BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

OREGON NATURAL DESERT ASSOCIATION,
Petitioner,

vs.

GRANT COUNTY,
Respondent,

and

CYPRESS ABBEY COMPANY and
CAL-NEVA LAND & TIMBER, INC.,
Intervenors-Respondent.

LUBA No. 2001-158

FINAL OPINION
AND ORDER

Appeal from Grant County.

Paul D. Dewey, Bend, filed the petition for review and argued on behalf of petitioner.

No appearance by Grant County.

Tia M. Lewis, Bend, filed the response brief and argued on behalf of intervenors-respondent.

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

REMANDED 04/03/2002

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

Opinion by Briggs.

NATURE OF THE DECISION

Petitioner appeals a county decision approving a conditional use permit for a personal use airport.

MOTION TO INTERVENE

Cypress Abbey Company and Cal-Neva Land & Timber, Inc. (intervenors) move to intervene on the side of respondent. There is no opposition to the motion and it is allowed.

REPLY BRIEF

Petitioner moves to file a reply brief. According to petitioner, a reply brief is necessary to respond to intervenors' arguments that it waived certain issues and to address intervenors' arguments that there is evidence in the record that clearly supports the county's decision. There is no opposition to the motion, and it is allowed.

FACTS

The subject 251-acre parcel is part of a 52,000-acre ranch that covers portions of Wheeler and Grant Counties. The parcel is zoned Exclusive Farm Use (EFU). The ranch is owned by Cypress Abbey Company and managed by Cal-Neva Land & Timber, Inc. Intervenors seek a conditional use permit to site a personal use airport on the ranch to provide more convenient access.

The proposed airstrip is located approximately 100 feet west of the John Day River, approximately five miles south of the unincorporated community of Kimberly. It lies to the north and west of the Foree Unit of the John Day Fossil Beds National Monument (National Monument), which is operated by the U.S. Parks Service. A major trailhead and visitors' center is located approximately 2,000 feet to the south of the southern end of the proposed airstrip.

The proposed airstrip is located in a flat area in the John Day River valley, with higher terrain lying to the west and east. The runway is generally oriented in a north-south

direction. Flights from the south will descend over the National Monument. Flights from the north will descend over property owned by intervenors. As proposed, most flights will arrive from and depart to the south, over the National Monument.

In 1987, intervenors' predecessors in interest applied for and received a conditional use permit to operate a personal use airport in generally the same location. Wheeler County issued the permit because at the time it was understood that the airport would be located on the portion of the property located within Wheeler County. As constructed, the airstrip is located primarily within Grant County.

In 2000, intervenors began constructing an improved airstrip to serve helicopters and turbo-prop jets. During construction, Grant County determined that a conditional use permit for a personal use airport was necessary to permit the new airstrip within Grant County. As a result, intervenors applied for a conditional use permit to site a 4,500-foot long and 120-foot wide airstrip. Sixty feet of the strip width will be asphalt; the remainder will be graveled. At the present time the airport is used infrequently. Intervenors propose to use the airstrip on a regular basis for flights by the owner and for agricultural purposes. Intervenors anticipate that planes carrying guests will arrive and depart on an average of 10 round-trip flights per month.

During the proceedings below, petitioner, the U.S. Park Service and others expressed concerns about the effect of the increase in number of flights and size of aircraft on the National Monument. In addition, other property owners in the vicinity expressed concerns about the airport's impact on livestock and wildlife.

The planning commission approved the personal use airport, with conditions. Petitioner and the U.S. Park Service appealed the planning commission's decision to the county court. The county court upheld the planning commission's decision, modifying one of the conditions of approval. As approved, the airport will permit unlimited flights for agricultural purposes and by the owner, plus up to an average of 10 flights per month by

invited guests of the owner. Landing lights have been installed for night landings, however, the conditions of approval require that night landings be kept to a minimum and require that the landing lights be extinguished after the aircraft has landed. In addition, the conditions of approval require that detailed logs be kept of the use of the airstrip, and require that the operation of the airstrip be reviewed by the planning commission one year after the permit is issued. This appeal followed.

SEVENTH ASSIGNMENT OF ERROR

Grant County has established an appeal process that requires an appellant in a land use action to "complete the [requisite] forms and to substantiate the information presented on the * * * appeal forms." Grant County Land Development Code (GCLDC) 30.040(B). In addition, GCLDC 31.070(A) provides, in relevant part:

> "The burden of proof shall be on the applicant. * * * The applicant shall address all the criteria listed in the staff report as it applies to the request. For purposes of an appeal, the burden of proof shall be on the appellant."

Petitioner argues that the burden of establishing that a proposal complies with applicable criteria is always on the applicant. *Strawn v. City of Albany*, 20 Or LUBA 344, 349-50 (1990). According to petitioner, the county erred in shifting the burden to petitioner to demonstrate that the county erred in approving the challenged decision.

We disagree with petitioner that the county in this case impermissibly shifted the burden of proof to the appellants. As we stated in *Coonse v. Crook County*, 22 Or LUBA 138, 142-43 (1991):

> "In a local appeal of the initial decision maker's decision, the applicant retains the burden of proof. Although local government procedural rules may impose certain obligations on appellants opposing an initial decision granting land use approval, the burden of proof imposed on the applicant under the above cited decisions remains with the applicant throughout the local proceedings. The opponents of the initial decision maker's decision also have a burden before the local appellate decision maker in the sense that the appellate decision maker may find the initial decision maker's decision to be well reasoned and supported by the evidentiary record. Unless the opponents of the initial decision are able to convince the appellate decision maker that the decision is

> erroneous in some way, the appellate decision maker may adopt that initial decision as its own. The processing of local appeals in this manner does not impermissibly shift the burden of proof assigned to applicants in land use proceedings in this state." (Footnote omitted.)

Grant County imposes a burden on an appellant to articulate reasons why the initial decision is in error. That in itself does not shift the burden to the appellants in a land use appeal to demonstrate by substantial evidence why relevant criteria have *not* been met. *See 1000 Friends of Oregon v. Benton County*, 20 Or LUBA 7, 15 (1990) (ordinance provisions that require that an appellant identify reasons for an appeal do not impermissibly alter the burden of persuasion regarding compliance with applicable approval criteria).

The county's ordinance might be interpreted to alter the burden of proof in appeals of local decisions approving permits, and there may have been some confusion about the burden of proof during the proceedings below. However, it is relatively clear from the final decision that the county did not interpret its code in that manner. The final decision concludes that the applicant demonstrated that the proposal complies with all relevant criteria. The county addressed evidence presented by the appellants and concluded that, despite that evidence, the criteria were satisfied. We believe the decision shows that the county did not impermissibly shift the burden of proof to the appellants.

The seventh assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

ORS 215.283(2)(h) permits "personal use airports" in EFU zones, provided the use complies with ORS 215.296 and applicable local approval criteria. ORS 215.283(2)(h) defines "personal use airport" as

> "an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by

> commercial aviation activities in connection with agricultural operations. * * *"[1]

Petitioner argues that it is not clear from the county's decision who the airport "owner" is, for purposes of ORS 215.283(2)(h). Petitioner argues that there are at least five individuals and entities that could potentially use the airstrip as an "owner." Petitioner argues that ORS 215.283(2)(h) requires that the owner be identified so that the county can determine that the proposed use of the airstrip by the owner qualifies as a "personal use." Petitioner contends that such a determination is especially important in this case, where there is some confusion as to who the owner is, and what uses that owner will make of the airstrip.

We agree with petitioner that, depending on the circumstances, ORS 215.283(2)(h) may require some type of explicit determination of who the owner is in order to conclude that the proposed airport uses are consistent with the definition of "personal use airport."[2] We have also held that ORS 215.283(2)(h) may require inquiry into whether the proposed uses are properly within the scope of allowed uses on a personal use airport. *See Berto v. Jackson County*, 33 Or LUBA 658, 662-63 (1997), *aff'd* 152 Or App 401, 953 P2d 432 (1998) (commercial aviation business operated by owner is not properly viewed as an allowed use of a personal use airport); *Rodgers v. Douglas County*, 17 Or LUBA 122 (1988) (airport designed for Lear jets and a Gulf Stream Turbo Commander and used by the owner to commute from his property in Oregon to his business in California is allowable as a personal use airport); *Kennedy v. Klamath County*, 8 Or LUBA 103 (1983) (commercial aviation activities, such as aircraft sales and rentals, flight instruction and airplane parking,

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[1]GCLDC 64.050(J) mirrors ORS 215.283(2)(h). Therefore, we owe no deference to the county court's interpretation of the term.

[2]Such a determination is useful in this case because the conditions of approval include a requirement that "within six months of a change in ownership of the Longview Ranch, the new owner or owners must apply for review and reconsideration" of the personal use airport. Record 92. Without some identification of the ownership of the ranch for the purposes of this application, enforcing that condition of approval will be problematic.

are inappropriate uses of a personal use airport). Here, petitioner raised issues below regarding both who the "owner" is and whether the uses proposed are properly viewed as an allowed use of a personal use airport. The county's decision does not address these issues.

The fifth assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

In the first subassignment of error, petitioner argues that the county's findings are inadequate to demonstrate that the proposed airstrip complies with ORS 215.296.[3] Petitioner argues that the county's findings (1) fail to describe the types of farm activities that are occurring on surrounding lands; (2) fail to analyze how the construction of the airstrip as proposed will impact farm activities; and (3) fail to explain why the proposed impacts will not force a significant change in or significantly increase the cost of accepted farm practices on those surrounding lands. In the third subassignment of error, petitioner contends that the county's findings are not supported by substantial evidence.

A. Adequate Findings

In *Brown v. Union County*, 32 Or LUBA 168, 174 (1996), we set out the analysis that must be conducted under ORS 215.296(1):

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[3]ORS 215.296 provides, in relevant part:

> "(1) A use allowed under * * * ORS 215.283(2) may be approved only where the local governing body * * * finds that the use will not:
>
> > "(a) Force a significant change in accepted farm * * * practices on surrounding lands devoted to farm * * * use; or
> >
> > "(b) Significantly increase the cost of accepted farm * * * practices on surrounding lands devoted to farm * * * use.
>
> "(2) An applicant for a use allowed under * * * ORS 215.283(2) may demonstrate that the standards for approval set forth in [ORS 215.296(1)] will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective."

The county's findings address GCLDC 64.060, which duplicates ORS 215.296(1). Our analysis of the statutory provision applies equally to the county's code.

> "In order to demonstrate compliance with ORS 215.296(1), county findings must: (1) describe the farm * * * practices on surrounding lands devoted to farm * * * use; (2) explain why the proposed use will not force a significant change in those practices; and (3) explain why the proposed use will not significantly increase the cost of those practices."

The county's findings state, in relevant part:

> "The criteria of [GCLDC] 64.060 are met by the showing that the continued use of the runway as lengthened and improved will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use and will not significantly increase the cost of accepted farm or forest practices on such lands. * * * Additionally, no plausible argument has been made by Appellants that the use of the runway could cause such adverse changes. * * * [T]he proposed use will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area. * * * The administrative record makes it abundantly clear that the Planning Commission took all the potential impacts into account and crafted conditions and limitations designed to reduce all the potential adverse impacts to less than significant. * * *" Record 4-5.

We agree that the county's findings do not adequately describe surrounding farm practices, or explain why the proposed airstrip complies with ORS 215.296(1)(a) and (b). Because we conclude the findings are inadequate, we do not address petitioner's substantial evidence challenges under the third subassignment of error. *DLCD v. Columbia County*, 15 Or LUBA 302, 305 (1987). The first subassignment of error is sustained.

B. Clear and Objective Conditions

In the second subassignment of error, petitioner contends that the county imposed conditions of approval to ensure that the proposed airstrip complies with ORS 215.296(1). Petitioner argues that the conditions of approval that the county adopted to ensure that the proposed airstrip will comply with ORS 215.296(1) are not clear and objective, as is required by ORS 215.296(2). *See* n 3. According to petitioner, conditions 1, 5, 8 and 10 are flawed in that they require significant legal and factual judgment in their interpretation and application.[4]

[4]The conditions of approval state, in relevant part:

Intervenors respond that petitioner has not identified any connection between ORS 215.296(1) and the conditions of approval. Intervenors contend that the county's findings make it clear that the proposed airstrip complies with all relevant criteria, regardless of the conditions of approval. Intervenors argue that the conditions of approval are intended to ensure that the impacts of the proposed airstrip on surrounding properties will be minimized to the greatest extent possible and, at most, provide additional support for the county's finding that the approval standards are satisfied. Therefore, intervenors argue, the fact that some of the conditions of approval are not clear and objective provides no basis for reversal or remand.

We cannot tell from the county's findings whether the conditions of approval are intended to address concerns that relate to the standards found at GCLDC 64.060, or GCLDC 46.030, or both.[5] Without some aid from petitioner to demonstrate that the challenged conditions of approval were in fact adopted in order to ensure compliance with ORS

"1. All pilots using the Longview Ranch personal use airport shall operate by the RULES FOR PILOTS OF AIRCRAFT USING LONGVIEW RANCH AIRSTRIP, attached and made a part of this decision.

"* * * * *

"5. Operations will be VFR (Visual Flight Rules) only.

"* * * * *

"8. Nighttime operations shall be held to a minimum. If airport lights are necessary they shall be used only for the time necessary for safe operations.

"* * * * *

"10. Not including operations for agricultural purposes, an average of 10 landing and takeoff operations per month, per year, is allowed at this airstrip." Record 92.

[5]As we stated earlier, GCLDC 64.060 mirrors ORS 215.296. GCLDC 46.030 sets out the county's conditional use criteria, which include a determination that the proposed use "will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area." GCLDC 46.030(C).

215.296(1), we agree with intervenors that petitioner's subassignment of error provides no basis for reversal or remand. The second subassignment of error is denied.

The second assignment of error is sustained, in part.

THIRD ASSIGNMENT OF ERROR

GCLDC 46.030 sets out the county's conditional use criteria and requires, in relevant part, that "[t]he use complies with the Goals and Policies for Grant County." GCLDC 46.030(A). Petitioner argues that the county erred in summarizing the county's agricultural policies, and finding that the proposed airstrip complies with the summary rather than the policies themselves. Petitioner also argues that the county's findings are inadequate to demonstrate that the relevant comprehensive plan policies have been satisfied.

In its decision, the county summarized the county's goals and policies to require that the county adopt decisions "promoting investment in agriculture and ranching while avoiding ecological damage to the environment." Record 5. Petitioner argues that the county's "summary" of the agricultural lands policies is not accurate and, further, fails to identify the relevant policies that must be addressed. According to petitioner, Grant County Comprehensive Plan (GCCP) Agricultural Lands Policies 17 and 18 are relevant, and establish approval standards that must be met. They provide, in relevant part:

> "(17) Conversion of agricultural land to nonfarm uses shall be based upon consideration of the following factors:
>
> "(A) Environmental, energy, social and economic consequences;
>
> "(B) No adverse impacts on adjoining and area agriculture;
>
> "(C) Compatibility of the proposed use with related agricultural lands;
>
> "(D) Effect on the stability of the overall land use pattern in the area;
>
> "(E) No interference with accepted farming practices on adjacent lands devoted to farm use;

"(F) The retention of Class I through VI Soils in farm use.

"(18) Maximize the preservation and use of lands with the best agricultural soils, particularly those lands with assigned irrigation rights and those lands within the identified flood plains, for agricultural use." GCCP 10.

Intervenors respond that the county's summary comprises an interpretation of what must be demonstrated in order to comply with GCLDC 46.030(A). Intervenors argue that the county's interpretation is entitled to deference under *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992) and ORS 197.829(1).[6] According to intervenors, nothing in the county's interpretation does violence to the county's agricultural lands policies, or is otherwise inconsistent with state statutes, land use goals or the county's ordinances.

The county adopted the following finding to support its conclusion that the proposed airport complies with county goals and policies:

"The use of the runway will promote the preservation of privately owned ranching and farming operations in Grant County by allowing owners from a wider area to enjoy the psychic benefits of owning and operating such ranches. Improved access to remote ranches will promote investment in such ranches and such investment will provide needed employment to the County. Additionally, such owners are likely to invest in the preservation of the natural environment on their ranches, such as has been done by the current owner of the Longview ranch in fencing cattle out of the stream beds, improving wildlife forage range and reducing cattle grazing levels." Record 3.

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[6]ORS 197.829(1) provides:

"The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

"(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

"(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

"(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

"(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements."

We do not believe that the county's summary of the comprehensive plan policies constitutes an "interpretation" that is subject to the deference established in ORS 197.829(1) and *Clark*. In any event, it is apparent that the issue of whether the proposed airport complies with GCCP Agricultural Lands Policies 17 and 18 was raised below and, therefore, it is incumbent on the county to adopt findings to respond to the issue. *Hillcrest Vineyard v. Bd. of Comm. Douglas Co.*, 45 Or App 285, 293, 608 P2d 201 (1980). We agree with petitioner that the above-quoted finding is inadequate to address GCCP Agricultural Lands Policies 17 and 18. The finding does not address the considerations set out in Policy 17, or explain how the county reached its decision that, after considering factors (A) through (F), the proposed airstrip complies with Policy 17. Because we agree with petitioner that the findings are inadequate, we do not address petitioner's substantial evidence arguments. *DLCD v. Columbia County*, 15 Or LUBA at 305.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

GCLDC 46.030(C) establishes the following requirement for conditional uses:

> "The location, size, design, and operating characteristics of the proposed use will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area[.]"

Petitioner challenges the findings and evidence supporting those findings regarding compliance with GCLDC 46.030(C). Petitioner contends that the standard requires that the county consider all uses that exist on abutting properties and the surrounding area, not just farm uses. In particular, petitioner contends that the challenged findings do not address issues raised below concerning the effect night landings would have on the use of the National Monument, the noise impacts and the impacts of vibrations on fragile fossil formations.

Petitioner argues that there will be an increase in noise because of the increase in the number of flights and the types of aircraft to be used. Petitioner contends that the conditions of approval that limit flights to 10 per month does nothing to address those impacts because

they do not address commercial flights in conjunction with agricultural activities. *See* n 4 (setting out the relevant condition). In addition, petitioner contends that the 10-flight limit is an *average*, not an absolute, so that there may be additional flights during the summer months, which are typically the months when the National Monument receives the most visitors.

Petitioner also challenges the county's apparent conclusion that the proposed flight pattern will result in most flights remaining more than 2,000 feet above the National Monument as they approach the airstrip. According to petitioner, the evidence supports the U.S. Park Service's contention that it would be very difficult to remain 2,000 feet above the National Monument property when the airstrip lies less than 1,200 feet from the National Monument property line. Because the county failed to address the impact the proposed airstrip would have on nonfarm uses, and because the county failed to recognize and address the issues the U.S. Park Service raised with respect to the impact of the proposed use on the National Monument, petitioner argues, the challenged decision must be remanded so that the county may address those issues.

Intervenors respond that the county addressed the impacts of the proposed airport on the National Monument by imposing conditions of approval that limit night landings and require that pilots comply with a specific landing policy that limits direct overflights over the National Monument. Intervenors contend that there was considerable testimony during the proceedings below regarding the impact of the proposed airport on the National Monument in particular, and that evidence is sufficient to support the county's conclusion that the proposal would not result in a significant adverse impact on livability, value or appropriate development of abutting or surrounding properties. Intervenors argue that under ORS 197.835(11)(b), such evidence is sufficient to establish that GCLDC 46.030(C) is satisfied.

The county's findings state, in relevant part:

> "[T]he proposed use will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the

> surrounding area. The nature of the surrounding area has been described by the witnesses during the hearing and is well known to the members of the Planning Commission and this Court. Those persons claiming potential adverse impacts have come forward and have made their concerns known. The administrative record makes it abundantly clear that the Planning Commission took all the potential impacts into account and crafted conditions and limitations designed to reduce all the potential adverse impacts to less than significant. Moreover, the Planning Commission has reserved the right to review its decision in one year, thus making sure that any unanticipated adverse impacts can be eliminated before becoming significant." Record 5.

We agree with petitioner that the findings are inadequate to address the issues that the parties raised below. Fairly read, the findings recognize that the parties and the county are familiar with the surrounding properties and the impacts that the proposed airstrip would have on activities occurring on those properties. The decision concludes that the conditions of approval are adequate to ensure that the proposed airstrip "will not have a significant adverse impact on the livability, value or appropriate development of abutting properties and the surrounding area[.]" However, the findings do not address why the county believes that, despite the testimony to the contrary, the proposed airstrip as conditioned will not cause noise and vibrations that could adversely affect activities and fossil formations on the National Monument. Nor do the findings explain why, in the face of testimony that *any* night landings will disrupt the nighttime experience of visitors to the National Monument, limited night landings nevertheless will not result in a significant adverse impact on the livability, value or appropriate development of the National Monument.

Turning to intervenors' argument that, notwithstanding the inadequacy of the county's findings, the county's conclusion that GCLDC 46.030(C) is satisfied may be affirmed under ORS 197.835(11)(b), we do not agree. ORS 197.835(11)(b) permits LUBA to affirm a decision, despite inadequate findings, where a party points to evidence in the record that "clearly supports" the county's decision. The "clearly supports" standard is a demanding standard that is met only where the relevant evidence is such that it is "obvious" or

"inevitable" that the decision is consistent with applicable law. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122 (1995).

We disagree with intervenors that the evidence clearly supports the county's conclusion that there will be no substantial impact on abutting and neighboring uses. There is conflicting evidence in the record regarding the likely impact of the proposed flight path, as well as the impact of the increase in the number of flights to the property. Given the conflicting nature of the evidence, we conclude that the evidence is insufficient to satisfy the "clearly supports" standard.

The fourth assignment of error is sustained.

FIRST ASSIGNMENT OF ERROR

GCLDC 46.030(D) requires a finding that the proposed conditional use "does not materially alter the stability of the overall land use pattern of the area[.]" According to petitioner, the standard requires (1) the selection of a study area; (2) a description of the agricultural activities that are occurring within the study area; and (3) a determination that the proposed use will not alter the stability of the land use pattern in the area. *Sweeten v. Clackamas County*, 17 Or LUBA 1234, 1246 (1989) (describing a similar statutory standard for approval of nonfarm dwellings). Petitioner contends that the county's findings are inadequate in that they fail to identify any study area and do not describe uses that exist within the study area. Therefore, petitioner contends that the county's conclusion that the proposed use will not alter the stability of the land use pattern in the area is completely unsupported by findings and evidence.

In response, intervenors argue that there are maps in the record that identify the ranch and its relationship to the public and private lands in the vicinity. According to intervenors, those maps depict an approximately 108-square mile area. Intervenors contend that no party below argued that the maps were inadequate to identify a relevant study area, or claimed that there were uses outside of the study area that were uniquely affected by the proposed airport

and, therefore, needed to be considered. Finally, intervenors argue that the *Sweeten* analysis applies to the siting of nonfarm dwellings within EFU zones pursuant to ORS 215.284(1)(d) and (2)(d), and has no applicability to the county's interpretation of its conditional use stability standard. *Ray v. Douglas County*, 36 Or LUBA 45 (1999).

We agree with intervenors that the analysis of the ORS 215.284 stability standard in *Sweeten* is not necessarily applicable to versions of the stability standard that are unrelated to the siting of nonfarm dwellings in EFU zones. *Ray*, 36 Or LUBA at 51. However, we have consistently held that findings relating to approval standards that require an analysis of the impact of the proposed use on surrounding properties must identify the relevant area to the extent it is necessary. *See Knight v. City of Eugene*, __ Or LUBA __ (LUBA No. 2001-139, January 11, 2002), slip op 5-6 and cases cited therein. Here, the findings do not identify the study area. Nor does the decision identify the uses that exist within the study area that might be affected by the proposed airport.[7] In the absence of a county interpretation that provides more guidance as to what GCLDC 46.030(D) requires, we conclude that the county's decision must identify a study area, describe the uses within the study area that may be affected by the proposed use, and then explain why the proposed airport will not materially alter the stability of the land use pattern in the area.

The first assignment of error is sustained.

SIXTH ASSIGNMENT OF ERROR

In 1997, the John Day River flooded and inundated the portion of the subject parcel where the airstrip and hangar are located. After the flood, a levee was constructed to the east

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[7]The county's findings state, in relevant part:

> "* * * In that the landing strip has been in use for many years, it [is] adequately demonstrated that its continued use will not alter the stability of the overall land use pattern in the area. Additionally, the Court finds that the Planning Commission properly found that the lengthening and improvement of the runway will not tend to alter the land use stability, particularly in light of the stringent conditions placed on the number of flight operations allowed. * * *" Record 5.

of the proposed airstrip.[8] As a result, the proposed airport is located within an area that is removed from the 100-year floodplain of the John Day River. The floodplain now lies immediately to the east of the levee. In testimony before the planning commission, the Oregon Department of Fish and Wildlife (ODFW) noted the existence of the levee and opined that the level would constrict water flow during flood events, which could result in downstream erosion.

Petitioner argues that the county's findings are inadequate because they do not set out the standards that the county used or identify the facts that the county relied upon to determine that the proposed airport complies with county regulations pertaining to development within the floodplain. *See* GCLDC 69.1, 72.040(A) and chapter 83.[9] In

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[8]The new levee is in roughly the same location as a levee that was constructed some time ago. The county's findings refer to the levee as being "reconstructed," but the parties do not cite us to any evidence in the record that explains when the levee was originally constructed and whether any portions of the original levee existed at the time the levee was "reconstructed."

[9]GCLDC 69.1, "Flood Hazard Combining Zone," contains regulations that apply to all areas of special flood hazards. GCLDC 69.140 provides, in relevant part, that:

> "A. General Siting Standards:
>
> "* * * * *
>
> "2. Structures shall be located on the area least impacted by inundations taking into consideration terrain, adverse soil and land conditions, access, location of structures on adjoining lots, and the size and shape of the parcel.
>
> "B. Encroachments. Where base flood elevations have been provided, but floodways have not, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point."

GCLDC 72.040 sets out special setback requirements, including:

> "A. Stream Setbacks. No structure * * * shall be located closer than 100 feet to the banks of any Class I or Class II water courses as defined by the Oregon Department of Fish and Wildlife."

GCLDC chapter 83 contains the county's erosion control regulations. It provides, in relevant part:

> "83.010 Purpose.

addition, petitioner contends that because the new levee was constructed to prevent flooding of the airstrip, the county must consider whether the levee, as well as the airport, complies with county regulations. Petitioner argues that the county erred in failing to address in this decision whether the levee is a "structure" subject to regulation under GCLDC 69.1, because the county's definition of "structure" includes:

> "Anything constructed or erected which requires a fixed location on the ground * * *. Decks, paved or concrete slabs, patios or walkways which are constructed less than 30 inches above grade are not considered structures. * * * [P]aved or concrete slabs, patios, or walkways which are 30 inches or higher above grade are considered structures and a development permit shall be required. * * *" GCLDC 11.030(302).

Petitioner also argues that the county's decision is not supported by substantial evidence. Petitioner argues that the levee is a "structure" as that term is used in GCLDC 11.030 and 69.1. Furthermore, petitioner contends that the levee lies within 100 feet of the John Day River and includes slopes greater than 15 percent, which means that its construction is subject to regulation under GCLDC 72.040 and 83. *See* n 9.

Intervenors dispute that the levee was constructed to protect the airport. According to intervenors, the levee was constructed to improve access to nearby alfalfa fields and to ensure that agricultural runoff from the parcel would not flow directly into the John Day River. Intervenors argue that the county specifically limited its review of the proposed airport to the airstrip itself and the use that will be made of the airstrip, concluding that the levee is not relevant to the proposed conditional use. In addition, intervenors argue that they

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> "The standards and criteria for erosion and sediment control provide for the design of projects so as to minimize the harmful effect of stormwater runoff and the resultant inundation and erosion from projects, and to protect neighboring downstream and downslope properties from erosion and sediment impacts.
>
> "83.020 Application of Standards
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> "A. These standards shall apply to any * * * land use application including development and construction which would require any grading or filling on slopes that are 15 [percent] or greater or soils that are granitic in composition as mapped by the Natural Resource[s] Conservation Service * * *."

presented evidence to show that there would be no more than a four and one-half inch increase in base flood elevation as a result of the levee and airstrip. Intervenors contend that the county could rely on this evidence, and did so. Therefore, intervenors argue, the county's decision is supported by substantial evidence.

The county's findings state, in relevant part:

> "* * * The levee lying between the John Day River and the runway was rebuilt for general flood control purposes. The levee, together with the topography of the runway and the surrounding fields, creates a sedimentation basin preventing storm water from entering the John Day River via surface flows in the area of the runway. * * *
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> "The re-building of the levee was concurrent with but independent of the lengthening and improvement of the runway. * * * The levee, as reconstructed, and the runway as improved and extended do not increase the surface elevation of the base flood by more than one foot at any one point. * * *" Record 3.
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> "* * * The applicant has presented evidence that the landing strip is more than 100 feet from the John Day River. Thus, the requirements of Article 72 are met. * * * Further, the applicant has provided evidence that the requirements of Article 83, a Sedimentation Plan, are inapplicable. * * * However, the applicant presented evidence that the expansion and improvement of the landing strip will not result in sedimentation of natural water courses by virtue of the rebuilding of the pre-existing flood control levee. * * * The proposed use does not involve the construction or use of any structures in Grant [C]ounty which could be damaged by flooding. Thus, Article 69.1 is largely inapplicable. The applicant demonstrated that neither the levee nor the runway facilities nor the two in combination will result in an increase in the surface elevation of the base flood more than one foot at any point. * * *" Record 4.

We disagree with petitioner that the county *must* address the levee in the context of this decision. Petitioner does not explain why the existence of the levee is necessary to ensure that the proposed airstrip satisfies GCLDC 69.1, or that the county's decision with respect to the airport's compliance with GCLDC 69.1 misconstrues the applicable law or is otherwise inadequate. In addition, the county specifically found that GCLDC 72.040 and 83 are inapplicable to the airstrip. The county's findings did rely on the existence of the levee to ensure that stormwater drainage will not flow directly into the John Day River. However,

petitioner does not cite to any criterion that requires that no stormwater flow directly into the John Day River. The county's decision concludes, to the extent the levee and the airport affect flood elevations, the impacts are not significant. That finding is adequate to address GCLDC 69.1 and is supported by substantial evidence. We also conclude that the county did not err in its conclusion that GCLDC 72.040 and 83 do not apply to the airport.

The sixth assignment of error is denied.

The county's decision is remanded.