

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

3  
4 DAVID LENTZ,  
5 *Petitioner,*

6  
7 vs.

8  
9 LANE COUNTY, CITY OF EUGENE and  
10 CITY OF SPRINGFIELD,  
11 *Respondents.*

12  
13 LUBA No. 2000-040

14  
15 FINAL OPINION  
16 AND ORDER

17  
18 Appeal from Lane County, City of Eugene and City of Springfield.

19  
20 Allen L. Johnson, Eugene, filed the petition for review and argued on behalf of  
21 petitioner. With him on the brief was Johnson & Sherton, P.C.

22  
23 Emily N. Jerome, Eugene, Stephen L. Vorhes, Eugene, and Joseph J. Leahy,  
24 Springfield, filed the response brief. With them on the brief were Harrang, Long, Gary,  
25 Rudnick, P.C. and Harold, Leahy & Kieran. Emily N. Jerome argued on behalf of  
26 respondents.

27  
28 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,  
29 participated in the decision.

30  
31 AFFIRMED

09/15/2000

32  
33 You are entitled to judicial review of this Order. Judicial review is governed by the  
34 provisions of ORS 197.850.  
35

**NATURE OF THE DECISION**

Petitioner challenges the adoption of comprehensive plan amendments redesignating property from Agriculture (AG) to Government and Education (G) to facilitate the realignment of a right-of-way over petitioner’s property.

**FACTS**

Petitioner owns a 91.7-acre parcel located east of the Eugene-Springfield Regional Airport (airport). The parcel is bordered on the north by Airport Road and on the west by the airport. The property is currently in agricultural use.

The cities of Eugene and Springfield and Lane County (respondents) have adopted a joint comprehensive plan (Metro Plan) addressing land uses within the incorporated boundaries of the two cities and within designated areas in the unincorporated county. The Metro Plan provides for the adoption of more detailed refinement plans. Refinement plans may be adopted by one or more of the affected local governments, provided the refinement plans are consistent with the Metro Plan as a whole. One of the refinement plans subject to the Metro Plan is the Eugene Airport Master Plan (Airport Plan). Because the airport is a regional amenity, all three local governments have plan policies addressing airport activities.<sup>1</sup>

In 1999, respondents adopted amendments updating the 1990 Eugene Airport Master Plan and related provisions in other local plans. The amendments include changes to the Eugene-Springfield Metropolitan Plan diagram to redesignate 20 acres of petitioner’s property from AG to G, a change in the Airport Refinement Plan to expand the airport

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<sup>1</sup>The challenged decisions amend the Lane County Zoning Map; the 1990 Eugene Airport Master Plan, adopted by the City of Eugene and Lane County; the 1999 Eugene Airport Master Plan Refinement Plan diagram; the Eugene-Springfield Metropolitan Area Transportation Plan; and the Eugene-Springfield Metropolitan Area Public Facilities Plan. Amendments to the latter three documents were adopted by all three entities.

1 boundary to include the redesignated portion of petitioner’s property and an amendment to  
2 the Eugene-Springfield Metropolitan Area Transportation Plan.

3 The purpose of the amendments affecting petitioner’s property is to accommodate the  
4 realignment of Airport Road around the southern end and buffer zones for a proposed new  
5 north-south runway. The new runway is to be located east of the existing airport terminal and  
6 parking area. The challenged amendments provide for the new runway, a runway protection  
7 zone, an object free area and a runway safety area, as required by Federal Aviation  
8 Administration (FAA) regulations. FAA regulations prohibit roads within these areas. As a  
9 consequence, respondents propose to realign a segment of Airport Road over a portion of the  
10 redesignated 20 acres.

11 Respondents adopted the amendments through a joint quasi-judicial decision making  
12 process. During the hearings below, petitioner appeared and testified that he believed the  
13 proposed amendments could not be adopted without also taking an exception to Statewide  
14 Land Use Planning Goal 3 (Agricultural Lands), Goal 11 (Public Facilities and Services) and  
15 Goal 14 (Urbanization) pursuant to OAR chapter 660, division 4. The adopted amendments  
16 do not take exceptions to those goals.

17 This appeal followed.

## 18 **BACKGROUND**

19 Because petitioner’s assignment of error contains arguments relating to ORS 836.600  
20 through 836.630 (Airport Planning Statute) and OAR chapter 660, division 13 (Airport  
21 Planning Rule or APR), we summarize the relevant portions of the statutes and rules.

### 22 **A. ORS 836.600 through 836.630**

23 ORS 836.600 through 836.630 govern local regulation of airport activities. ORS  
24 836.600 establishes a general state policy to encourage and support the “continued operation  
25 and vitality of Oregon’s airports.” ORS 836.630(3) provides that the statutes and rules

1 promulgated in accordance with the statutes “shall be liberally construed to further” this  
2 general state policy.

3 ORS 836.616(1) requires that the Land Conservation and Development Commission  
4 (LCDC) “adopt rules for uses and activities allowed within the boundaries of airports.” Uses  
5 allowed within airport boundaries established pursuant to LCDC rules must include

6 “[c]ustomary and usual aviation-related activities including but not limited to  
7 takeoffs, landings, \* \* \* construction and maintenance of airport facilities  
8 \* \* \* and other activities incidental to the normal operation of an airport.”  
9 ORS 836.616(2)(a).

10 **B. The Airport Planning Rule (APR)**

11 OAR chapter 660, division 13 contains LCDC’s rules addressing airport planning.  
12 ORS 836.610(1) requires local governments to amend their comprehensive plan and land use  
13 regulations regarding publicly owned airports to conform to the APR.<sup>2</sup> The APR requires  
14 that local governments adopt comprehensive plan and land use regulations for each aviation  
15 facility subject to the requirements of ORS 836.610(1). The plan and land use regulations  
16 must include, among other things:

17 “A map \* \* \* showing the location of the airport boundary. The airport  
18 boundary shall include the following areas \* \* \*:

19 “(a) Existing and planned runways, taxiways, aircraft storage \* \* \*,  
20 maintenance, sales, and repair facilities; [and]

21 “(b) Areas needed for existing and planned airport operations[.]” OAR  
22 660-013-0040(1).

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<sup>2</sup>Airports subject to the APR include the following publicly owned airports:

“Publicly owned airports registered, licensed or otherwise recognized by the Department of Transportation on or before December 31, 1994, that in 1994 were the base for three or more aircraft[.]” ORS 836.610(1)(a).

The parties do not dispute that the Eugene-Springfield Regional Airport falls within this definition of publicly owned airports.

1 **ASSIGNMENT OF ERROR**

2 OAR 660-012-0065 identifies “transportation facilities, services and improvements  
3 which may be permitted on rural lands consistent with Goals 3, 4, 11, and 14 without a goal  
4 exception.”<sup>3</sup> OAR 660-012-0065(3) provides, in relevant part:

5 “The following transportation improvements are consistent with goals 3, 4,  
6 11, and 14 subject to the requirements of this rule:

7 “(a) Accessory transportation improvements for a use that is allowed or  
8 conditionally allowed by ORS 215.213 \* \* \*;

9 “(b) Transportation improvements that are allowed or conditionally  
10 allowed by ORS 215.213 \* \* \*;

11 “\* \* \* \* \*

12 “(n) *Expansions or alterations of public use airports* that do not permit  
13 service to a larger class of airplanes[.]” (Emphasis added.)

14 Respondents found that the disputed amendments were not required to take an  
15 exception to Goals 3, 11 and 14 because the amendments fall within one or more of the  
16 categories of improvements described above.

17 **A. OAR 660-012-0065(3)(n)**

18 Petitioner argues that respondents misconstrued the applicable law when they found  
19 that no goal exceptions are required because the amendments result in the expansion of a  
20 “public use airport.” OAR 660-012-0065(3)(n). According to petitioner, the realignment of a  
21 local arterial that provides access to other properties in addition to the airport is not an  
22 “airport use” and, therefore, the limited exemption provided for in OAR 660-012-0065(3)(n)  
23 does not apply.

24 Petitioner contends that the decision may only be deemed to comply with the relevant  
25 goals under OAR 660-012-0065(3)(n) if the expansion is limited to “airport uses.” According

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<sup>3</sup>Petitioner does not challenge respondents’ conclusion that Goal 4 (Forest Lands) does not apply to the challenged decisions.

1 to petitioner, statutory policies favoring the retention of agricultural lands require that there  
2 be some limitations on the scope of airport expansions that comply with OAR 660-012-  
3 0065(3)(n). Otherwise, petitioner contends, entities wishing to establish urban uses that are  
4 only tangentially related to nearby airports need merely to extend the airport boundaries to  
5 encompass those uses. Petitioner argues that such a broad reading of OAR 660-012-  
6 0065(3)(n) circumvents the many protections afforded agricultural lands by the exceptions  
7 process.

8 Petitioner relies on ORS 836.616 for the proposition that the legislature limited  
9 LCDC's authority to adopt its APR allowing for a multiplicity of uses within airport  
10 boundaries. Petitioner reads the statute to authorize the APR to allow for an expansion of an  
11 airport, without taking exceptions to Goals 3, 11 and 14, only if the expansion is reasonably  
12 necessary to accommodate the list of uses provided for in ORS 836.616.<sup>4</sup> Petitioner argues  
13 that this narrow reading of the APR is supported by the definition of "airport" in ORS  
14 836.605.<sup>5</sup> According to petitioner, the temporal distinction in ORS 836.605 means LCDC's  
15 APR cannot allow "airport uses" established after December 31, 1994, to include more than

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<sup>4</sup>As we previously stated, ORS 836.616(1) requires that LCDC "adopt rules for uses and activities allowed within the boundaries of [publicly owned] airports." Uses allowed within airport boundaries established pursuant to LCDC rules must include:

"[c]ustomary and usual aviation-related activities including but not limited to takeoffs, landings, \* \* \* construction and maintenance of airport facilities \* \* \* and other activities incidental to the normal operation of an airport[.]" ORS 836.616(2)(a).

ORS 836.616(2) lists nine other airport-related uses that must be allowed within airport boundaries. None of the parties argue that the realignment of Airport Road falls within one of those nine categories of uses.

<sup>5</sup>ORS 836.605(2) defines "airport" as:

"the strip of land used for taking off and landing aircraft, together with all adjacent land used in 1994 in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for the existing commercial and recreational airport uses and activities as of December 31, 1994."

1 “the strip of land used for taking off and landing aircraft” and those limited uses included in  
2 ORS 836.616.

3 Petitioner further argues that the rules LCDC adopted to define “airport uses” in  
4 accordance with ORS 836.616 apply only to non-towered airports. The Eugene-Springfield  
5 Regional Airport is a towered airport. Therefore, petitioner contends that the only “expansion  
6 \* \* \* of a [towered] public use airport” that may be allowed without taking an exception to  
7 Goals 3, 11 and 14 is to accommodate “the strip of land used for [the] taking off and landing  
8 [of] aircraft.” ORS 836.605(2).

9 Respondents argue that the realignment of Airport Road should not be considered in a  
10 vacuum. According to respondents, the realignment is necessitated by the establishment of  
11 the new runway. Respondents contend that the redesignation and expansion of the airport  
12 boundaries is necessary to accommodate a new runway and its associated safety zones.  
13 Respondents argue that, because the new runway is needed to continue the airport’s current  
14 level of air service, the actions that must taken to accomplish that goal should be considered  
15 to be part of the “expansion of a public use airport” as that term is used in OAR 660-012-  
16 0065(3)(n). Respondents contend that petitioner’s references to statutes and the APR are  
17 misdirected in that neither the statutes nor the APR provide textual or contextual support for  
18 petitioner’s understanding of the term “expansion of a public use airport.”

19 Our difficulty with petitioner’s argument is that it reads a standard into OAR 660-  
20 012-0065(3)(n) that does not exist. If the airport expansion continues to serve the same class  
21 of airplanes, then the expansion of the public use airport boundaries is considered to be  
22 consistent with the cited goals. Respondents’ findings make it clear that the challenged  
23 amendments result in improved service to the existing class of airplanes and do not permit a  
24 larger class of airplanes to utilize the airport. The findings also make it clear that the  
25 realignment of Airport Road is caused by the establishment of a new runway. Petitioner does  
26 not argue that as a result of the challenged decisions respondents can automatically establish

1 more intensive commercial and industrial uses on the subject property. Therefore,  
2 petitioner's concerns about what might occur as a result of the redesignation are premature.

3 Respondents' understanding and application of the exemption provided in OAR 660-  
4 012-0065(3)(n) is correct.

5 **B. OAR 660-012-0065(3)(a) and (b)**

6 Respondents argue that the challenged decision also justifies the amendments based  
7 on OAR 660-012-0065(3)(a) and (b) and that petitioner fails entirely to challenge these  
8 alternative bases for the decision. Record 49. However, respondents' discussion of OAR  
9 660-012-0065(3)(a) and (b) occurs only with respect to Goal 12. The decision does not  
10 appear to invoke OAR 660-012-0065(3)(a) and (b) with respect to Goals 3, 11 and 14.

11 The assignment of error is denied.

12 Respondents' decisions are affirmed.