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

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

LUBA No. 84-077

Petitioners,

FINAL OPINION  
AND ORDER

vs.

CLACKAMAS COUNTY and THE PORT )  
OF PORTLAND, )  
Respondents. )

Appeal from Clackamas County.

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

Michael E. Judd, Oregon City, filed the response brief and argued the cause on behalf of Respondent County.

Susan M. Quick, Portland, filed the response brief and argued the cause on behalf of Respondent Port of Portland. With her on the brief were Ball, Janik and Novack.

BAGG, Chief Referee; DuBAY, Referee; KRESSEL, Referee; participated in this decision.

AFFIRMED

01/04/85

You are entitled to judicial review of this Order.  
Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal (1) a Comprehensive Plan Map change from  
4 Agriculture to Rural (with exceptions to LCDC Goals 3 and 4);  
5 (2) a zone change from EFU-20 to RRRF-5; (3) a Comprehensive  
6 Plan Map change from Rural to Agriculture and zone changes from  
7 RRRF-5 to EFU-20; (4) a Comprehensive Plan Map change from  
8 Rural Center to Rural and zone change from RA-1 to RA-2; (5) a  
9 Conditional Use Permit for airport use; (6) an administrative  
10 approval of a lot line adjustment and (7) an administrative  
11 approval of a Principal River Conservation Area assessment.

12 These decisions facilitate the expansion of airport  
13 facilities near Mulino, Oregon. The applicant for the changes  
14 in question is the Port of Portland (hereinafter the "Port").  
15 The approvals are before us for the second time.

16 FACTS

17 The following statement of facts appeared in our first  
18 opinion, Gordon v. Clackamas County, \_\_\_ OR LUBA \_\_\_ (LUBA No.  
19 83-115, 03/16/84) (1984) (hereinafter cited as Mulino I) and is  
20 accurate for the purposes of this opinion:

21 "In March of 1982, the Port of Portland applied to  
22 Clackamas County to expand the Mulino Airport. The  
23 expansion would make the Mulino Airport into a  
24 "General Utility" (GU) airport with space for 170  
25 permanently based aircraft. Presently, the airport  
26 has three hangers and bases about 40 aircraft. Plans  
included further expansion which would turn the Mulino  
Airport into a "Basic Transport" (BT) facility with  
space for 350 permanently based aircraft. However,  
the land use decisions made by Clackamas County do not  
include any provisions for this second expansion.

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

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

20 "The planning commission held a series of public  
21 hearings and recommended approval of the comprehensive  
22 plan changes and the zone changes along with the  
23 conditional use permit. The county's planning  
24 division approved a lot line adjustment in a letter of  
25 June 21, 1983, and issued the notice of the decision  
26 approving the assessment of the Principal River  
Conservation Area. Petitioners herein appealed these  
decisions to the board of county commissioners. The  
board held hearings on July 19 and July 21, 1983. A  
final order approving all land use decisions was  
entered November 2, 1983." (Footnotes omitted).  
Mulino I, Slip Opinion at 2-4.

19 We remanded the decision for consideration of whether  
20 alternatives existed to the expansion of the airport at  
21 Mulino. We also remanded the decision under provisions of the  
22 county plan controlling wetlands and the "Principal River  
23 Conservation Area." See Clackamas County Comprehensive Plan  
24 Policy 3, Policy 10.2(a) and §704.05(13)(2) of the Clackamas  
25 County Zoning Ordinance. Pursuant to the remand, the county  
26 held a hearing on June 27, 1984, and issued a final order

1 approving the changes on August 29, 1984. This appeal followed.

2 ASSIGNMENT OF ERROR No. 1

3 "THE BOARD OF COMMISSIONERS ADOPTED AN IMPROPER  
4 EXCEPTION TO LCDC GOALS 3 AND 4 PURSUANT TO ORS  
5 197.732(1)(c)(A)(B) IN THAT IT MISCONSTRUED THE  
6 APPLICABLE LAW: FAILED TO ADOPT ADEQUATE FINDINGS TO  
7 SUPPORT ITS DECISION: AND ITS FINDINGS ARE NOT  
8 SUPPORTED BY SUBSTANTIAL EVIDENCE."

9 ASSIGNMENT OF ERROR No. 2

10 "THE BOARD OF COMMISSIONERS VIOLATED LCDC GOAL 3 BY  
11 FAILING TO ADOPT A PROPER EXCEPTION THERETO."

12 ASSIGNMENT OF ERROR No. 3

13 "THE BOARD OF COMMISSIONERS VIOLATED LCDC GOAL 4 BY  
14 FAILING TO ADOPT A PROPER EXCEPTION THERETO."

15 A. Applicability of OAR 660-04-022

16 After the issuance of our opinion in Mulino I and before  
17 the county held an evidentiary hearing to consider the issues  
18 on remand, the Land Conservation and Development Commission  
19 (LCDC) adopted new rules controlling goal exceptions under LCDC  
20 Goal 2, Part II. The rules were adopted pursuant to a mandate  
21 from the 1983 Legislature and were not in effect at the time we  
22 issued our first opinion. See ORS 197.732(3). The new rules  
23 include provisions relevant to this review proceeding.  
24 Particularly relevant under petitioners' first three  
25 assignments of error is OAR 660-04-022(1). The rule lists

26 "[t]he types of reasons that may or may not be used to  
justify certain types of uses not allowed on resource  
lands...." OAR 660-04-022.

1 The rule provides:

2 "(1) For uses not specifically provided for in  
3 subsequent sections of this rule or OAR 660, Division  
4 14, the reasons shall justify why the state policy  
5 embodied in the applicable goals should not apply.  
6 Such reasons include but are not limited to the  
7 following:

8 "(a) There is a demonstrated need for the proposed use  
9 or activity, based on one or more of the  
10 requirements of Statewide Goals 3 to 19; and  
11 either

12 "(b) A resource upon which the proposed use or  
13 activity is dependent can be reasonably obtained  
14 only at the proposed exception site and the use  
15 or activity requires a location near the  
16 resource. An exception based on this subsection  
17 must include an analysis of the market area to be  
18 served by the proposed use or activity. That  
19 analysis must demonstrate that the proposed  
20 exception site is the only one within that market  
21 area at which the resource depended upon can  
22 reasonably be obtained; or

23 "(c) The proposed use or activity has special features  
24 or qualities that necessitate its location on or  
25 near the proposed exception site."

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Petitioners urge the rule requires the jurisdiction seeking  
to take an exception to find a "demonstrated need" exists for  
the proposed use and, further, that the use is dependent upon  
some resource existing at the particular site chosen.

Petitioners argue the county has failed to show either a  
"demonstrated need" for increased aircraft basing or that  
Mulino is the appropriate place for expansion to accommodate  
more aircraft. We understand petitioners to say the record  
shows there is sufficient supply at various airports in the  
region to meet any demand for additional aircraft basing.

1 Respondents (the county and the Port) argue that OAR  
2 660-04-022(1) is inapplicable. They argue the rule is  
3 inapplicable because it took effect after this Board ruled on  
4 the question of "need." Respondents insist the appropriate  
5 standard is ORS 197.732, the only standard in effect at the  
6 time the county made its original decision. Respondents also  
7 say our order of remand did not question the county's finding  
8 of need for increased aircraft basing. Respondents say our  
9 order only questioned the county's compliance with ORS  
10 197.732(1)(c)(B),<sup>1</sup> requiring a showing there are no other  
11 areas available to meet the need which do not require the  
12 taking of a goal exception. They claim the issue of need,  
13 "demonstrated" or not, has been conclusively decided.

14 We find the rule applicable because it was in effect after  
15 our remand and long before the county held an evidentiary  
16 hearing on the remanded issues. The Port and the county had  
17 ample notice of the rule and suffered no prejudice by having to  
18 comply. See Central Freightlines, Inc. v. Unites States, 669  
19 F2d 1063 (5th Cir, 1982). The cases cited by the Port for its  
20 view the rule should not apply are not on point. They concern  
21 circumstances where the deciding body has no opportunity for  
22 further evidentiary hearings or where some injustice is  
23 suffered by a party by the application of a new law. See,  
24 e.g., Lambert Pharmacal Co. v. Roberts Bros., 192 Or 23, 233  
25 P2d 258 (1951); Joseph v. Lowery, 261 Or 545, 495 P2d 273  
26 (1972); Truckload v. Health Division, 28 Or App 433, 559 P2d

1 931, rev den, 278 Or 621 (1977).

2 While we conclude the LCDC rule applies, we do not believe  
3 it requires us to reach the result urged by petitioners.

4 B. Demonstrated Need

5 In Mulino I, we concluded the county had found sufficient  
6 "reason" for an exception to Goals 3 and 4. The reason was a  
7 finding that the spaces available for aircraft basing would not  
8 accommodate the anticipated growth in aviation and the  
9 resultant requirement for places to put the aircraft.<sup>2</sup>

10 Mulino I, Slip Opinion at 13, 18. Further, we concluded the  
11 record contained substantial evidence to support the county's  
12 conclusion that more spaces for aircraft basing are necessary.  
13 Ibid, p. 18. In the order on review in this proceeding, the  
14 county restated its conclusion that a need exists for 502  
15 aircraft basing spaces. Record, p. 34.

16 However, petitioners again challenge the county's conclusion  
17 that a need exists for spaces to base aircraft. Petitioners  
18 cite us to evidence in the record showing a decline in the  
19 number of general aviation operations at the Hillsboro and  
20 Troutdale Airports.<sup>3</sup> Record, p. 772.

21 We do not believe we are obliged to reconsider the question  
22 of "need" for additional aircraft basing spaces. In our view,  
23 OAR 660-04-022(1) is not materially different from the standard  
24 we previously considered. A new analysis is not warranted. It  
25 is sufficient that we found a need existed for additional  
26 aircraft basing spaces in Mulino I. We conclude the county

1 satisfied the requirement that a "demonstrated need" exists for  
2 the proposed use.<sup>4</sup>

3 Next, petitioners claim the county failed to show the  
4 Mulino site has particular features suited for the proposed  
5 use. Such a finding is called for under OAR 660-04-022(1)(c).  
6 See page 5, supra.

7 We do not find petitioners' argument persuasive. The  
8 county found the demand for expanded airport facilities exists  
9 most critically in the southeast metropolitan area. Record,  
10 p. 43. This finding is supported by evidence from the Federal  
11 Aviation Administration and the Oregon Aeronautics Division  
12 indicating there is a significant demand in this area to  
13 accommodate the anticipated basing shortfall. Record, pp.  
14 527-529, 819-920, 995-996. Further, each privately owned  
15 airport in Clackamas County was inventoried for some 60  
16 individual characteristics in the following categories:

- 17 "(1) Airport ownership
- 18 "(2) Present and projected airport use
- 19 "(3) Airport operational policies
- 20 "(4) Existing and planned facilities
- 21 "(5) Surrounding land use
- 22 "(6) Site topography
- 23 "(7) Airport location
- 24 "(8) Airspace constraints
- 25 "(9) Development at nearby airports
- 26 "(10) Historical development data"

Record, p. 30; see also, pp. 116-120; Mulino I,  
Item 59, Appendix F, pp. 3-10 to 3-17.

24 Through the use of the inventories, both in Mulino I and  
25 the present case, the county concluded that Mulino was the most  
26

1 suitable location.

2 We believe the county's analysis is sufficient to meet OAR  
3 660-04-022(1)(b) or (c). Petitioners do not claim there is  
4 error inherent in the county's method, and the petitioners do  
5 not explain either that the analysis was in fact not performed  
6 or that the facts relied upon are untrue. Rather, petitioners  
7 challenge the conclusions by referring to data tending to show  
8 that airports in the region could assume a larger share of any  
9 basing need. Where there is substantial evidence in the record  
10 to support the county's conclusion, but there is also evidence  
11 which might suggest a different conclusion, we are not  
12 empowered to overturn the county's decision. ORS  
13 197.835(8)(a)(C); ORS 197.830(11); Christian Retreat Center v.  
14 Comm. of Washington County, 28 Or App 673, 560 P2d 100, rev den  
15 (1977).

16 C. The "Alternatives" Requirement - Private Airports

17 The second part of petitioners' argument is that the county  
18 failed to meet the requirements of ORS 197.732(1)(c)(B). The  
19 statute requires a showing that "areas which do not require a  
20 new exception can not reasonably accommodate the use."

21 In Mulino I we remanded the case because the county had not  
22 shown other existing airports could not collectively assume the  
23 anticipated increase in aircraft basing needs. We stated that  
24 while the decision acknowledged that basing lids existed at  
25 various airports, there was an inadequate analysis of why the  
26 basing lids could not be raised. See generally Mulino I, Slip

1 Opinion at pp. 15-18 and 21-22. Petitioners complain the  
2 county has failed to explain why it is not possible to  
3 accommodate the need for increased aircraft basing among one or  
4 more existing airports. They agreed the basing need can be  
5 accommodated by existing facilities; no need exists to expand  
6 the Mulino facility.

7 We do not agree with petitioners. On remand, the county  
8 made additional findings explaining the method used to  
9 calculate the basing capacity of existing airports in the study  
10 area.<sup>5</sup> The county added to the findings appearing in Mulino  
11 I an explanation that, even under liberal forecasts of growth  
12 at airports in the county, a 300 percent increase in basing  
13 capacity over the 20 year period will be required to meet the  
14 demand.<sup>6</sup> Record, p. 29.<sup>7</sup> The Port argues it is  
15 "irrational" to believe that private airports can assume this  
16 increase.<sup>8</sup> Brief of Port of Portland at 25.

17 The county's findings, read as a whole, provide an adequate  
18 explanation of how basing forecasts were developed and why it  
19 would be unreasonable to expect the lids to be increased to  
20 accommodate the need. See Record, pp. 29-38.<sup>9</sup>

21 D. Other Airports

22 The Port's (and the county's) analysis of airport basing  
23 capacity elsewhere in the region is challenged by petitioners.  
24 The county explained, however, that other facilities, including  
25 airports at Aurora, McMinnville and Scappoose, were not  
26 available for expansion because of a variety of factors such as

1 airspace conflicts, physical limitations and money. Record,  
2 pp. 39-40, 44-46. The possibility of a new airport facility at  
3 Clark County was also considered and rejected for reasons that  
4 there was no sure indication that such an airport would be  
5 constructed. Record, pp. 40-44. Similarly, the county  
6 considered whether the basing limits at the Portland Hillsboro  
7 and the Portland Troutdale Airports might be raised. The  
8 county explained that application of FAA guidelines showed the  
9 basing lids at these facilities could not be raised. The  
10 guidelines showed existing runways would be unable to handle  
11 operations generated by more aircraft.<sup>10</sup> See, Record, pp.  
12 46-57.

13 The county's conclusions about the basing lids at other  
14 airports in the region are adequate and supported by  
15 substantial evidence in the record. Petitioners' reliance on  
16 other evidence does not mean the county's evidence is  
17 insufficient. Homebuilders v. Metro, 54 Or App 60, 633 P2d  
18 1320 (1981). The findings explain that the basing lids  
19 presently established may not be exceeded without causing not  
20 only inconvenience, but noise, aircraft congestion and  
21 interference with adjacent residential and non-aircraft uses.  
22 We believe this conclusion is sufficient to comply with the  
23 issue in our order of remand.

24 ASSIGNMENT OF ERROR No. 4

25 "THE BOARD OF COMMISSIONERS VIOLATED LCDC GOAL 12 BY  
26 FAILING TO ADOPT A PROPER EXCEPTION TO LCDC GOALS 3  
and 4."

1 ASSIGNMENT OF ERROR No. 5

2 "THE BOARD OF COMMISSIONERS ERRED IN APPLYING THE  
3 APPLICABLE LAW UNDER LCDC GOAL 12."

4 ASSIGNMENT OF ERROR No. 6

5 "THE BOARD OF COMMISSIONERS VIOLATED LCDC GOAL 14 BY  
6 FAILING TO ADOPT A PROPER EXCEPTION TO LCDC GOALS 3  
7 and 4."

8 While petitioners claim violation of Goals 12 and 14, they  
9 fail to make any argument as to how the violations arise.  
10 Without some explanation of the nature of the violations, we  
11 decline to review the decision for compliance with these  
12 goals. Deschutes Development Co. v. Deschutes County, 5 Or  
13 LUBA 218 (1982). Assignments of Error Nos. 4, 5 and 6 are  
14 dismissed.

15 ASSIGNMENT OF ERROR No. 7

16 "THE CLACKAMAS COUNTY BOARD OF COMMISSIONERS' FINDINGS  
17 THAT THE PROPOSED AIRPORT WOULD BE IN COMPLIANCE WITH  
18 THE GOALS OF THE MOLALLA RIVER PRINCIPLE [sic] RIVER  
19 CONSERVATION AREA (PRCA) WERE INADEQUATE, NOT  
20 SUPPORTED BY SUBSTANTIAL EVIDENCE AND FAILED TO APPLY  
21 APPLICABLE LAW."

22 Petitioners complain that the county comprehensive plan has  
23 been violated by approval of the airport development.<sup>11</sup> The  
24 comprehensive plan policies allegedly violated are Policy 3 and  
25 Policy 10.2(a).

26 Policy 3 of the Clackamas County Comprehensive Plan  
requires that there be a

"buffer or filler strip of natural vegetation along  
all river and stream banks..., the depth of which will  
be dependent upon the proposed use of development,

1 width of river or stream, steepness of terrain, type  
2 of soil, existing vegetation, and other contributing  
factors, but will not exceed 150 feet...."

3 This policy is to be read in conjunction with Policy 10.2(a)  
4 controlling the "Principal River Conservation Area." The  
5 Mollala River, a portion of which is affected by the proposed  
6 airport development, is included in the Principal River  
7 Conservation Area. Policy 10.2(a) requires a

8 "vegetative fringe...along the river free of  
9 structures, grading and tree cutting activities (see  
10 Policy 3.0). Diseased trees or those in danger of  
falling may be removed."

11 The policy defines activities prohibited within the buffer  
12 strip. Tree cutting activities are specifically prohibited.

13 We understand Policy 10.2(a) to prohibit cutting in the  
14 "vegetative fringe," but the depth of that fringe (or buffer)  
15 is up to the county to establish pursuant to plan Policy 3.  
16 Indeed, Policy 10.2(a) specifically refers the reader to Policy  
17 3 of the plan, which shows an intent to give the county the  
18 duty of establishing the depth of the fringe. Given this  
19 understanding, we now turn to see how the county applied these  
20 plan policies.

21 The findings describe the vegetative buffer which will  
22 exist along the banks of the river:

23 "In this case the County finds that the proposed  
24 public use will provide such a vegetative fringe  
25 buffer along the banks of the river. No tree cutting  
26 will take place in this area. The vegetative buffer  
will range in width from a minimum of 50 feet on the  
north bank of the river up to 100 feet along the south

1 bank of the Molalla. Along the north bank of the  
2 river there is approximately a 50 foot elevation  
3 difference between the river level and top of bank  
4 elevations. Vegetation on the embankment will not be  
5 removed. Along the top of the embankment, only  
6 vegetation constituting an obstruction or 'hazard to  
7 air navigation' based on FAA guidelines will be  
8 removed. Therefore, Policy 3 and Policy 10.2 are met  
9 in that a buffer strip of natural vegetation left in  
10 its natural state will remain.

11 "The County finds the majority if not all of the trees  
12 to be cut in the PRCA by the Port will be trimmed  
13 only, and very few, if any, trees will be felled.  
14 This further supports the policies contained in the  
15 comprehensive plan for maintenance of existing  
16 vegetation." Record, p. 77.

17 The county specifically found there would be no tree  
18 cutting within the vegetative buffer which varies in width from  
19 a minimum of 50 feet on the north bank to 100 feet along the  
20 south bank. The only cutting which will occur, as we  
21 understand the county's finding, is along the top of the north  
22 embankment. We understand the finding to say this area is  
23 outside the buffer established under Policy 3. A vegetative  
24 fringe will be maintained, and there will be no cutting within  
25 that fringe.

26 Based on the foregoing, we conclude the requirements of  
comprehensive plan Policy 10.2(a) and Policy 3 prohibiting tree  
cutting on the fringe (or buffer area) have been fulfilled.

Affirmed.

FOOTNOTES

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3 1

ORS 197.732( ) (c) (B) provides, in part:

"(1) A local government may adopt an exception to a goal when:

\* \* \*

"(c) The following standards are met:

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

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

"(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." ORS 197.732(1) (c) (A-D).

17 2

The standard embodied in our first opinion was ORS 197.732(1) (c). The statutory standard called for a "reason" why state policy embodied in the goals should not apply. OAR 660-04-022(1) is somewhat different in that it calls for a showing of "demonstrated need" which is to be "based on one or more of the requirements of Statewide Goals 3 to 19." In Mulino I, this rule was not in force, and the county did not address which goal required a reliever airport at Mulino. In the order under review in the present case, the county did not address which goal requirement triggers the need for an exception. Petitioners do not raise this failure as error, but rather concentrate on whether there is sufficient evidence in the record to support the county's finding that additional basing spaces are required and whether the Mulino site may be considered a "site specific resource" or one with "special features" that meet subsection (b) and (c) of OAR 660-04-022(1).

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2 An "operation" is a take off or landing. Record, p. 744.

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4 OAR 660-04-022(1) is not stated as a required set of  
5 criteria. The rule says the reasons enumerated under (a), (b)  
6 and (c) of (1) of 660-04-022 do not form an exhaustive list of  
adequate reasons. If the county can come up with other reasons  
7 which show compliance with ORS 197.732, it is free to do so.

7 Petitioners raise an additional argument that the Port's  
8 arithmetic is wrong. Petitioners claim the county should have  
9 included aircraft currently based at McMinnville and Scappoose  
in their calculations. If the Port had done so, the need for  
additional spaces would be decreased by 120.

10 We agree with the Port's response that the two airports  
11 were not considered in either the demand or the supply  
12 analysis. We do not believe it was error for the Port to have  
excluded the two airports since they are outside Port  
jurisdiction and outside the area of study.

13  
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14 Petitioners urge this Board to consider evidence presented  
15 by petitioners which tends to show Port forecasts of aircraft  
16 basing needs to be high and Port forecasts of space available  
for expansion at existing airports to be low.

17 While we can agree with petitioners that much of the  
18 evidence submitted by them is credible, it is beyond our  
19 authority to overturn county findings of fact for which there  
20 is substantial evidence in the record. By substantial evidence  
21 in the record, we mean evidence a reasonable mind could accept  
22 as sufficient to make important decisions. Braidwood v. City  
of Portland, 24 Or App 477, 480, 546 P2d 777 (1976). The fact  
23 that there may be other evidence in the record which could lead  
24 the county to a different conclusion does not mean the record  
25 lacks substantial evidence. Publishers Paper Co. v. Friends of  
Benton County, 63 Or App 632, 637, 665 P2d 357 (1983).

23  
6

24 The county found average airport growth to be 14 spaces per  
25 year. Port forecasts set the growth rate at 17.5 aircraft  
26 spaces per year for the next 20 years. Record, pp. 29-30.  
Assuming this increased growth rate, private airports would  
still not be able to meet the projected basing shortfall.

1  
2 7  
3 The Port found 28 private airports to exist in Clackamas  
4 County. Eight are now open to the public, 18 are private and  
5 are not open to the general public and the remaining 2 airports  
6 are closed. See Record, p. 32.

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8 8  
9 The Port states its forecast was based on the inventory  
10 considerations cited supra at page 8 "and an assessment of  
11 physical capabilities for expansion using accepted airport  
12 planning and development principles." Record, p. 37. The  
13 findings then refer the reader to a Port document appearing at  
14 pages 435 through 525 and particularly pages 441 to 468. This  
15 discussion further details the reasons why private airports can  
16 not assume a greater share of the basing load. The reasons  
17 include money, topography, airport facilities including  
18 runways, kinds of aircraft and airport requirements to serve  
19 them, landing and navigational aids (for instrument landing  
20 conditions).

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22 9  
23 With respect to the three airports stressed by petitioners  
24 as having a great potential capacity, Troh's, Fairways and  
25 Estacada, the county found there were geographical constraints  
26 at Troh's, Record, p. 38, construction too near the airport at  
Fairways, Record, pp. 38-39, and the potential that Estacada  
Airport will close entirely, Record p. 38.

Other airports in the region are similarly dismissed by the  
county. Starks Twin Oaks Airport in Washington County is not  
available, according to the county, because it is only 8 miles  
from the Hillsboro Airport and there would be "significant  
airspace interaction with PHA (Portland Hillsboro Airport)."  
Record, p. 39. Further, both the Starks Twin Oaks Airport and  
an airport called Skyport are located on natural resource land  
as designated in the Washington County Comprehensive Plan. The  
county found that adding capacity to these airports would  
require an exception. Therefore, these airports are not  
alternatives requiring consideration under ORS  
197.732(1)(c)(B), according to the county.

With respect to the remaining airports in Washington  
County, the county notes the airports are private, and the  
public may not land on these strips without written  
permission. The county, we believe correctly, understood that  
it could not consider these airports as alternatives. Record,  
p. 40.

1 While we might criticize the county for not responding  
2 precisely to our request for findings on how it is that each  
3 airport can not expand in some small quantity to assume the  
4 greater share of the basing load, we do understand the findings  
5 as a whole to explain why the airports are not available for  
6 such expansion.

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5 10

6 The operations limit of an airport is fixed by the Federal  
7 Aviation Administration as the "practical annual capacity"  
8 (PANCAP). PANCAPS are calculated from FAA criteria included in  
9 two advisory circulars, "airport capacity criteria used in long  
10 range planning" (AC 150/5060-3) and "airport capacity criteria  
11 used in preparing the national airport plan" (AC 150/5060-1A).  
12 Additionally, a publication called "Airport Capacity Handbook"  
13 is utilized. See Record, p. 442. We do not understand  
14 petitioners to challenge this method of calculating the  
15 operation capacity of the airport.

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11 11

12 Petitioners make a second claim that the zoning ordinance  
13 and the comprehensive plan are in conflict. Citing Philippi v.  
14 Sublimity, 294 Or 730, 662 P2d 325 (1983), petitioners argue  
15 that the conflict is impermissible. We agree that the plan and  
16 the zoning ordinance are in conflict, and we do not agree with  
17 the county's explanation of how the plan and the zoning  
18 ordinance work together. However, because we find that the  
19 plan has not been violated in its application to this airport  
20 expansion, we do not believe this conflict requires a reversal  
21 or a remand.

22 In Mulino I and in the case before us, the county treated  
23 the policies in the plan as though they were general  
24 guidelines. Although the plan policies are expressed in  
25 absolute, unqualified language, the county asks that we read  
26 §704.05(B)(2) of the zoning ordinance to reflect an allowable  
27 exception to the policies. The county states that the zoning  
28 ordinance permits the cutting of trees for a "public use," if  
29 that public use exists within the Principal River Conservation  
30 Area. See, Record, pp. 75-76.

31 The comprehensive plan unqualifiedly requires a vegetative  
32 strip. Because the plan is the controlling land use document  
33 and is worded (in this instance) in absolute terms, we do not  
34 believe the zoning ordinance can authorize disregard of the  
35 requirement for a vegetative strip.

1 Similarly, Policy 10.2(a) of the plan dictates that the  
2 "vegetative fringe" be free of structures and grading and tree  
3 cutting activities. While an exception is provided in the plan  
4 for diseased trees, there is no exception for construction  
5 activities or trimming to allow a particular kind of use.  
6 Again, we do not find that the zoning ordinance may alter the  
7 provisions of a specific plan policy. Philippi v. Sublimity,  
8 294 Or 730, 662 P2d 325 (1983). See also, Liles v. City of  
9 Gresham, 66 Or App 59, 672 P2d 1229 (1983).  
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