

1                           BEFORE THE LAND USE BOARD OF APPEALS  
2                           OF THE STATE OF OREGON  
3

4 JACK MURRAY, RICHARD HIGHFILL, )  
5 and JIM WILSON, )  
6 )  
7                   Petitioners, )  
8 )

9           vs. )

10                   )                   LUBA No. 91-187  
11 MARION COUNTY, )  
12 )                   FINAL OPINION  
13                   Respondent, )                   AND ORDER  
14 )

15           and )

16 )  
17 OREGON DEPARTMENT OF )  
18 TRANSPORTATION, )  
19 )  
20                   Intervenor-Respondent. )

21  
22  
23           Appeal from Marion County.

24  
25           Edward J. Sullivan and Daniel H. Kearns, Portland,  
26 filed the petition for review. With them on the brief was  
27 Preston, Thorgrimson, Shidler, Gates & Ellis. Edward J.  
28 Sullivan argued on behalf of petitioners.

29  
30           Jane Ellen Stonecipher, Salem, filed a response brief  
31 and argued on behalf of respondent. With her on the brief  
32 was Robert C. Cannon.

33  
34           Lucinda D. Moyano, Salem, filed a response brief and  
35 argued on behalf of intervenor-respondent. With her on the  
36 brief was Charles S. Crookham, Attorney General.

37  
38           SHERTON, Referee; HOLSTUN, Chief Referee; KELLINGTON,  
39 Referee, participated in the decision.

40  
41                   REMANDED                           05/19/92

42  
43           You are entitled to judicial review of this Order.  
44 Judicial review is governed by the provisions of ORS  
45 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a county ordinance approving (1) an  
4 exception from Statewide Planning Goal 3 (Agricultural  
5 Lands) for 10 acres of agricultural land; (2) a  
6 comprehensive plan map change from Primary Agricultural to  
7 Public Use for the 10 acres; (3) a corresponding zone change  
8 from Exclusive Farm use (EFU) to Public (P); (4) lot line  
9 adjustments adding 11.8 acres (including the 10 acres which  
10 are the subject of the goal exception and plan and zoning  
11 map changes) to a 144 acre parcel at the site of the Aurora  
12 State Airport; and (5) a conditional use permit for airport-  
13 related improvements on the resulting 155.8 acre parcel.

14 **MOTION TO INTERVENE**

15 The Oregon Department of Transportation, Aeronautics  
16 Division (hereafter OAD), the applicant below, moves to  
17 intervene in this proceeding on the side of respondent.  
18 There is no opposition to the motion, and it is allowed.

19 **FACTS**

20 On June 18, 1980, the county adopted a "committed"<sup>1</sup>  
21 exception from Goal 3 for approximately 250 acres at the  
22 site of the Aurora State Airport (hereafter airport). The  
23 1980 exception area is designated Public Use on the Marion

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<sup>1</sup>ORS 197.732(1)(b) allows local governments to adopt exceptions to a statewide planning goal where the subject land is "irrevocably committed \* \* \* to uses not allowed by the applicable goal \* \* \*."

1 County Comprehensive Plan (plan) map and is zoned P.  
2 Additionally, the county's Airport Overlay zone has been  
3 applied to both the 1980 exception area and the area  
4 proposed to be added to it.

5 There are two residential developments designated Rural  
6 Residential and zoned Acreage Residential (AR) adjoining the  
7 1980 exception area to the west and southwest. Otherwise,  
8 the 1980 exception area is surrounded by land in farm use,  
9 designated Primary Agricultural and zoned EFU. Clackamas  
10 County adjoins the exception area to the north. Keil Road,  
11 a county road, abuts the exception area at its southeastern  
12 and southern boundaries. The City of Aurora is  
13 approximately one mile southeast of the airport.<sup>2</sup>

14 The 1980 exception area includes a 144 acre parcel  
15 owned by the state. The state owned parcel currently  
16 includes (1) a north-south oriented paved and lighted  
17 runway, 100 ft. wide and 4,100 ft. long; (2) a parallel  
18 taxiway, with a centerline 200 ft. from that of the runway;  
19 and (3) an area to the east of the runway-taxiway containing  
20 a beacon, communications equipment, hangars, airplane  
21 parking aprons, automobile parking and offices. The  
22 remainder of the 1980 exception area is comprised of  
23 privately owned parcels adjoining the runway-taxiway to the  
24 east. These parcels are the site of hangars, airplane

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<sup>2</sup>The airport is not within the city's urban growth boundary (UGB).

1 parking aprons, fuel facilities and airport-related  
2 businesses and offices. The airport and airport-related  
3 uses within the 1980 exception area are served by individual  
4 wells and septic systems.

5 As indicated above, the airport itself is owned by the  
6 state and is operated by OAD. When the county adopted its  
7 1980 exception to Goal 3 for the airport, it also adopted as  
8 part of its comprehensive plan, OAD's "Aurora State Airport  
9 Master Plan 1976-1995" (hereafter 1976 Airport Plan). Plan  
10 Transportation Policy 15. The 1976 Airport Plan states that  
11 the airport serves "several counties" and describes the  
12 airport as "part of a regional system of airports for the  
13 greater Portland area." 1976 Airport Plan 3. According to  
14 the 1976 Airport Plan, in 1975-1976 there were 127 aircraft  
15 based at the airport and 90,000 annual aircraft operations.  
16 The 1976 Airport Plan predicts that these figures will  
17 increase to 248 and 209,000, respectively, by 1995. Id. at  
18 22-24.

19 The 1976 Airport Plan states the airport at that time  
20 satisfied Federal Aviation Administration (FAA) design  
21 standards for a "General Utility" airfield, one serving  
22 propellor aircraft with maximum gross weights under 12,500  
23 lbs. Id. at 23. The plan also projects that between 1985  
24 and 1990, use of the airport by increased numbers and types  
25 of aircraft will necessitate improving the airport to comply  
26 with FAA design standards for a "Basic Transport" airfield,

1 one serving propellor aircraft with maximum gross weights up  
2 to 60,000 lbs. and turbojet aircraft. Id. at 23, 25.  
3 According to the 1976 plan, by 1995, the existing runway  
4 should be lengthened by 1,900 ft., 1,000 ft. at the north  
5 end and 900 ft. at the south end. Id. at 25, 31. The 1976  
6 Airport Plan also proposes that the taxiway-runway  
7 separation be increased to 225 ft., and that new  
8 navigational aids be added.<sup>3</sup> Id. at 30.

9 In 1988, OAD adopted a new master plan for the airport,  
10 the "Aurora State Airport Master Plan Report, July 1988"  
11 (hereafter 1988 Airport Plan).<sup>4</sup> The 1988 Airport Plan finds  
12 that in 1987, there were approximately 254 aircraft based at  
13 the airport and approximately 60,000 total aircraft  
14 operations; and the plan projects that those figures will  
15 increase to 360 and 140,000, respectively, by the year 2007.  
16 1988 Airport Plan 3-4, 53-54.<sup>5</sup> The 1988 Airport Plan  
17 proposes that the airport be developed in accordance with  
18 the FAA's Transport airfield classification wherever

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<sup>3</sup>The 1976 Airport Plan refers to adding a Microwave Landing System or its equivalent in 1985-1995. Id. at 30, 45. It also refers to adding a Non-directional Beacon in 1975-1980. Such beacon was installed some time after adoption of the 1976 Airport Plan, and is currently in use.

<sup>4</sup>The 1988 Airport Plan has not been adopted as part of the county comprehensive plan.

<sup>5</sup>The 1988 Airport Plan is in the local record both as a separate document and at Supplemental Record 228-452. Because the Supplemental Record pages omit some oversize maps and charts, citations in this opinion are to the 1988 Airport Plan itself.

1 feasible.<sup>6</sup> 1988 Airport Plan 4-6.

2 In early 1991, OAD applied for the subject land use  
3 approvals, in order to carry out the following airport  
4 improvements endorsed by the 1988 Airport Plan:

5 (1) Addition of a 100 ft. wide by 1,000 ft. long  
6 extension to the southern end of the existing  
7 runway.

8 (2) Addition of a 40 ft. wide by 1,000 ft. long  
9 extension to the southern end of the existing  
10 parallel taxiway.

11 (3) Increase in runway/taxiway centerline  
12 separation from 200 ft. to 300 ft.

13 (4) Installation of a precision instrument  
14 approach (PIA) system.<sup>7</sup>

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<sup>6</sup>In 1983, the FAA extensively revised its airfield design standards. The former General Utility and Basic Transport design standard classifications were replaced by General Utility Stage I, General Utility Stage II and Transport classifications. The former General Utility classification was divided into the new General Utility Stage I and Stage II classifications. The former Basic Transport classification was generally intermediate in nature between the new General Utility Stage II and Transport classifications. 1988 Airport Plan 71-72, 76. The 1988 Airport Plan recognizes that the present mix of aircraft using the airport fits the definition of General Utility Stage I, but that the airport was built to satisfy the old General Utility design standards, and for the most part currently satisfies the design standards for General Utility Stage II (nonprecision approach). Id. at 72-73, 76.

The 1988 Airport Plan also states that projected future use of the airport "falls on the line between the General Utility Stage II and Transport classifications." Id. at 72. The plan proposes development in accord with Transport standards, with the exception that a waiver be obtained from Transport design standards for Building Restriction Line (BRL) and Aircraft Parking Limit (APL) distances, because these Transport standards cannot be met without severe disruption of existing airport and off-airport development, and are excessive for the anticipated usage of the airport. Id. at 5, 99.

<sup>7</sup>The 1988 Airport Plan proposes installation of a conventional Instrument Landing System, but recognizes that use of the more recently

1           The county approved an exception to Goal 3 for  
2 approximately 10 acres of agricultural land adjoining the  
3 southern and southeastern boundaries of the 1980 exception  
4 area, with corresponding plan and zoning map changes, for  
5 the purpose of carrying out the above described  
6 improvements. These 10 acres include portions of three  
7 parcels, totalling 4.6 acres, owned by Donnelly and  
8 currently used as a filbert orchard. They also include 5.4  
9 acres of a 40 acre parcel owned by Jenks and currently used  
10 to produce grass turf. The county also approved lot line  
11 adjustments adding these 10 acres, and 1.8 acres of land  
12 already within the 1980 exception area, to the 144 acre  
13 state-owned airport parcel. Finally, the county approved a  
14 conditional use permit allowing the above described  
15 airport-related improvements on the resulting 155.8 acre  
16 state-owned parcel.<sup>8</sup> This appeal followed.

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developed Microwave Landing System referred to in the 1976 Airport Plan is a possibility. 1988 Airport Plan 88. At present, an aircraft landing at the airport must use either a visual approach or one of two established nonprecision instrument approaches.

<sup>8</sup>The county imposed conditions of approval prohibiting (1) improvement of the runway to increase its load carrying capacity to more than 30,000 lbs. per axle, and (2) use of the airport by "fixed wing aircraft in excess of 45,000 lbs. gross take-off weight and fixed wing single wheel aircraft in excess of 30,000 lbs. gross take-off weight." Supp. Record 2, 63. As we understand it, these restrictions, together with the proposed runway length, runway-taxiway separation and waivers from FAA Transport BRL and APL distances, result in limiting the weight, size and speed of aircraft that will be able to use the airport. See 1988 Airport Plan 74, 76, 81-86, 106, Table 18. In other words, not every type of aircraft that could use an airport meeting all FAA Transport design standards will be able to use this airport, as it is proposed and approved by the county.

1 **FIRST ASSIGNMENT OF ERROR**

2 The first assignment of error addresses goal  
3 exceptions. The justification for the county's exception to  
4 Goal 3 is challenged in subassignments one through four.  
5 Petitioners' fifth subassignment challenges the county's  
6 failure to adopt an exception to Goals 11 (Public Facilities  
7 and Services) and 14 (Urbanization).

8 **A. Subassignment One**

9 "Respondent's findings are inadequate to support a  
10 'reasons' justification for a Goal 3 exception in  
11 this case; moreover, the record lacks substantial  
12 evidence necessary to support such an exception."

13 ORS 197.732(1)(c) establishes four standards for  
14 adopting "reasons" goal exceptions. ORS 197.732(1)(c)(A)  
15 sets out the following standard:

16 "Reasons justify why the state policy embodied in  
17 the applicable goals should not apply[.]"

18 OAR 660-04-020(2)(a) provides that to satisfy this standard:

19 "\* \* \* The exception shall set forth the facts and  
20 assumptions used as the basis for determining that  
21 a state policy embodied in a goal should not apply  
22 to specific properties or situations including the  
23 amount of land for the use being planned and why  
24 the use requires a location on resource land."<sup>9</sup>

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<sup>9</sup>Additionally, OAR 660-04-022(1) provides that reasons adequate to satisfy ORS 197.732(1)(c)(A) include, as relevant:

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

\* \* \* \* \*

1 (Emphasis added.)

2 Petitioners contend the challenged exception does not  
3 adequately justify expansion of the existing airport use to  
4 include the runway, taxiway and precision instrument  
5 approach improvements described above. Petitioners also  
6 contend that even if the proposed airport improvements are  
7 justified, the challenged exception does not establish why  
8 the subject 10 acres of agricultural land must be designated  
9 and zoned for other than agricultural use.

10 **1. Justification for Airport Improvements**

11 Petitioners contend the county improperly based its  
12 goal exception for the proposed airport improvements on a  
13 projected increase in "market demand" for use of the  
14 airport. 1000 Friends of Oregon v. Marion County, 18 Or  
15 LUBA 408, 410-17 (1989) (1000 Friends) (reasons exception to  
16 expand an existing recreational vehicle (RV) park); see  
17 BenjFran Dev. Co. v. Metro Service Dist., 95 Or App 22, 767  
18 P2d 467 (1989). Petitioners argue the record shows the FAA  
19 will not approve a PIA for the airport unless the number of  
20 instrument approaches at the airport increases and the real  
21 reason for having a PIA is to attract "substantial corporate  
22 aircraft activity." 1988 Airport Plan 86-87.

23 Petitioners further contend the county has not

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

1 demonstrated that it cannot satisfy the requirements of one  
2 or more of Goals 3-19, or the requirements of its  
3 acknowledged comprehensive plan, without allowing the  
4 proposed airport improvements. Petitioners argue the county  
5 has failed to demonstrate that the projected increase in  
6 airport use cannot be accommodated at other airports in the  
7 vicinity or in the Portland metropolitan market area.  
8 According to petitioners, the county's findings that the  
9 proposed airport improvements are needed for safety reasons  
10 do not provide adequate justification for the exception  
11 because they relate to operational safety of the proposed  
12 expanded airport, rather than the existing facility.

13 1000 Friends, supra, was similar to this case in that  
14 it involved a "reasons" goal exception adopted to allow  
15 expansion of a previously adopted "committed" goal exception  
16 area. In 1000 Friends, supra, 18 Or LUBA at 414, we found  
17 the county's findings inadequate to comply with  
18 ORS 197.732(1)(c)(A) because they did not establish that the  
19 county could not achieve the policies of the plan or of  
20 relevant goals without expanding the subject exception area  
21 to provide additional RV spaces. We said the findings were  
22 inadequate because they did not show the increased demand  
23 for RV spaces had to be met at the subject location, rather  
24 than elsewhere in the area.

25 In this case, petitioners base their arguments on a  
26 similar premise that accommodating increased demand for

1 airport facilities is not a sufficient justification for a  
2 "reasons" goal exception, and that such an exception  
3 requires a demonstration that the increased demand cannot be  
4 satisfied at other airports in the area. However, there is  
5 a significant difference in this case; the acknowledged  
6 county comprehensive plan, which includes the 1976 Airport  
7 Plan, projects and provides for future growth in use of the  
8 Aurora State Airport and for substantially the same airport  
9 improvements challenged in this appeal.<sup>10</sup> As described  
10 above, the 1976 Airport Plan recognizes that the airport is  
11 part of a regional airport system in the Portland  
12 metropolitan area, projects significantly increased use of  
13 the airport in the future and calls for runway extensions,  
14 increased runway-taxiway separation, and a PIA system.

15 The 1976 Airport Plan has been acknowledged by the Land  
16 Conservation and Development Commission (LCDC) under ORS  
17 197.251 as complying with the statewide planning goals. The  
18 county is not required to rejustify these acknowledged plan  
19 provisions in this proceeding. However, to comply with  
20 ORS 197.732(1)(c)(A) and OAR 660-04-020(2)(a), the county  
21 must establish the reasons why the proposed new goal

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<sup>10</sup>The county adopted its "committed" goal exception for the airport in 1980. Section (2) of OAR 660-04-018 ("Planning and Zoning for Exception Areas"), which became effective on March 20, 1986, provides that planning and zoning for committed exception areas must limit uses of such areas to the existing types of uses or certain other rural uses. However, OAR 660-04-018 applies only to goal exceptions adopted by local governments after the effective date of the rule. OAR 660-04-018(4).

1 exception is required to carry out substantially the same  
2 airport growth and expansion provided for in the  
3 acknowledged 1976 Airport Plan. Whether an exception from  
4 Goal 3 for the subject 10 acres is required to carry out the  
5 proposed airport improvements is addressed below.

6 This subassignment of error is denied.

7 **2. Requirement for Subject Property**

8 We understand petitioners to argue that even if the  
9 proposed airport improvements are permissible, the county  
10 has not demonstrated that those improvements require the  
11 adoption of an exception from Goal 3 for all or part of the  
12 subject 10 acres. Petitioners argue the challenged decision  
13 does not explain why the county's purposes cannot be  
14 accomplished through use of aviation easements or other  
15 means, rather than changing the designation of the subject  
16 10 acres from Primary Agricultural to Public Use.  
17 Petitioners point out that the findings state the 5.4 acre  
18 Jenks property at the southern end of the proposed exception  
19 area "would be leased for continued farming." Supp.  
20 Record 29.

21 Petitioners further argue that OAR 660-04-020(2)(a)  
22 requires findings justifying "the amount of land for the use  
23 being planned." According to petitioners, under Dyke v.  
24 Clatsop County, 18 Or LUBA 787 (1990), the following county  
25 finding is clearly insufficient to justify the acreage  
26 subject to the goal exception:

1 "The minimum total land area which is necessary to  
2 facilitate the long-planned [airport] improvements  
3 will be converted to nonfarm use. \* \* \*" Supp.  
4 Record 42.

5 Respondents' only response to this argument is to state  
6 that the above quoted finding is adequate. Respondents'  
7 Brief 12.

8 The 1976 Airport Plan did not envision that additional  
9 land would be required to carry out the airport improvements  
10 called for by that plan. 1976 Airport Plan 25. The record  
11 shows that the proposed runway extension will end  
12 approximately 1,000 ft. north of the southern boundary of  
13 the 1980 exception area and that the proposed PIA facilities  
14 will not be located on the proposed exception area. Record  
15 357, 363. The record shows that a small portion of the  
16 extended taxiway, perhaps one acre in area, will be located  
17 on the northeast corner of the proposed exception area.  
18 Record 357. The parties do not identify any other findings  
19 or evidence in the record explaining why an exception from  
20 Goal 3 is required for the remaining approximately nine  
21 acres of the proposed exception area to facilitate the  
22 proposed airport improvements.<sup>11</sup> Therefore, except with

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<sup>11</sup>We note that the 1988 Airport Plan includes a table entitled "Property Acquisition Summary." This table lists the "Proposed Use" of the portions of the three Donnelly parcels to be acquired as "Inside BRL, Realign Road," and that of the Jenks property as "Clear Zone." 1988 Airport Plan 23. However, what is lacking is an explanation of why an exception from Goal 3 is required for land within the BRL or Clear Zone, or for relocation of Keil Road. We note that OAD does not propose to acquire, nor the county to

1 regard to the portion of the proposed exception area where  
2 the extended taxiway is proposed to be located, we agree  
3 with petitioners that the county's findings do not justify  
4 why a goal exception is required for the proposed exception  
5 area.

6 This subassignment of error is sustained.<sup>12</sup>

7 **B. Subassignment Two**

8 "The decision lacks an analysis of alternative  
9 sites which could accommodate the use without an  
10 exception. Even if the decision included an  
11 adequate alternatives analysis, the record does  
12 not contain substantial evidence sufficient to  
13 support the conclusion that no alternatives to  
14 this site exist which do not require an  
15 exception."

16 ORS 197.732(1)(c)(B) sets out the following standard  
17 for "reasons" goal exceptions:

18 "Areas which do not require a new exception cannot  
19 reasonably accommodate the use[.]"

20 Petitioners contend the county's findings fail to satisfy  
21 this standard because they do not consider whether the  
22 projected increased airport use can be accommodated at other  
23 airports within the county, in the Portland metropolitan  
24 area or within an urban growth boundary.

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take an exception for, all land within the proposed Clear Zone for the extended runway.

<sup>12</sup>Petitioners also argue under this subassignment of error that the county failed to limit the uses of the proposed exception area to those for which the subject "reasons" exception is justified, as required by OAR 660-04-018(3)(a). Because the county's findings do not identify the uses of the subject 10 acres for which the proposed goal exception is justified, we do not address this aspect of petitioners' argument.

1           As we explained under the previous subassignment of  
2 error, in view of the acknowledged 1976 Airport Plan, we do  
3 not believe the county is required to consider whether the  
4 projected increased airport usage can be accommodated at  
5 other airports or at other locations. Therefore, what the  
6 county is required to consider under this standard is  
7 whether the proposed improvements to this airport can be  
8 reasonably accommodated without requiring a goal exception,  
9 i.e. within the 1980 exception area.

10           In addition to the approved alternative of extending  
11 the existing runway to the south and carrying out PIA from  
12 the north, the county considered extending the runway to the  
13 south and carrying out PIA from the south, extending the  
14 runway to the north and carrying out PIA from the north and  
15 extending the runway to the north and carrying out PIA from  
16 the south. The county found that all of these alternatives  
17 require use of some resource designated lands. Supp.  
18 Record 27. Petitioners do not contend there are other  
19 alternatives for carrying out the proposed improvements at  
20 this airport in addition to these four identified by the  
21 county. Additionally, petitioners do not contend that the  
22 three other alternatives do not require a goal exception.<sup>13</sup>  
23 Therefore, petitioners provide no basis for concluding that

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<sup>13</sup>In fact, petitioners appear to concede that the alternatives which include extending the runway to the north would include "conversion" of some agricultural land, although less than is included in the approved exception area. Petition for Review 28, n 30.

1 there are alternative sites for the proposed improvements at  
2 this airport which do not require a new goal exception to  
3 which ORS 197.732(1)(c)(B) applies.

4 This subassignment of error is denied.

5 **C. Subassignment Three**

6 "The decision violates OAR 660-04-020(2)(c) which  
7 requires findings that the long-term consequences  
8 resulting from the use at the proposed site, with  
9 measures designed to reduce adverse impacts, are  
10 not significantly more adverse than would  
11 typically result from the same proposal being  
12 located in other areas requiring a goal exception.  
13 The decision has no such findings or discussion,  
14 and the record lacks substantial evidence to  
15 support findings to this effect."

16 As explained under the preceding subassignment, the  
17 county considered three alternatives for carrying out the  
18 proposed improvements at the subject airport, all of which  
19 involve agricultural land and require an exception.  
20 Petitioners contend, however, that the county failed to  
21 evaluate the long-term consequences of using these three  
22 alternatives and to compare them to those of the proposed  
23 alternative.

24 We agree with petitioners that ORS 197.732(1)(c)(C) and  
25 OAR 660-04-020(2)(c) require comparing the long-term  
26 economic, social, environmental and energy (ESEE)  
27 consequences of allowing the proposed use at the proposed  
28 site with the consequences of locating the proposed use in  
29 other areas which also require a goal exception. Johnson v.  
30 Tillamook County, 16 Or LUBA 855, 864 (1988); Jensen v.

1 Clatsop County, 14 Or LUBA 776, 782 (1986).

2       The county's findings describe the ESEE consequences of  
3 the approved alternative, Supp. Record 28-32, but do not  
4 describe the ESEE consequences of the other three  
5 alternatives or compare them to those of the chosen  
6 alternative.       The findings state that the approved  
7 alternative "has been chosen to be the best alternative,  
8 from an aeronautical perspective, due to the existing site  
9 constraints and design considerations." (Emphasis added.)  
10 Supp. Record 27. Although aeronautical reasons favoring the  
11 chosen alternative may be relevant in the analysis of ESEE  
12 consequences required by ORS 197.732(1)(c)(C) and  
13 OAR 660-04-020(2)(c), they do not obviate the requirement  
14 for such an analysis.<sup>14</sup>

15       This subassignment of error is sustained.

16       **D.    Subassignment Four**

17       "Respondent's findings that the proposed use is  
18       compatible with other adjacent land uses are

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<sup>14</sup>Respondents contend that even if the county's findings are inadequate, under ORS 197.835(9)(b), we may nevertheless affirm this part of the county's decision because there is "relevant evidence in the record which clearly supports [this] part of the decision \* \* \*." However, the evidence in the record identified by the parties is conflicting with regard to the ESEE consequences of the proposed use at the proposed location. Additionally, there is conflicting evidence in the record with regard to the amount of resource land required by the other three alternatives considered by the county, particularly those involving extension of the northern end of the runway, and the ESEE consequences of those alternatives. Therefore, we cannot affirm this part of the county's decision under ORS 197.835(9)(b). Forster v. Polk County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 91-108, December 2, 1991), slip op 6; Kellogg Lake Friends v. Clackamas County, 17 Or LUBA 277, 290 (1988), aff'd 96 Or App 536 (1989).

1 inadequate and are not supported by the  
2 substantial evidence in the record."

3 ORS 197.732(1)(c)(D) sets out the following standard  
4 for "reasons" goal exceptions:

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

8 OAR 660-04-020(2)(d) requires an exception to "describe how  
9 the proposed use will be rendered compatible with adjacent  
10 land uses" and to "demonstrate that the proposed use is  
11 situated in such a manner as to be compatible with  
12 surrounding \* \* \* resource management or production  
13 practices."

14 Petitioners contend the record includes testimony that  
15 focuses on the issue of compatibility of the proposed  
16 aeronautical activities with the farm use of the Donnelly  
17 and Jenks properties. Therefore, according to petitioners,  
18 the county is required to respond to this issue in its  
19 findings. Norvell v. Portland Area LGBC, 43 Or App 849, 604  
20 P2d 896 (1979). Petitioners argue that the county's  
21 findings are impermissibly conclusory.

22 We agree with petitioners that ORS 197.732(1)(c)(D) and  
23 OAR 660-04-020(2)(d) require the county to adopt findings  
24 that (1) describe the uses adjacent to the proposed  
25 exception area, and (2) explain why the proposed use of the  
26 exception area is or will be rendered compatible with those  
27 uses. Johnson v. Tillamook County, supra, 16 Or LUBA

1 at 865. However, petitioners' argument under this  
2 subassignment is partly based on a premise that in this  
3 case, ORS 197.732(1)(c)(D) and OAR 660-04-020(2)(d) require  
4 the county to demonstrate that the increased airport usage  
5 facilitated by the proposed goal exception is compatible  
6 with uses adjacent to both the proposed and existing  
7 exception area. We disagree with this premise.

8 In the unique situation presented by this case, where  
9 the increased airport usage facilitated by the proposed goal  
10 exception is planned for in the county's acknowledged  
11 comprehensive plan and the subject of an acknowledged goal  
12 exception, we believe the county need only consider  
13 compatibility issues raised by the addition of the proposed  
14 10 acres to the 1980 exception area.<sup>15</sup> Petitioners may not  
15 use the proposed goal exception for addition of 10 acres to  
16 the airport site as a vehicle to challenge whether the type  
17 and intensity of airport use planned for by the acknowledged  
18 comprehensive plan is compatible with uses adjacent to the

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<sup>15</sup>However, Marion County Zoning Ordinance (MCZO) 119.070(b) requires findings that a proposed conditional use "will be in harmony with the purpose and intent of the zone." MCZO 171.010 provides that the purpose of the P zone is "to provide regulations governing the development of lands appropriate for specific public \* \* \* uses and to ensure their compatibility with adjacent uses." (Emphasis added.) For the reasons stated in n 17, infra, we do not address petitioners' assignment of error concerning compliance of the challenged decision with MCZO conditional use permit approval requirements. Accordingly, we express no opinion on the scope of the compatibility analysis required by MCZO 119.070(b) and 171.010 for approval of a conditional use permit for the proposed airport-related improvements on the 155.8 acre state-owned parcel created by the proposed lot line adjustments.

1 airport.

2       The exception findings adopted by the county include  
3 conclusory statements that the proposed airport improvements  
4 will be compatible with adjacent uses. Supp. Record 32  
5 (findings 42 and 43). They also state that the discussion  
6 on compatibility "in the comprehensive plan amendment and  
7 zone change portion of this consolidated application, is  
8 hereby incorporated by this reference." Id. (finding 44).  
9 Whether this statement refers to other portions of the  
10 findings or to portions of the OAD applications is unclear,  
11 and where any such discussion of compatibility is located in  
12 the record is not identified. Respondents contend the  
13 county's goal exception compatibility findings are supported  
14 by plan amendment findings at Supp. Record 35-37. These  
15 findings address whether acquisition of the subject 10 acres  
16 would prevent continued farm use of the remaining Donnelly  
17 orchards and Jenks turf farm.

18       As we stated under subassignment one, supra, the  
19 county's findings do not explain why an exception from  
20 Goal 3 is required for approximately 9 of the 10 acres for  
21 which an exception is proposed. Similarly, the  
22 compatibility findings described in the preceding paragraph  
23 do not establish what use will be made of the subject  
24 property, except to say that the 5.4 acre portion of the  
25 Jenks property might remain in farm use. Supp. Record 36.  
26 Without establishing the uses to be made of the proposed

1 exception area, the findings can provide no basis for  
2 determining those uses will be compatible with adjacent  
3 uses, as required by ORS 197.732(1)(c)(D) and  
4 OAR 660-04-020(2)(d).

5 This subassignment of error is sustained.

6 **E. Subassignment Five**

7 "Goal[s] 11 and 14 exceptions are required here  
8 because the proposed use necessarily converts what  
9 is presently farm land into urban land through the  
10 introduction of urban facilities and uses.  
11 Respondent made no attempt to take exceptions to  
12 Goals 11 and 14 in this case."

13 Petitioners argue the county's findings establish that  
14 the proposed airport improvements are urban in nature.  
15 Supp. Record 18, 31-32, 40. Petitioners argue that a  
16 comprehensive plan amendment allowing urban uses on rural  
17 land must be supported by either (1) a demonstration of  
18 compliance with Goal 14, or (2) adoption of an exception to  
19 Goal 14. 1000 Friends of Oregon v. LCDC (Curry County), 301  
20 Or 447, 470-71, 724 P2d 268 (1986). Petitioners further  
21 argue that OAR 660-12-065(4)(o) and 660-12-070(1), although  
22 not directly applicable to the challenged decision because  
23 the subject applications were filed before these rules  
24 became effective, indicate that an exception to Goals 11 and  
25 14 is required to locate a transportation facility of the  
26 nature proposed on rural land. Petitioners point out that  
27 exceptions from Goals 11 and 14 have never been adopted for  
28 the Aurora State Airport, and contend such exceptions must

1 be adopted as part of the challenged decision.

2 Respondents contend petitioners failed to raise the  
3 issue of whether the OAD proposal requires an exception to  
4 Goals 11 and 14 during the county proceedings and,  
5 therefore, are precluded from raising this issue before  
6 LUBA. ORS 197.763(1), 197.835(2).

7 We have stated that where a local government's notice  
8 of hearing does not comply with ORS 197.763(3)(b) because it  
9 fails to identify an approval criterion relevant to the  
10 proposed development, under ORS 197.835(2)(a) petitioners  
11 may raise the local government's failure to require  
12 compliance with that approval criterion as an issue in a  
13 LUBA appeal proceeding. Neuenschwander v. City of Ashland,  
14 20 Or LUBA 144, 157 (1990). Where a local government's  
15 notice of hearing fails to identify an applicable statewide  
16 planning goal as an approval criterion, petitioners  
17 similarly may raise the local government's failure either to  
18 comply with or to adopt an exception from that goal as an  
19 issue in a LUBA appeal proceeding. There is no dispute that  
20 the county's notices of hearing did not identify Goals 11  
21 and 14 as applicable criteria and, therefore, if Goals 11  
22 and 14 are applicable to the challenged decision,  
23 petitioners may raise failure to adopt exceptions from Goals  
24 11 and 14 in this appeal.

25 Respondents argue that Goals 11 and 14 do not apply to  
26 the challenged decision, because the findings and evidence

1 in the record establish that the proposed airport  
2 improvements are not urban in nature. Supp. Record 30, 37;  
3 Record 349-50.

4 We agree with petitioners that in view of the area  
5 served and level of service provided, both the existing and  
6 proposed airport uses are clearly urban public facility  
7 uses. Thus, the acknowledged county comprehensive plan  
8 authorizes urban use of the 1980 exception area.<sup>16</sup> However,  
9 the challenged decision amends the county's comprehensive  
10 plan and zoning maps to designate and zone an additional 10  
11 acres for use as part of this urban airport use. This  
12 requires that exceptions to Goals 11 and 14 be adopted for  
13 those 10 acres. We note, however, that because such  
14 exceptions to Goals 11 and 14 would be based on the need to  
15 facilitate improvements to an urban public facility use that  
16 are already authorized by the acknowledged comprehensive  
17 plan, the text of such exceptions probably could be very  
18 similar to that required for the proposed exception to  
19 Goal 3.

20 This subassignment of error is sustained.

21 The first assignment of error is sustained, in part.

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<sup>16</sup>The county's plan is acknowledged as complying with Goals 11 and 14, and the proposed plan and zoning map amendments are allegedly required to carry out the airport development authorized by the acknowledged plan. Petitioners may not use their appeal of the challenged decision as a means of requiring the county to adopt Goal 11 and 14 exceptions to allow the airport development that is already authorized by the acknowledged plan.

1           The county's decision is remanded.<sup>17</sup>

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<sup>17</sup>In sustaining the first assignment of error, we determine the county's exception to Goal 3 is inadequate, and that the county failed to adopt required exceptions to Goals 11 and 14. The comprehensive plan map change, zoning map change, conditional use permit and lot line adjustment approvals challenged in petitioners' other assignments of error are all dependent upon county approval of the required goal exceptions. We therefore do not consider petitioners' arguments that other approval criteria for plan and zone amendments, conditional use permits and lot line adjustments are violated by the challenged decision. ORS 197.835(9)(a) requires that we decide all issues when reversing or remanding a decision, to the extent that we can do so consistent with the deadline established for issuing our final opinion and order. Resolution of the remaining issues raised by petitioners would require further extensions of the statutory deadline for issuing our final opinion and order.