



1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners request we reverse a decision of the Douglas  
4 County Board of Commissioners granting a conditional use permit  
5 to allow a personal use airport.

6 MOTION TO INTERVENE

7 The applicant for the conditional use permit, Bill Woods,  
8 seeks to intervene in this review proceeding on the side of  
9 respondent Douglas County. There is no objection to the  
10 intervention, and it is allowed.

11 FACTS

12 The proposed airport is located in a Farm-Forest (FF) zone  
13 in rural Douglas County. The airport site occupies less than  
14 15 acres in the interior of a 3,000 acre ranch owned by  
15 intervenor-respondent (respondent). The airport will have one  
16 runway, 5,000 feet long and 40 feet in width. Landings and  
17 takeoffs will be to the southeast.

18 The site is on the west side of Interstate 5, and the  
19 runway is 504 feet higher in elevation than the freeway. The  
20 LDN 55 contour line for the airport will extend 750 feet to  
21 either side of the runway.<sup>1</sup>

22 Property to the east, south and west is in large  
23 agricultural holdings. A rural residential area lies to the  
24 north. It is from these residential properties that  
25 remonstrances were received against the proposed airport use.  
26 The nearest residential dwelling is 3,000 feet north of the

1 runway.

2 Along with the runway, there will be fuel storage, night  
3 landing lights and electronic navigational aids. Respondent  
4 plans to build two hangers to house respondent's aircraft.  
5 Respondent presently owns and uses a Lear Jet, a Gulfstream  
6 Turbo Commander and a helicopter.

7 The application was approved by the Douglas County Planning  
8 Commission. The decision was appealed to the county  
9 commissioners and was heard on June 15, 1988. The  
10 commissioners granted the conditional use on July 6, 1988, and  
11 this appeal followed.

12 FIRST ASSIGNMENT OF ERROR

13 "The management of Farm Forest lands and their uses,  
14 as stated in the provisions of Oregon Statutes and  
15 Douglas County Ordinances require denial of those uses  
16 which are non Farm Forest (FF) or Exclusive Farm Use  
17 (EFU) in nature, unrelated to FF or EFU uses and  
18 incompatible with existing or adjacent permitted  
19 uses. The proposed JET AIRPORT is against the intent  
20 and goals of the Oregon Legislature's Agricultural Use  
21 Policy and the provisions of the Douglas County  
22 Comprehensive Plan. Even where variances are granted,  
23 compatibility with surrounding uses must be  
24 demonstrated [sic]. The Respondent/Commissioners have  
25 failed to demonstrate [sic] how the proposed use is  
26 compatible, failed to carry out the goals and intent  
of the legislature and violated the applicable  
Statutes and Ordinances." (Emphasis in original.)

21 Petitioners argue that the decision violates a provision of  
22 the Douglas County Land Use and Development Ordinance (LUDO)  
23 permitting personal use airports as conditional uses.

24 Petitioners also argue the decision violates  
25 ORS 215.213(2)(h).<sup>2</sup> LUDO 3.5.100(8), ORS 215.213(2)(h) and  
26

1 ORS 215.283(2)(g) all describe "personal use airports" as  
2 follows:

3 " \* \* \* A personal use airport as used in this section  
4 means an airstrip restricted, except for aircraft  
5 emergencies, to use by the owner, and, on an  
6 infrequent and occasional basis, by his invited  
7 guests, and by commercial activities in connection  
8 with agricultural operations."

9 Petitioners claim this provision requires the airport be  
10 used exclusively by the owner (with some exceptions not  
11 relevant here) and may be used only in conjunction with  
12 agricultural activities. Petitioners argue the Lear Jet and  
13 the Gulfstream Turbo Commander, both high performance aircraft,  
14 are not agricultural aircraft and certainly not used in  
15 furtherance of an agricultural enterprise. Petitioners and  
16 respondent agree the purpose in constructing the airport is for  
17 respondent's pleasure and to allow respondent to travel  
18 directly by air between his home in Douglas County and his  
19 business located in southern California.

20 Petitioners bolster their argument by quoting from a  
21 portion of the purpose section of the county's ordinance. This  
22 provision calls for the preservation of farm and forest lands  
23 for the production of crops, livestock and timber products.

24 "This ordinance is designed to provide and coordinate  
25 regulations in Douglas County governing the  
26 development and use of lands and to implement the  
27 Douglas County Comprehensive Plan. To these ends, it  
28 is the purpose of this ordinance to:

29 " \* \* \* \* \*

30 "(4) Conserve farm and forest lands for the production  
31 of crops, livestock and timber products." LUDO 1.025.

1 Petitioners also quote the state's agricultural land use policy  
2 found in ORS 215.243.<sup>3</sup> Petitioners argue these policies make  
3 it clear that rural lands are important and scarce and are not  
4 to be used for urban activities. We understand petitioners to  
5 believe the airport is an urban use.<sup>4</sup>

6 Petitioners' basic premise is that a personal use airport  
7 within land zoned for exclusive farm use or, in this case, the  
8 county's FF zone, is only permissible if it is in furtherance  
9 of some agricultural (or forestry) activity. We find neither  
10 the county ordinance nor the state statute so restrict personal  
11 use airports. Nothing in the code or the ordinance requires  
12 that a personal use airport be limited to agricultural  
13 activities. Rather, the provisions allow personal use airports  
14 with no restrictions on purpose except that the use be  
15 "personal" to the owner and that any commercial aviation  
16 activity must be in conjunction with agricultural operations.  
17 That is, personal use airports are conditionally permitted; and  
18 commercial aviation activities are permitted at such airports  
19 if "in connection with agricultural operations." The quoted  
20 language limits commercial aviation activities but does not  
21 limit private use by the owner at personal use airports. We so  
22 held in Todd v. Douglas County, 14 Or LUBA 307 (1986), and we  
23 see no reason to depart from that decision in this review  
24 proceeding.

25 The first assignment of error is denied.

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1 SECOND ASSIGNMENT OF ERROR

2 "The Respondent/Commissioners have not specifically or  
3 generally demonstrated how any number or type of  
4 measure [sic] could make a non-agriculture related JET  
AIRPORT compatible with the other permitted uses in an  
FF or EFU zone." (Emphasis in original.)

5 Petitioners argue the airport is not compatible with any of  
6 the other permitted uses in the FF zone. Petitioners further  
7 claim that "no number or type of measure designed to mitigate  
8 conflicts will make such project or use compatible." Petition  
9 for Review 17. Petitioners advise that LUDO 3.39.050.1  
10 provides that a conditional use may be granted if

11 "the proposed use is or may be made compatible with  
12 existing adjacent permitted uses and other uses  
permitted in the underlying zone."

13 Petitioners' complaint is that the airstrip is not even  
14 compatible with other airstrips in the area, much less with the  
15 other permitted uses existing in the area.<sup>5</sup>

16 Respondent first argues LUDO 3.39.050(1) is not  
17 applicable. Respondent contends LUDO 3.5.125, not LUDO  
18 3.39.050(1), is the controlling section for conditional use  
19 approvals on FF zoned land. LUDO 3.5.125 provides:

20 "1. Except as specifically provided for in Section  
21 3.5.100.13, the following criteria shall be  
applicable to conditional uses in the FF zone:

22 "a. The agricultural and forestry elements of  
23 the Douglas County Comprehensive Plan.

24 "b. The provisions of ORS 215.243.

25 "c. The provisions of Section 3.5.000 of this  
ordinance."<sup>6</sup>

26 "2. The Approving Authority shall approve the

1 application if:

2 "a. The use is compatible with the applicable  
3 criteria listed above.

4 "b. The use would not seriously interfere with  
5 farm uses defined in ORS 215.203 or forest  
6 practices as defined and regulated by ORS  
7 527.610 to 527.730 on adjacent lands devoted  
8 to, or suitable for, such uses.

9 "c. The grant of the application would not  
10 materially alter the stability of the  
11 overall land use pattern in the area.

12 "3. The Approving Authority shall impose any  
13 conditions necessary to meet the applicable  
14 criteria and preserve lands in this district for  
15 farm and forest uses."

16 Respondent argues there are findings adequate to show that  
17 the use is or may be made compatible with other uses in the  
18 area.

19 We disagree with respondent's first argument that LUDO  
20 3.39.050 is not applicable. This section is located in the  
21 general conditional use chapter of the LUDO and provides:

22 "The Approving Authority may grant a request for  
23 conditional use approval if the following criteria are  
24 met:

25 "1. The proposed use is or may be made compatible  
26 with existing adjacent permitted uses and other  
27 uses permitted in the underlying zone.

28 "2. The proposed use is compatible with any other  
29 criteria contained in specific zoning district  
30 regulations of the Ordinance."

31 Nothing in this provision limits its applicability in any  
32 particular zone or establishes it as the only provision  
33 applicable to conditional use requests. We conclude both LUDO  
34 3.39.050 and LUDO 3.5.125 are applicable to a conditional use

1 request in the FF zone.

2       Reviewing the findings with these standards in mind, we  
3 note the findings include considerable facts and discussion  
4 about noise levels. The county order concludes noise levels  
5 resulting from the proposed airport operations will not be  
6 incompatible with adjacent uses. According to the order, noise  
7 levels at the nearest residence resulting from the proposed use  
8 will be less than those generated by other existing uses in the  
9 area (including barking dogs, a rooster and a chain saw  
10 operated 100 feet from measuring equipment). Record 94. A  
11 noise level measurement was taken at the nearest residence  
12 during two passes by the jet aircraft. The flight path was 200  
13 feet above the landing site, and there was no perceptible  
14 change in the background noise level of 58 decibels. Id.

15       The county's conclusion that the use is compatible with  
16 adjacent existing and permitted uses is also based upon  
17 consideration of the altitude and direction of aircraft flight  
18 (generally not over residential area), the number of flights,  
19 the size of respondent's 3,000 acre ranch and the proximity of  
20 the airport to surrounding properties.

21       In addition, the county imposed conditions regarding  
22 aircraft operations, directions of travel, maintenance of fire  
23 trails, storage of water and fuel and removal of topsoil. The  
24 petitioners do not explain how the county's findings and  
25 conditions of approval fail to show that the use is or may be  
26 made compatible with existing surrounding uses and other uses

1 permitted in the zone. Without more detail in petitioners'  
2 argument, we are unable to sustain this claim.

3 The second assignment of error is denied.

4 THIRD ASSIGNMENT OF ERROR

5 "Failure of Respondent/Commissioners to consider  
6 ecological impacts and restrictions on agricultural  
pursuits."

7 Petitioners quote LUDO 3.35.800.3.f controlling airport impact  
8 overlay zones. The code provides:

9 "No use shall be allowed in the airport impact  
10 overlay district if such use is likely to attract an  
unusual quantity of birds."

11 Petitioners argue that approval of the airport will cause a  
12 conflict with use of adjoining farm and rural residential  
13 lands. Petitioners' argument is based on the premise that LUDO  
14 3.35.800.3.f will result in restrictions on the production of  
15 certain crops because they are likely to attract an unusual  
16 quantity of birds. According to petitioners, persons engaging  
17 in such agricultural use in the area would be in violation of  
18 the code.

19 Petitioners also contend that the plan to remove topsoil  
20 and respread it in areas near the airport will increase  
21 agricultural productivity of the surrounding land. Petitioners  
22 believe this action will result in attraction of a greater  
23 number of birds, resulting in an "ecologically unsound"  
24 impact.

25 Respondent replies that LUDO 3.35.800.3.f is not  
26 applicable. The county did not apply the airport impact

1 overlay zone. Respondent acknowledges that if the protective  
2 zoning should be proposed at a future time "the concerns  
3 expressed by petitioners might be germane." Respondent's  
4 Brief 22.

5 As to petitioners' claim about the effect of relocating  
6 topsoil, respondent claims petitioners offer no argument to  
7 support their assertion that applying the topsoil to lands near  
8 the airport will attract birds.

9 LUDO 3.35.800 controls airport impact overlay zones. LUDO  
10 3.35.800 provides as follows:

11 "The purpose of the Airport Impact Overlay District is  
12 to protect the public health, safety and welfare by  
13 assuring that development within areas impacted by  
14 airport operations is appropriately planned to  
15 mitigate such operations. This overlay district is  
16 also intended to prevent the establishment of the  
17 space obstructions in air approaches through height  
18 restrictions and other land use controls, as deemed  
19 essential to protect the public health, safety and  
20 welfare.

21 "The Overlay shall be applied to Airport Approach  
22 areas, as herein defined, and depicted in the County  
23 Zoning Atlas.

24 "1. Definitions - For the purpose of this section  
25 only, the following definitions are established:

26 "a. AIRPORT APPROACH AREA: A wedge-shaped area  
described by boundaries where the inner edge  
of the Airport Approach Area coincides with  
each end of the runway and is 250 feet wide  
at each terminus. The Airport Approach Area  
expands outward uniformly to a width of 750  
feet at a horizontal distance of 2,500 feet  
from the terminus, with its centerline being  
the continuation of the centerline of the  
runway."

Petitioners' assignment of error does not assert the county

1 erred because it failed to apply the airport impact overlay  
2 district. Implicit in petitioners' claim, however, is the  
3 assertion that the airport impact overlay district must be  
4 applied, and its provisions will inhibit agricultural use.  
5 Inhibition of agricultural use, in petitioners' view, shows  
6 that the airport is not compatible with other existing and  
7 permitted uses in the area, thus violating LUDO 3.39.050.1.

8 We note, however, that while there is nothing in the  
9 ordinance to suggest that the overlay is applicable only to  
10 public airports, as suggested by respondent, it is also clear  
11 that the overlay is to be applied to airport approach areas as  
12 "depicted in the county's zoning atlas." There is no  
13 suggestion by petitioners or respondent that the county's  
14 zoning atlas shows an airport approach area for the subject  
15 property. Of course, the zoning atlas simply may not be up to  
16 date in that it may not include airports constructed after  
17 completion of the atlas. However, we are cited to nothing in  
18 the ordinance or the comprehensive plan to suggest that the  
19 county is obliged to amend its zoning atlas and apply the  
20 overlay for every new airport constructed.

21 We note that transportation element finding 107 in the  
22 comprehensive plan explicitly provides:

23 " \* \* \* [c]ompatible land uses that avoid safety and  
24 noise conflicts may be achieved through either  
25 existing zoning districts or by establishing a special  
26 airport overlay zone that would modify the underlying  
zoning districts in the vicinity of airports."  
(Emphasis added.)

1 Indeed, there is language in LUDO 3.35.800, quoted supra,  
2 suggesting the decision to apply the airport impact overlay  
3 district turns on whether the county deems application of the  
4 district "essential to protect the public health, safety and  
5 welfare." A decision to apply the overlay could coincide with  
6 initial approval of the airport, but there is nothing in LUDO  
7 3.35.800 that would prevent a decision from occurring later.  
8 In addition, there is nothing in LUDO 3.35.800 to require that  
9 a determination will ever occur that the public health, safety  
10 and welfare demands application of the overlay.<sup>7</sup>

11 The third assignment of error is denied.<sup>8</sup>

12 FOURTH ASSIGNMENT OF ERROR

13 "The Respondent/Commissioners have consistently taken  
14 the word of Intervenor/Respondent's attorney in all  
15 matters. In the matter of fire safety, the  
16 Respondent/Commissioners have erroneously accepted the  
17 Intervenor/Respondent's attorney's assertion that no  
18 fires have resulted from aircraft crashes."

19 Petitioners claim the county failed to address the fire  
20 dangers petitioners insist the airport will bring to the area.  
21 These issues were raised in proceedings before the county,  
22 according to petitioners. Petitioners assert there have been  
23 fires caused by aircraft operations in the area. The  
24 commissioners' failure to respond to petitioners' concerns was  
25 error, according to this argument.

26 Petitioners do not provide a legal theory upon which we  
might reverse or remand the county's order. We suspect,  
however, petitioners are claiming that the fire danger shows

1 the proposed use to be incompatible with surrounding uses. We  
2 also understand petitioners to argue the county was obliged to  
3 respond to evidence raising an issue of compliance with an  
4 applicable approval criterion. See, Hillcrest Vinyards v.  
5 Board of Comm. of Douglas County, 45 Or App 285, 293, 608 P2d  
6 201 (1980); Norvell v. Portland Area LGBC, 43 Or App 849,  
7 853-854, 604 P2d 896 (1979).

8 Respondent replies that not every bit of evidence need be  
9 addressed in findings. Lee v. City of Portland, 57 Or App 798,  
10 646 P2d 790 (1982). Respondent acknowledges evidence was  
11 introduced about fire danger, but respondent believes the  
12 findings adopted and the conditions imposed by the county board  
13 of commissioners are sufficient to show the fire issue was  
14 adequately considered and adequate safety measures provided.

15 We agree with respondent. The county's order includes  
16 considerable discussion about fire protection from the Oakland  
17 Rural Fire District and requires that other fire protection  
18 measures be taken to protect the airport and surrounding area.  
19 Petitioners do not explain why these measures are inadequate,  
20 and we therefore deny the fourth assignment of error.<sup>9</sup>

21 FIFTH ASSIGNMENT OF ERROR

22 "The Respondent/Commissioners have consistently taken  
23 the word of Intervenor/Respondent's attorney in all  
24 matters. The issue of noise pollution has been  
25 clouded by biased 'expert' testimony from professional  
26 people hired by Intervenor/Respondent to further his  
own cause. The issue of JET FUEL storage has been  
glossed over. Respondent/Commissioners have approved  
this inappropriate project even in the face of glaring  
inaccuracies and incomplete investigation into

1 compliance with regulations." (Emphasis in original.)

2 In this assignment of error, petitioners complain that  
3 because of the topography around the airport,

4 "[t]he families living on the ridges and hilltops  
5 would feel the direct blast while those living in the  
6 valleys would be subject to reverberations and trapped  
7 sound as the applicant's and his guest's JETS would  
8 land and take off." Petition for Review 22.

9 Petitioners go on to list evidence about noise levels.

10 However, petitioners present no noise measurements taken from  
11 sites off the applicant's property showing any violation of  
12 existing noise standards or illustrating excessive noise.

13 In addition, petitioners complain about fuel storage.  
14 Petitioners do not, however, explain to us how the provision  
15 for fuel storage violates any applicable criterion of county  
16 ordinance or state law.

17 We understand petitioners' complaint, in sum, to be that  
18 the county commissioners did not adequately assess information  
19 about noise and fuel storage and their impacts on the  
20 community. In other words, petitioners complain that the use,  
21 with its noise and provision for storage of jet fuel, is not  
22 compatible with the uses in the surrounding area.

23 The order includes findings about the topography of the  
24 area, the noise impacts generated by the applicant's aircraft,  
25 fuel storage and fire danger. The findings note that the  
26 nearest residence outside the applicant's ownership is some  
3,000 feet from the landing strip, and residences of other  
persons objecting are located from a mile to several miles from

1 the airport site. Record 94. The order includes discussion of  
2 noise measurements of aircraft passing over the area, including  
3 a noise measurement taken while the jet aircraft passed over  
4 the Lane residence 3,000 feet from the landing strip. The  
5 evidence suggested to the county that the applicant's aircraft  
6 will provide no appreciable increase in noise over background  
7 levels. Id. Petitioners provide no evidence to suggest this  
8 conclusion is mistaken.

9 With respect to fuel storage, we note again measures were  
10 taken for fire protection in the area, and petitioners do not  
11 provide us with information on why these measures were  
12 insufficient.

13 We deny the fifth assignment of error.

14 SIXTH ASSIGNMENT OF ERROR

15 "Failure of Respondent/Commissioners to correctly  
16 interpret Real Estate effects upon the community."

17 Petitioners complain that while the county considered real  
18 estate values of properties near the Roseburg airport and  
19 concluded that there was no loss in value, the properties  
20 considered were primarily mobile home parks. The comparison is  
21 useless, according to petitioners. Petitioners, however, do  
22 not explain why the comparison is useless. Petitioners assert  
23 that this airport will alter the stability of property values  
24 in the area because it will adversely affect the peaceful rural  
25 lifestyle enjoyed by area residents. Petitioners conclude the  
26 county did not clearly show the use would not have a

1 detrimental effect on property values in the area.

2 The relevant finding is as follows:

3 "30. No measurable detrimental effect on property  
4 values will be caused by the landing strip. The  
5 landing strip is in the interior of the 3,000 +  
6 acre property of the applicant. Evaluation of  
7 properties in the vicinity of the Roseburg  
8 Municipal Airport shows no negative impact from  
9 that airport's operations. Mobile home parks  
10 near the airport have a high occupancy rate and  
their managers have received no complaints about  
the operations of Roseburg Municipal Airport.  
Mobile home parks a greater distance from the  
airport appear to be less in demand and have  
lower rental rates. Air Park Estates, Glide,  
Oregon, was specifically designed around an  
airstrip which is promoted as an advantage.

11 "31. The planning staff recalled three instances of  
12 approval of private airports. In these three  
13 instances, no complaints have been received  
regarding the operations of those airports after  
the initial application procedure." Record 95-96.

14 Fairly read, petitioners challenge the evidentiary support  
15 for the county's conclusion that the proposed use will not  
16 cause adverse effect on property values. Petitioners do not,  
17 however, explain why the challenged finding is critical to this  
18 decision. Only if the challenged finding is critical to the  
19 decision, is the question of whether it is supported by  
20 substantial evidence relevant to our inquiry. Bonner v. City  
21 of Portland, 11 Or LUBA 40, 52 (1984). Without an explanation  
22 of why the challenged finding is critical to this decision, we  
23 are provided with no basis to remand or reverse the decision.  
24 Territorial Neighbors v. Lane County, \_\_\_ Or LUBA \_\_\_ (LUBA No.  
25 87-083, April 27, 1988), slip op at 22-23.<sup>10</sup>

26 The sixth assignment of error is denied.

The decision of Douglas County is affirmed.<sup>11</sup>

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FOOTNOTES

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1 A "LDN" contour line is a sound measurement indication. The LDN line measures average day and night noise levels computed by the Department of Environmental Quality (DEQ). Beyond the 55 LDN contour line, the DEQ has concluded there is no significant noise impact as a result of the airport.

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2 Petitioners' citation to ORS 215.213(2)(h) is misplaced. The applicable statute is ORS 215.283(2)(g).

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3 ORS 215.243 provides:

"(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

"(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

"(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

"(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones."

1 4

2 Additionally, petitioners mention the Oregon Forest  
3 Practices Act found in ORS Chapter 527. It is not clear  
4 to us what relevance this act has to the decision.  
5 However, we understand petitioners to believe that because  
6 the airport is not compatible with forest uses, the policy  
7 to encourage economically efficient forest practices in  
8 the State of Oregon is not furthered by this decision.  
9 See, ORS 527.630.

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12 Petitioners claim other airstrips nearby are grass  
13 strips used in conjunction with agricultural or logging  
14 activities.

14 6

15 LUDO 3.5.000 is the purposes section of the FF zone.  
16 The purposes section provides as follows:

17 "The Farm-Forest Classification is intended to promote  
18 management, utilization, and conservation of forested  
19 grazing lands, lands which might not be forested but  
20 have such potential, and nontillable grazing lands  
21 adjacent to forested lands. The purpose of this  
22 classification is to encourage sound management  
23 practices on such lands for agricultural or forest  
24 resource uses, including but not limited to:  
25 watershed management; recreation; fish and wildlife  
26 management; and agricultural activities consistent  
27 with sound forest and agricultural management  
28 practices, to retain lands within this district for  
29 farm and forest use, preserving such land from  
30 nonresource use and conflicts."

24 7

25 Lastly, it appears that the airport impact overlay zone, if  
26 applied, would be applied to a limited geographical area. In  
this case, LUDO 3.35.800 shows a diagram of an airport impact  
overlay area and shows it to extend for a distance of only 2500

1 feet from the end of a runway. Because the proposed airport is  
2 within respondent's 3,000 acre ranch, and because the airport  
3 impact overlay district would not extend beyond respondent's  
4 property line, we question whether enactment of the overlay  
5 would necessarily result in the kind of incompatibilities with  
6 adjacent uses proscribed by LUDO 3.39.050.

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8

Petitioners also claim ORS 215.253(1), prohibiting exercise  
of restrictions on accepted farming practices, is violated by  
the county's decision. Petitioners do not explain how this  
proposed use violates the statute and we will not speculate  
about petitioners' claim.

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9

Petitioners quarrel with the county's reliance on certain  
evidence from the respondent's attorney. The fact that some of  
the evidence in the record is from respondent's attorney is  
not, in itself, cause for remand or reversal. Information  
provided by the attorney, that there had been no aircraft  
caused fires in the area in the last five years, is contrary to  
several news articles provided by petitioners. These news  
articles, however, were apparently not provided to the county  
commission but were provided to this Board as an appendix to  
petitioners' petition for review. These news items were not  
before the county board and are not properly part of our  
record. We decline to consider them. We find the evidence  
given by the attorney to be substantial evidence in support of  
the county's conclusion about fire dangers. Younger v. City of  
Portland, 305 Or 346, 752 P2d 262 (1988).

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10

We note the county's findings do address the question of  
impact on property values. Further, we note the intervenor's  
expert did testify on the issue of property values and noted  
several areas impacted by airports where property values had  
not declined. See transcript 68.

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11

Respondent filed a motion to strike portions of the  
petition for review. The first complaint is about the  
following language:

"This will be a definite conflict with adjoining farm  
and rural residential lands if certain crops such as  
wheat or fruit trees are restricted because they are

1       likely to attract an unusual quantity of birds."  
2       Petition for Review at 18.

3       Respondent argues there is no support in the record for this  
4       statement. We do not believe the statement requires support in  
5       the record. We regard the statement as argument. It is an  
6       assertion of a possible event based upon a hypothetical  
7       situation. We do not regard the statement as one of fact. We  
8       therefore decline to strike this portion of the petition.

9       The next complaint is about the following language:

10       "Contrary to the assertions \* \* \* though the fire  
11       burned for two days \* \* \* three men died and thousands  
12       of dollars, man-hours and equipment-hours spent."  
13       Petition for Review at 19-20.

14       There is also a complaint about newspaper articles included in  
15       the petition for review at appendix B.

16       Respondent argues there is no evidence in the record about  
17       fire spreading from aircraft crashes. The news articles  
18       included in petitioners' appendix B were not provided to the  
19       board of county commissioners and, according to respondent,  
20       should be stricken.

21       We agree with respondent. Petitioners are unable to cite  
22       evidence in the record regarding fires resulting from aircraft  
23       crashes.

24       The last complaint is about a discussion in the petition  
25       for review at page 28 about a letter received from respondent's  
26       attorney which petitioners describe as threatening petitioners  
27       with a libel suit if petitioners did not stop making remarks  
28       about the respondent. There is a copy of the letter included  
29       in the petition for review at appendix D, and respondent moves  
30       to strike the letter also.

31       We decline to strike the letter. The letter is part of the  
32       record before the county commission, and petitioners'  
33       characterization of the letter may not agree with that of its  
34       author, but petitioners are entitled to their own  
35       interpretation of documents in the record.