
17 conclusion shall be completely set forth in the plan and
18 shall include:

13 "(a) Why these other uses should be provided for;

14 "(b) What alternative locations within the area could
15 be used for the proposed uses;

16 "(c) What are the long term environmental, economic,
17 social and energy consequences to the locality,
18 the region or the state from not applying the
19 goal or permitting the alternative use;

20 "(d) A finding that the proposed uses will be
21 compatible with other adjacent uses."

22 "ORS 197.732 Goal exceptions; criteria; rules;
23 review. (1) A local government may adopt an exception
24 to a goal when:

25 * * *

26 "(c) The following standards are met:

"(A) Reasons justify why the state policy embodies in
the applicable goals should not apply;

"(B) Areas which do not require a new exception
cannot reasonably accommodate the use;

1 of this Act, notwithstanding any existing provisions of the
goals or other rules governing exceptions to the goals."

2

3 10

The county did make findings on both the old and the new
4 exceptions criteria.

5

11

6 The Board understands the "region" to include, generally,
Clark County, Washington and Multnomah, Clackamas and
7 Washington Counties in Oregon.

8

12

9 In Appendix G, p. 3-2 through 3-4, there is discussion of
expansion of Hillsboro, Troutdale and Aurora state airports.
10 The discussion includes a statement that the basing limit at
Hillsboro was based on community noise exposure "and other
11 environmental concerns, and in consultation with the City of
Hillsboro." It states that removing the basing lid at
12 Hillsboro would require the addition of another runway, but it
does not explain why. The comments about Troutdale speak of
13 conflicts with shared airspace with Portland International and
states that the limit was established to minimize environmental
14 impacts on the adjacent communities. Aurora is stricken as a
possible place for expansion because of impacts on a
15 subdivision west of the airport. There is a curious statement
that since Aurora is outside the Port of Portland's
16 jurisdiction, a legislative change would be needed to grant the
Port power to operate at Aurora. The Port says it has no plans
17 to seek such authority. This last statement is hardly a reason
to rule out an airport when the criteria is not whether a
18 public entity wishes to take legislative action, but whether an
exception should be taken to two statewide planning goals.

19

20 13

We note the letters from the City of Hillsboro at Vol. III,
21 p. 1556 and Vol. II, p. 803, refer to the basing lids and
states that the community "has dealt with the impacts of the
22 facility and has assurances that the airplane lid won't be
increased without our involvement and approval."

23

24 14

Along with the Goal 14 argument, petitioners point to
25 Guideline 3 of LCDC Goal 12 limiting transportation facilities
in agricultural land. The guideline says no major
26 transportation facility should be planned or developed outside

1 urban boundaries on Class I and II Agricultural Land, as
2 defined by the US Soil Conservation Service unless no feasible
3 alternative exists. They argue that while the guideline is not
4 binding, it is necessary to use the guideline in construing the
5 alternatives criteria. In other words, petitioners argue Goal
6 12 requires a showing that there are no alternatives to taking
7 the agricultural land at Mulino for an expanded airport. We
8 discuss the matter of compliance with Goal 12 under Assignment
9 of Error 15-16, infra.

6
15

7 Urban land is defined in the goals as follows:

8 "Urban areas are those places which must have an
9 incorporated city. Such areas may include lands adjacent
10 to an outside incorporated city and may also; (a) Have
11 concentrations of persons who generally reside and work in
12 the area (b) Have supporting public facilities and
13 services."

11 The purpose of Goal 12 is "to provide for an orderly and
12 efficient transition from rural to urban land use.

13 Urban growth boundaries shall be established to identify
14 and separate urbanizable land from rural land."

15
16

15 The findings recite that Clackamas County has the greatest
16 need for a reliever airport.

17
17

18 The county made a finding that

19 "some evidence was presented that the privately owned
20 public-use airports in Clackamas County can
21 accommodate the need for basing capability at Mulino.
22 However, of the 8 public-use airports, several have
23 failed to obtain permits for expansion and some are
24 for sale. A publicly owned public-use airport will
25 provide a more permanent high quality general aviation
26 facility in Clackamas County capable of serving the
27 non-recreational flying public." Record, Vol. I, p.
28 30.

24 The fact that several airports have not obtained permits for
25 expansion or are for sale does not explain why they can not
26 take additional aircraft. This finding may give an adequate
27 reason why individual airports can not assume the whole load,

1 but the Board fails to understand what a potential sale of an
2 airport or its failure to obtain unspecified permits for
3 expansion has to do with whether or not additional aircraft may
4 be based there.

5 The statement that a publicly owned airport will provide a
6 high quality aviation facility is not an explanation of why
7 alternatives are not reasonably available. It is a statement
8 which might be used to support a determination of need. In its
9 present form, however, it is simply a statement of desire.

10 Also, we are mindful of the county's findings that the
11 number of basic transport aircraft (exceeding 12,500 lbs. gross
12 weight) will increase. The county states that by 1992, more
13 basic transport category airport facilities will be needed.
14 The county also found that private airports can not accommodate
15 these large aircraft. Missing, however, is any explanation or
16 facts showing why existing publicly owned airports can not
17 accommodate the expected increase.

18

19 This last consideration is taken up on Assignments of Error
20 and 22.

21

22 "GOAL 13: To conserve energy.

23 "Land and uses developed on the land shall be managed and
24 controlled so as to maximize the conservation of all forms
25 of energy, based upon sound economic principles."

26

27 This statement is essentially irrelevant. The land is
28 agricultural land, is subject to the protection of Goal 3 and
29 was recognized by the county as subject to such protection as
30 witnessed by the county zoning of the property for exclusive
31 farm use.

32

33 The Board realizes that guidelines are not binding on local
34 governments. See ORS 197.015(9). As we noted in Gresham v.
35 Fairview, 3 Or LUBA 219, 229 (1981), the guidelines express
36 LCDC's interpretation of a goal, and they should be given some
weight. The Gresham v. Fairview opinion was issued under the
provisions of 1979 Or Laws, ch 772. The Board's opinion in
Gresham v. Fairview was referred to the commission for its
review of our discussions about statewide planning goals. See

1 1979 Or Laws, ch 772, §5(3), as amended. The commission
2 approved the Board's opinion including the Board's use of a
3 goal guideline.

3
4 22

4 The following are the mitigation measures imposed by the
5 county

6 "(i) Before any vegetation is modified or removed
7 within the PRCA boundary, the Port will
8 provide Clackamas County a report addressing
9 the items in Section 704.05 of the Ordinance.

10 "(ii) The Section 704.03 buffer strip along the
11 north side of the Molalla River will be
12 maintained in a low growing vegetative cover
13 that does not conflict with FAA Part 77
14 surfaces.

15 "(iii) The Port will identify individual trees to be
16 topped or removed on the south side of the
17 Molalla River." Record, Vol. I, p. 61.

18
19 23

20 The Board understands CCCP to refer to the Clackamas
21 County Comprehensive Plan and not a foreign nation.

22
23 24

24 Policy 2.0 of the county comprehensive plan includes
25 criteria which are similar to those found in ORS
26 197.732(1)(c)(A through D).

"2.0 Designation of additional rural lands shall be
based on findings which shall include but not be
limited to

"a. Reasons why additional Rural land is needed
or should be provided.

"b. An evaluation of alternative areas in the
County which should be designated Rural; and
a statement of why the chosen alternative is
more suitable.

"c. An evaluation of the long term
environmental, economic, social and energy
consequences to the locality, region or
state by designating this area Rural.

1 "d. Reasons why designating the area Rural will
2 be compatible with other adjacent uses."

3

25

4 Plan Policy 6.0, 7.0 and 10.0 are as follows:

5 "6.0 Areas with marginal or unsuitable soils for
6 agricultural use shall be given a higher
7 priority for conversion to rural development
8 than areas with more suitable soils.

9 "7.0 Public facilities should be expanded or
10 developed only when consistent with maintaining
11 the rural character of the area.

12 * * *

13 "10.0 All sewerage systems shall be maintained by a
14 County service district or an incorporated city."

15

26

16 "1203.01 The Hearings Officer may allow a conditional
17 use, after a hearing conducted pursuant to
18 Section 1300, provided that the applicant
19 provides evidence substantiating that all
20 requirements of this Ordinance relative to the
21 proposed use are satisfied, and demonstrates
22 that the proposed use also satisfies the
23 following criteria:

24 "A. The use is listed as a conditional use in
25 the underlying district.

26 "B. The characteristics of the site are suitable
for the proposed use considering size,
shape, location, topography, existence of
improvements and natural features.

"C. The site and proposed development is timely,
considering the adequacy of transportation
systems, public facilities and services
existing or planned for the area affected by
the use.

"D. The proposed use will not alter the
character of the surrounding area in a
manner which substantially limits, impairs,
or precludes the use of surrounding

1 properties for the primary uses listed in
2 the underlying district.

3 "E. The proposal satisfies the goals and
4 policies of the Comprehensive Plan which
5 apply to the proposed use."

6

 27

7 The Board is not impressed with petitioners' additional
8 argument that terrain features show that an instrument approach
9 is only feasible when strong winds are from the north and yet
10 instrument landings are generally needed when winter storms
11 bring strong winds from the south. The matter of how the
12 instrument approach is flown does not appear to be a matter
13 within the expertise of petitioners, and a bald assertion that
14 the instrument approach procedures are wrong without some
15 citation to evidence in the record showing how they are wrong
16 does not rise to the level of an allegation of error.

1 CERTIFICATE OF MAILING

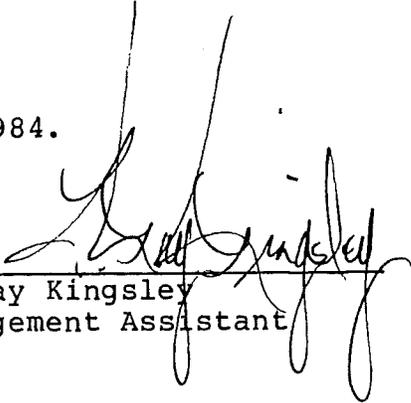
2 I hereby certify that I served the foregoing Final Opinion
3 and Order for LUBA No. 83-115, on March 16, 1984, by mailing to
4 said parties or their attorney a true copy thereof contained in
a sealed envelope with postage prepaid addressed to said
parties or their attorney as follows:

5
6 Richard C. Stein
Ramsay, Stein,
7 Feibleman & Myers
544 Ferry Street, S.E.
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9 Michael E. Judd
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11 Susan M. Quick
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101 S.W. Main Street
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14 Dated this 16th day of March, 1984.

15
16
17 
18 L. Kay Kingsley
Management Assistant