BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

PATTY BROCKMAN, JOHN BURNS,
LEE DUVALL, ADELINE DUVALL, DAVID FIFE,
WENDY FIFE, HEATHER HINES, TONY KRAUSE,
LEONARD SCHMIDLIN, BETTY SCHMIDLIN,
TIM SOOK, TAMMY SOOK and PAT ZIMMERMAN,
*Petitioners*,

vs.

COLUMBIA COUNTY,
*Respondent*,

and

TIM BERO and MICHELLE BERO,
*Intervenors-Respondents.*

LUBA Nos. 2009-044 and 2009-045

FINAL OPINION
AND ORDER

Appeal from Columbia County.

Michael F. Sheehan, Scappoose, filed the petition for review and argued on behalf of petitioners.

No appearance by Columbia County.

Mark J. Greenfield, Portland, filed the response brief and argued on behalf of intervenors-respondents.

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

REMANDED 08/03/2009

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

Opinion by Holstun.

## NATURE OF THE DECISION

Petitioners appeal two ordinances, Ordinance 2009-1 and 2009-2. Ordinance 2009-1 approves a Statewide Planning Goal 4 (Forest Lands) exception and comprehensive plan map and zoning map amendments for a 27.8-acre portion of a 70.8-acre parcel. Ordinance 2009-2 approves an exception to Goal 4 to allow a six-space campground on the remaining 43-acre portion of the 70.8-acre parcel.

## MOTION TO INTERVENE

Tim Bero and Michelle Bero (intervenors), the applicants below, move to intervene on the side of the respondent in this appeal. There is no opposition to the motion, and it is granted.

## FACTS

The Vernonia Airport was constructed during the 1930s by the Civilian Conservation Corps. It has a relatively short grass runway and few improvements. The airport is located outside the Vernonia city limits and urban growth boundary (UGB), but within three miles of the city's UGB. Access to the airport is via Airport Way, a private unpaved roadway.

Intervenors submitted the application in February 2008. As originally proposed, intervenors proposed to create two parcels from their 70.8-acre parcel, which adjoins the airport on its west side. The application sought a Goal 4 exception for the proposed 43-acre parcel to allow development of a campground on that parcel.[1] The application requested a change in the comprehensive plan map designation from Forest Resource to Community Service and a change in the zoning map designation from Primary Forest-76 (PF-76) to Community Service-Recreational.

[1] Under OAR 660-006-0025(4)(e)(A) campgrounds may not be allowed on forest land within 3 miles of a UGB "unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 004."

The application also sought a Goal 4 exception for a proposed 27.8-acre parcel to allow airport and airport related uses. The application sought a change in the comprehensive plan map designation from Forest Resource to Rural Industrial and a change in the zoning map designation from PF-76 to Airport Industrial (AI). Intervenors proposed to use most of the 27.8-acre parcel (approximately 22 acres) to extend the airport runway west and provide required setbacks and protected areas around the extended runway. A smaller part of the 27.8-acre parcel (approximately 6 acres) was to be used for "airport industrial buildings and/or hangars." Record 1059.

After the Department of Land Conservation and Development (DLCD) expressed concerns about the proposal, an amended goal exception was proposed. Under the amended goal exception, intervenors no longer proposed to partition the 70.8-acre parcel. Intervenors continued to request a Goal 4 exception to allow a small campground on the 43-acre portion of the 70.8-acre parcel, but abandoned the request for comprehensive plan and zoning map amendments for the 43-acre portion of the 70.8-acre parcel. While intervenors no longer proposed to create a new 27.8-acre parcel, intervenors continued to propose a Goal 4 exception for the 27.8 acres to allow the runway expansion and airport related industrial uses and continued to propose comprehensive plan and zoning map amendments for the 27.8 acres.[2]

The planning commission voted to recommend to the board of county commissioners that the application be denied. Despite that recommendation, the board of county commissioners voted to approve the application, with conditions. One of the conditions of approval provided:

> "2. The approximately 27.8 acre site zoned Airport Industrial (AI) shall only be used for those uses identified and justified in the Exception

[2] Apparently intervenors abandoned their plan to partition the 70.8-acre parcel because the additional parcels would have exceeded the number of parcels that are permitted to be served by a private roadway under the county's Subdivision and Partitioning Ordinance.

> Statement and as allowed by State Statute. Other uses listed in the Airport Industrial (AI) Zone may not be located on this site without new Exceptions to the Statewide Planning Goals." Record 10.

The challenged decision also limits the campground to six camping sites. This appeal followed.

**FIRST ASSIGNMENT OF ERROR**

Under OAR 660-004-0018(4)(a), in approving the Goal 4 exception for the 27.8 acre portion of the property, the county was required to limit the uses to those that are justified by the exception.[3] Petitioners contend that the challenged decision does not limit use of the 22-acre portion of the 27.8 acres to a runway extension and required protected areas and setbacks.[4] Petitioners argue that there are four problems with this part of the exception.

> "First, there is no binding commitment on the part of the City of Vernonia—e.g. City Council Action—to accept the land and fund the runway extension, nor any binding commitment on the part of the applicants to transfer the land.
>
> "Second, rezoning of the PF-76 owned land for the runway extension has to meet the requirements for an exception. There has been no showing that it does.
>
> "Third, the applicant has indicated his intention of having the Vernonia Airport be a NPIAS airport.[5] As such, any runway extension would have to belong to the City, the sponsor of the airport, and this would require a transfer of the property to the City. This the applicant has firmly refused, since it would require a partition of the [70.8] acre parcel, which would violate the County's Subdivision and Partitioning Ordinance Section 1005(A) which

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[3] OAR 660-004-0018(4)(a) provides:

> "When a local government takes an exception under the 'Reasons' section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception[.]"

[4] Petitioners contend that although intervenors initially proposed to extend the runway, as county review of the application progressed their position changed and as approved the exception simply makes the runway possible. Although we need not resolve the dispute, we generally agree with intervenors that since they do not own the airport, the most that the exception could ever do is make the runway extension possible.

[5] According to intervenors, "NPIAS stands for 'National Plan of Integrated Airport Systems.'"

> prohibits the creation of a new parcel on a private road with six or more existing parcels.
>
> "And, finally, * * * it opens the door to 'Trojan Horse' uses, *i.e*. the justification for the exception is that the land will be used for a runway extension. The City declines to extend the runway. The County has granted the exception for any 'use' which can be remotely categorized as 'airport related.' The applicant then builds a flex building on land which he rents to a veterinary clinic which the County considers as 'airport related' because some of its business comes from airport users." Petition for Review 13-14.

Taking petitioners' fourth problem first, we understand petitioners to contend that if for some reason the city ultimately decides not to extend the existing airport runway onto the 27.8 acres, intervenors would be free to put the 22 acres that were to be used for the runway extension to any airport related use they wish. Intervenors respond:

> "Petitioners claim that Intervenors have changed the proposal. But from the start, Intervenors' application and supporting documents made clear that if the application was approved, 22 of the 28 acres would be made available to the City to allow for future runway expansion. By its terms, the exception clearly allows airport uses on about 22 acres, and airport industrial uses on about six acres. Because the approved exception is now part of Columbia County's Comprehensive Plan, it is binding on Intervenors. Indeed, Ordinance 2009-1 includes a Condition 2 requiring that the 27.8 acre parcel be used only for those uses identified and justified in the exception statement and as allowed by state statute. * * *" Intervenors-Respondents' Brief 9-10.

The exception and the decision are reasonably clear that the exception is justified, in part, on the need for approximately 22 acres to extend the existing runway and in part on a need for approximately six acres for airport related industrial development. The exception document includes the following table at Record 826:

| **Proposed Land Uses – Parcel A** | |
|---|---|
| **Use** | **Approximate Acres** |
| Industrial Building | 1.0 |
| Parking, loading, driveways | 2.0 |
| Runway extension and protection* | 22 |
| Future Industrial Space | 2.0 |
| Public Facilities (existing road) | 1.0 |
| **Total** | 28 |

"*Runway protection includes the Building Restriction Line (265 feet from centerline) and the runway protection zone extending 1,000 square feet from end of extended runway."

The decision, as conditioned, limits use of the 22 acres to expansion of the airport runway. If for some reason the city decides not to extend the runway onto the 22 acres, intervenors would not be free to put the entire 27.8 acres to additional airport related industrial uses. An additional exception would be required to use those 22 acres for uses other than a runway extension.

Turning to the first alleged problem above, petitioners identify no legal requirement that the city must enter into a binding commitment to construct the airport runway expansion before an exception can be approved that would allow such an expansion. We are aware of no such legal requirement. Again, if the anticipated airport runway expansion that supports the disputed exception is not constructed, a new exception will be needed to authorize development of those 22 acres for some other use.

Petitioners' second alleged problem is that the exception for the runway expansion on the 22 acres does not meet the requirements for a statewide planning goal exception. Petitioners' entire argument is "[t]here has been no showing that it does." Petition for Review 13.

The findings of fact and conclusions of law that are attached to Ordinances 2009-1 and 2009-2 are six pages long. The second page of those findings (Record 13) adopts seven other documents as findings, including the entire initial application and letters to the county by intervenors' attorney. By our count, the incorporated findings total over 200 pages. We

can appreciate the difficulty that petitioners face when a final decision incorporates many other documents as findings. That practice poses difficulties and dangers for the enacting body as well, since it runs a significant risk of adopting inconsistent reasoning that could easily require remand for that reason alone. But whatever the merits or demerits of incorporating letters and other documents that were prepared throughout a land use proceeding as findings, petitioners' undeveloped claim that the findings are inadequate to demonstrate an exception is warranted to allow expansion of the runway provides no basis for reversal or remand. Petitioners must do more than say those findings are inadequate; petitioners must explain why they believe those findings are inadequate. *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220 (1982).

Finally, petitioners' third alleged problem, that the Vernonia Airport may become a NPIAS airport in the future and make it necessary to divide the 22 acres from the 70.8 acres, is speculation. More importantly, it has nothing to do with the permissibility of granting a statewide planning goal exception to allow expansion of a runway onto those 22 acres. If it becomes necessary to divide the 22 acres from the 70.8 acres and the county land division standards that are in effect when that becomes necessary preclude the land division, that will simply mean the runway cannot be extended unless and until a solution is found to allow the 22 acres to be divided into a separate parcel. Petitioners' third alleged problem provides no basis for reversal or remand of the exception that is before us in this appeal.

The first assignment of error is denied.

**SECOND ASSIGNMENT OF ERROR**

In their second assignment of error, petitioners contend the county failed to demonstrate that other areas that do not require an exception cannot reasonably accommodate the proposed airport related uses on the approximately 6 acres of the 27.2 acres that will not be required for runway extension. Under Goal 2, Part II(c) and OAR 660-004-0020(2), four factors must be considered when taking a reasons exception. One of those

factors is whether "[a]reas which do not require a new exception cannot reasonably accommodate the use." Goal 2, Part II(c)(2); OAR 660-004-0020(2)(b).[6] Petitioners contend the proposed airport related uses can easily be accommodated at the Scappoose Airport.

**A. Scappoose and Hillsboro Airports as Reasonable Alternatives**

There does not appear to be any serious dispute that there is vacant land that is available for industrial development at the Scappoose Airport located approximately 30 miles from Vernonia and at other airports in Oregon. However, under OAR 60-004-0020(2)(b)(B), the county is permitted to consider "[e]conomic factors * * * along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas." *See* n 6. Two of the reasons the county gave for approving the disputed exception

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[6] OAR 660-004-0020(2)(b) provides:

> "'Areas which do not require a new exception cannot reasonably accommodate the use':
>
> "(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified;
>
> "(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. *Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas*. Under the alternative factor the following questions shall be addressed:
>
> "(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?
>
> "(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?
>
> "(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?
>
> "(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?" (Emphasis added.)

for airport related industrial development are a desire to support growth of the Vernonia Airport and a desire to encourage economic growth and employment opportunities for economically depressed Vernonia. Among the many findings adopted by the county are the following;

> "7. Before the Board, opponents argued that airport related industrial uses could be located at Scappoose or Hillsboro airports. The Board finds that under ORS 836.600 and OAR 660-013-0010, the Board may approve land use actions intended to encourage and support the continued growth and vitality of Vernonia Airport even if vacant land is available at these other airports. Indeed, the Board finds that the Vernonia community is in great need of economic stimulus, especially with the flooding it has experienced in recent years, and that this Application provides both opportunity for economic stimulus for Vernonia and opportunity to make needed improvement at Venonia Airport. Further, the Board finds that requiring Vernonia residents to travel 30 or more miles in each direction to find work at Scappoose or Hillsboro airports, simply because vacant land may be available for airport manufacturing at those airports, is neither reasonable nor fair to residents of Vernonia and not consistent with objectives of the Transportation Planning Rule to reduce principal reliance on the automobile. * * *"[7] Record 14.

As petitioners correctly note, the county's contention that automobile reliance will be reduced by airport related development at the rural Vernonia airport, rather than at more developed locations with superior access to alternatives to automobile transportation, seems highly suspect. However, the county's Transportation Planning Rule reasoning and many of

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[7] OAR 660-013-0010, which is cited in the findings, is the purpose and policy statement in the Airport Planning Rule. OAR 660-013-0010 provides:

> "(1) This division implements ORS 836.600 through 836.630 and Statewide Planning Goal 12 (Transportation). The policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. These rules are intended to promote a convenient and economic system of airports in the state and for land use planning to reduce risks to aircraft operations and nearby land uses.
>
> "(2) Ensuring the vitality and continued operation of Oregon's system of airports is linked to the vitality of the local economy where the airports are located. This division recognizes the interdependence between transportation systems and the communities on which they depend."

the other sixteen findings that petitioners specifically challenge under this assignment of error are not the key reasons that the county relied on to support the challenged exception. The key reasons that the county adopted in support of the challenged exception, reasons which make sites at the Scappoose and other airports unreasonable alternative sites, are the county's desire to encourage improvement of the Vernonia airport and to encourage economic development to benefit economically depressed Vernonia. Petitioners' responses to those reasons are that (1) other communities, including Scappoose, are also economically depressed, and (2) the statutes and rules that encourage the continued operation and vitality of Oregon's airports do not trump the statewide planning goal exception criteria.

That other communities in Columbia County may also be economically depressed does not mean the depressed economy in Vernonia cannot be a legitimate reason for an exception to allow airport related development. While we generally agree with petitioners that the statutes and rules that encourage continued operation and vitality of Oregon's airports do not necessarily trump the exception criteria, it does not follow that a desire to encourage development of an existing airport cannot be a legitimate reason for an exception. If the development that would likely locate at the sites that would be made available through the disputed exception for land next to the Vernonia airport would come at the expense of lands already designated for industrial development at the Scappoose airport or other airports, there might be a coordination issue under Goal 2 (Land Use Planning) or other statewide planning goal issues. But petitioners offer no other reasons to question the legitimacy of those reasons as a basis for the disputed exception, and we agree with intervenors that those reasons for the disputed exception make sites at the Scappoose or Hillsboro airports something other than reasonable alternatives.

**B. Other Alternative Sites**

Petitioners also argue that in 1993 the county approved an exception for approximately 37 acres, much of which remains undeveloped. In addition, there is vacant

industrially zoned land within the City of Vernonia. Petitioners suggest that those lands are reasonable alternatives.

Unchallenged findings explain that all but 10 acres of the 37 acres are located within runway setback areas and for that reason may not be developed for industrial uses. Portions of the remaining 10 acres are located within the Nehalem River floodplain and areas of the remaining 10 acres are too narrow to be developed. Record 132. Other findings provide other reasons why the industrially zoned vacant lands at the airport are not developable. Record 14, 826. Petitioners do not challenge these findings, and we conclude they are sufficient to demonstrate that the airport properties for which an exception was approved in 1993 are not reasonable alternative sites.

With regard to the vacant industrially zoned site in Vernonia, the county's findings explain that site is the only vacant industrially zoned site in Vernonia that is not located in the Nehalem River floodplain and that the city is considering the site for a public facility or a school. Those findings go on to take the position that given that site in Vernonia is the only industrially zoned site in the city outside the floodplain and given that the proposed uses are airport related uses, the site in the city is not a reasonable alternative to the proposed site next to the airport. Petitioners have not shown that the county's reasoning regarding the industrially zoned site in the city is erroneous.

For the reasons explained above, the second assignment of error is denied.

**THIRD ASSIGNMENT OF ERROR**

Another of the four factors that must be considered to grant an exception under Goal 2, Part II(c) is whether the proposed uses will be compatible with adjacent uses. OAR 660-004-0020(d).[8] Petitioners contend that because the particulars of the industrial development

[8] OAR 660-004-0020(d) provides:

> "'The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts'. The exception shall describe how the

that is authorized by the exception are not known, the county has largely relied on subsequent site plan review to ensure that airport related industrial development will be consistent with nearby residences. Petitioners contend that the OAR 660-004-0020(d) compatibility standard will not apply directly in design review. Petitioners raised several issues below regarding compatibility. First, petitioners contend that an overlay zone will be applied to adjacent properties if the runway is extended and allege that overlay will constitute a regulatory taking of private property for a *private* use, because it will prevent commercial forest use of adjoining forest land. Second, petitioners argue increased use of Airport Way, which is a private gravel road, will exceed the terms of the easements for Airport Way. Third, petitioners contend runoff from the airport will create drainage and contamination problems on adjoining properties. Fourth, petitioners argue that there are shallow, down gradient wells on adjoining properties and that "industrial properties pose a threat both in terms of sewage disposal as well as industrial contamination." Petition for Review 33. Finally, petitioners contend the adjoining residents will be damaged by increased air traffic.

**A. The Airport Overlay Zone**

As intervenors correctly point out, petitioners do not explain what overlay they are talking about, much less how its application will result in an improper regulatory taking of private property for a private purpose. In addition, even if application of the overlay would result in a regulatory taking, it is not obvious to us why that means the proposed airport related industrial uses or the airport expansion is not compatible with adjoining forest uses. Finally, if the city extends the runway and the county applies an overlay zone to protect that

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proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. 'Compatible' is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."

runway, we fail to see how that constitutes an improper taking of property for a "private" use.

**B. Airport Way**

With regard to Airport Way, intervenors contend, and we agree, that the issue of the scope of the easement and the compatibility of the airport and airport related uses authorized by the exception are separate issues. Any questions regarding whether intervenors' use of the road exceeds the scope of the easement must be resolved by circuit court, not LUBA. With regard to whether the development that is made possible by the disputed exception will result in traffic that is incompatible with adjoining properties, intervenors contend that petitioners merely speculate that such will be the case. Intervenors point out there is an engineering report in the record that concludes the expected traffic will be consistent with Airport Way's status as a local road. The challenged decision notes that to meet county road standards, the existing travel surface on Airport Way will need to be widened to 20 feet with three-foot shoulders. A condition of approval requires that prior to development intervenors must provide a traffic impact analysis that identifies the proposed uses and establishes the road improvements that will be needed to the road system and requires that all improvements be to county standards.

Without a better developed argument to establish why petitioners believe the uses allowed by the disputed exception will lead to traffic on Airport Way that is incompatible with adjoining uses, we reject petitioners' undeveloped suggestion that it will be incompatible.

**C. Drainage and Contamination**

With regard to drainage and contamination concerns, the county adopted the following findings:

> "As explained by LandTech, runoff from the site would drain into an existing 30 inch culvert located at the southwesterly corner of the site, adjacent to tax lot 600 (the existing airport site) and north of the existing private road. At the

> time of final engineering for the project, a typical 100 foot long water quality swale can and would be provided, which would easily accommodate the treatment of runoff generated by the proposed 84,450 square feet of impervious surface. Water quality swales are a widely accepted method of water quality treatment in Oregon. As to water quality impacts associated with increased travel on the roadway, as LandTech notes, the improved road section serving the site can be constructed with roadside ditches within the existing 40-foot easement right-of-way which would control surface runoff and assist in the removal of phosphorus prior to discharge into the creek.
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> "These facts support the conclusion that adequate storm water services can be provided." Record 429.

Petitioners neither acknowledge nor challenge the above findings. Without a more developed argument, we agree with intervenors that the county adequately demonstrated that drainage and contamination from the uses authorized by the disputed exception will not cause those uses to be incompatible with adjoining uses.

**D. Impact on Wells and Sewage and Industrial Contamination**

With regard to wells, the primary concern below appears to have been that increased water consumption at the airport would cause nearby wells to go dry. Intervenors' expert LandTech stated that some wells on adjoining properties were dug too shallow and may at times go dry for that reason. But LandTech also concluded that wells that were dug deeply enough easily produce a sufficient quantity of water for single family dwellings. Record 449. LandTech also concluded that "[n]o data exists to support a claim that an increase in draw down from the exiting Bero well would adversely impact any neighboring well." Record 449. The county adopted that conclusion as a finding. Record 427. We agree with intervenors that the county adequately established that consumption of water by the uses authorized by the disputed exception will not be incompatible with adjoining uses.

With regard to petitioners' argument that "[m]ajor industrial activities on adjacent industrial properties pose a threat both in terms of sewage disposal as well as industrial contamination," we agree that petitioners' undeveloped argument is not sufficient to establish

that the threat of sewage or industrial contamination will render the uses authorized by the disputed exception incompatible with adjoining uses.

**E. Increased Air Traffic**

Intervenors first contend that no issue regarding incompatibility based on the increased air traffic that may result from the additional airport related industrial development was raised below, and therefore under ORS 197.763(1) and 197.835(3) that issue may not be raised for the first time at LUBA.[9] Intervenors characterize that issue as a "noise impacts" issue. Intervenors-Respondents' Brief 24.[10] At oral argument petitioners argued that the increased air traffic impacts issue was adequately raised at Record 421. Record 421 is one of many exhibits that were attached to a letter from petitioners' attorney to the county. That letter appears at Record 369-75. As a general rule, we think it is highly unlikely that an issue that is only raised obliquely in one of 44 pages of exhibits to a letter is raised with sufficient specificity to preserve the issue for review at LUBA. However, the identical argument that intervenors contend was waived is made in the letter to which Record page 421 is an exhibit. Record 373. The issue set out in footnote 10 was not waived.

The county's compatibility findings rely heavily on two points. First, that the existing airport has been there for many years and many of the nearby houses were built with knowledge that the airport, and impacts that are generated by the airport (including air traffic impacts), were already occurring. Second, the county relied heavily on its understandings of

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[9] ORS 197.835(3) limits the issues that may be raised in a LUBA appeal, and provides:

> "Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable."

[10] The incompatibility argument that intervenors argue petitioners waived is as follows:

> "It is also clear that substantial increases in air traffic associated with the industrial and commercial developments proposed here would cause significant damage to children and adults or the existing residential properties adjacent to the airport." Petition for Review 33-34.

its obligations under state law to "encourage and support the continued operation and vitality of Oregon's airports." ORS 836.600.[11] Intervenors argue the county's reliance on both those factors was entirely appropriate:

> "[S]imply stated, airport noise already exists at the airport, and when people move next to an airport, they must anticipate airport noise. Regarding damage to children and adults, Petitioners provided no evidence that increased air traffic at Vernonia would result in higher decibels.
>
> "Petitioners try to minimize the finding that Vernonia Airport was there before they were, but this fact is relevant. Vernonia Airport is an existing use that immediately adjoins or is in close vicinity to not only Intervenors' property but also many of Petitioners' properties. Further, because the airport is zoned AI, uses permitted at that airport include the very same uses authorized for this new exception area, namely, airport uses and airport related industrial uses. Because those uses already are allowed on land that immediately adjoins or is nearby to lands owned by Petitioners, and because many allowed uses already exist at the airport, it is difficult to see how expanding airport and airport industrial uses onto another 27.8 immediately adjacent acres would violate the compatibility requirement for reasons exceptions.
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> "Moreover, it must be recognized that where goal exceptions are taken to allow for expansion of airport uses, not one but two LCDC rules come into play when compatibility issues arise: OAR 660-004-0020(2)(d) and OAR 660-013-0040(6).[12] The former requires findings that the proposed uses are

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[11] Among the county's findings are the following:

> "13. The Board heard many local residents express concerns regarding potential incompatibilities between airport uses, including airport industrial uses, and residential uses. The Board is sensitive to these concerns but agrees with the Applicants that under OAR 660-013-0040, such concerns are addressed through landscaping or other types of mitigation measures during the permitting process. The Board also notes that Vernonia Airport has been in existence since before World War II, and it finds, for this reason, that persons purchasing land or constructing dwellings nearby knew, should have known, or reasonably could have anticipated that the airport might grow over time. The Board expressly acknowledges the state policy in ORS 836.600 to encourage and support the continued operation and vitality of all public use airports, and it finds that the proposed Applications are consistent with and further the objectives of this policy." Record 16.

[12] OAR 660-004-0020(2)(d) was quoted earlier. OAR 660-013-0040 is part of the airport planning rule and imposes "Aviation Facility Planning Requirements." OAR 660-013-0040(6) provides:

> compatible with adjacent uses or can be rendered compatible through measures designed to reduce adverse impacts. The latter, which is unique to airport property, provides that '[w]hen compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600.' * * *" Intervenors-Respondents' Brief 24-26 (underlining in original; footnotes omitted).[13]

There are at least two problems with intervenors' arguments and the county's decision regarding increased air traffic impacts. First, although some of the adjoining dwellings may post-date construction of the airport and existing airport related uses, that does not mean expansions of the airport and related uses onto adjoining lands that require statewide planning goal exceptions need not be compatible with those dwellings. OAR 660-004-0020(d) requires that such expansions be compatible. OAR 660-013-0040(6) requires that the county "take reasonable steps to eliminate or minimize [any] incompatibility through location, design, or conditions." *See* n 12. If the county determines that the proposed extension of the airport runway and additional airport related industrial development pursuant to a statewide planning goal exception will create additional air traffic impacts that are incompatible with adjacent uses and that such incompatibility cannot be eliminated or minimized "through location, design, or conditions," OAR 660-004-0020(d) and OAR 660-013-0040(6) "may" conflict and OAR 660-013-0040(6) "may" require or permit the county

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> "When compatibility issues arise, the decision maker shall take reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions. A decision on compatibility pursuant to this rule shall further the policy in ORS 836.600."

[13] ORS 836.600, which is referenced in the last sentence of intervenors' argument, provides as follows:

> "In recognition of the importance of the network of airports to the economy of the state and the safety and recreation of its citizens, the policy of the State of Oregon is to encourage and support the continued operation and vitality of Oregon's airports. Such encouragement and support extends to all commercial and recreational uses and activities described in ORS 836.616 (2)."

to allow the expansion notwithstanding the incompatibility. However, based on the current record, the county has not established that its obligations under the two rules conflict. [14]

The second problem with intervenors' arguments and the county's decision regarding potential increased air traffic impacts is that both the county and intervenors seem to reverse the burden of proof concerning the compatibility of the proposed uses with the existing adjoining uses. Intervenors and the county have that evidentiary burden of proof. *Fasano v. Washington Co. Comm.*, 264 Or 574, 588, 507 P2d 23 (1973). No party has identified any evidence in the record regarding how much additional air traffic might be expected at the airport, as a result of the uses authorized by the disputed exception. Until that is known, the county is simply not in a position to know if that increased air traffic will be incompatible with adjoining uses. If the increased air traffic will not be incompatible with adjoining uses, the proposal complies with OAR 660-004-0020(2)(d). Even if increased air traffic might be incompatible with adjoining uses, the county is required under OAR 660-004-0020(d) and 660-013-0040(6) to consider "measures designed to reduce adverse impacts" and take "reasonable steps to eliminate or minimize the incompatibility through location, design, or conditions." Those measures and reasonable steps may be sufficient to conclude that the proposed uses will be compatible notwithstanding the additional air traffic impacts.[15]

For the reasons explained above, the county failed to establish that the uses authorized by the exception will not have increased air traffic impacts that cannot be

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[14] We say OAR 660-013-0040(6) "may" allow the county to approve an incompatible expansion in that circumstance, because it is far from clear to us that OAR 660-013-0040(6) would require or allow the county to approve an incompatible airport expansion notwithstanding that the expansion would occupy land that requires a statewide planning goal exception and notwithstanding that the expansion would be inconsistent with OAR 660-004-0020(d). We need not and do not resolve that question here.

[15] It bears emphasizing here that under OAR 660-004-0020(d), the county is obligated to ensure the uses authorized by the exception will be compatible with adjoining uses, but the county is not obligated to ensure that those uses will cause "no interference or adverse impacts of any type with adjacent uses." *See* n 8.

minimized or eliminated so that the uses will be compatible with adjoining development. For that reason, the third assignment of error is sustained in part.

**FOURTH ASSIGNMENT OF ERROR**

Petitioners contend the challenged exception violates Columbia County Road Standards IV(A)(1), which provides:

> "Private roads shall not be approved if the road is presently needed, or is likely to be needed, for public road purposes in the normal development of the area, or if the private road is intended to facilitate more intensive development in the area, or *if the private road is intended to serve commercial or industrial development*. * * *" (Emphasis added.)

Columbia County Road Standards IV(A)(1) governs *approval* of private roads, and the disputed exception does not approve a private road. Airport Way is an existing road. Petitioners' fourth assignment of error provides no basis for reversal or remand.

The fourth assignment of error is denied.

**FIFTH ASSIGNMENT OF ERROR**

In their fifth assignment of error, petitioners challenge the other statewide planning goal exception that was approved to allow a six-space commercial campground within 3 miles of the Vernonia UGB. *See* n 1.

As intervenors correctly note, "nowhere do Petitioners analyze the actual exception set out at [Record] 828-831." Intervenors-Respondents' Brief 32. Because petitioners do not challenge those findings or their evidentiary support, the fifth assignment of error is denied.

**SIXTH ASSIGNMENT OF ERROR**

Columbia County Zoning Ordinance (CCZO) Section 221 provides that "[o]nly one principal use may be placed on each lot or parcel."[16] As defined by CCZO 100.80, a

[16] CCZO Section 200 is entitled "General Provisions." The text of CCZO Section 221 is set out below:

> "One Principal Use Per Lot: Only one principal use may be placed on each legal lot or parcel."

principal use is "[t]he main use to which the premises are devoted and the primary purpose for which the premises exist."[17] Petitioners contend that intervenors propose a number of different airport related industrial uses and a campground in contravention of the requirement of CCZO Section 221 for only one principal use on the 70.8-acre parcel. In response to this argument, the county adopted the following findings:

> "The Board heard opponent testimony that the Bero property would be put to more than one use, contrary to the requirements of CCZO 221. However, what CCZO 221 states is that only one 'principal' use shall be located on each legal lot or parcel. The Board expressly finds that the principal use authorized on the Bero property is airport related uses. The Board finds that that the uses located within the area rezoned AI are consistent with the principal use requirement. It also finds that the Beros also have expressed an intent to use the remainder of their property not zoned AI for uses that are related to airport use, such as a bed and breakfast serving pilots and their passengers. The Board concludes that other uses occurring on the property would not constitute a principal use of the Bero property." Record 16.

The board of county commissioners' choice of the term "airport related uses" to describe the proposed principal use has a verb tense problem. We understand the board of county commissioners to have meant that the proposed principal use is airport related development.

Petitioners' position under this assignment of error and the county's interpretation are both unclear. We understand petitioners to argue that only one permitted or conditional use in the AI and PF-76 zone may be authorized on the 70.8-acre parcel as its principal use. That interpretation is certainly a possible interpretation. Under that interpretation only one of the many "Uses Permitted Outright" and "Uses Permitted Under Prescribed Conditions" could be located on the 70.8-acre parcel as its "principal use," even though almost all of them are airport related uses or airport related development.

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[17] The text of CCZO 100.80 is set out below:

> "Principal Use: The main use to which the premises are devoted and the primary purpose for which the premises exist."

LUBA must affirm the county's interpretation unless it is inconsistent with the text, purpose or underlying policy of CCZO 221. ORS 197.829(1).[18] As intervenors correctly point out, petitioners do not cite ORS 197.829(1) or make any obvious attempt to explain why the county's interpretation must be reversed under ORS 197.829(1). It is clear that the county does not interpret the "principal use" requirement of CCZO 221 to require that not more than one of the many "Uses Permitted Outright" or "Uses Permitted Under Prescribed Conditions" in the AI zone be constructed on the 70.8-acre parcel. In fact, as the county interprets CCZO 221, it would appear that as far as CCZO 221 is concerned, almost any of the "Uses Permitted Outright" or "Uses Permitted Under Prescribed Conditions" in the AI zone could be constructed on the 70.8-acre parcel, as long as they can be characterized as "airport related" development or accessory to airport related development.[19] Under the county's interpretation, CCZO 221 is almost meaningless in the AI zone.

But the county's interpretation finds at least some support in the CCZO 100.80 definition of "principal use," which is relevant context. *See* n 17. That definition of "principal use" anticipates that the "principal use" may occupy multiple "premises." The

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[18] 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."

[19] With the exception of "Farm Uses," almost all of the "Uses Permitted Outright" or "Uses Permitted Under Prescribed Conditions" in the AI zone appear to be "airport related uses" or uses that are limited by the CCZO so that they will be airport related.

county's apparent view is that a number of industrial uses in different premises may collectively constitute the "principal (airport related industrial) use" of the parcel, as long as all of those industrial uses are dependent on air transportation. As indicated earlier that interpretation may have a verb tense problem, since the principal use can be made up of multiple uses. But that interpretation is not inconsistent with the text of CCZO 100.80 definition of principal use that envisions multiple premises. And although the county's interpretation may make CCZO 100.80 largely an irrelevant limitation in the AI zone, that likely would not be the case in other zones that allow a number of categories or types of uses.

Although it is a very close question, we conclude that petitioners have not demonstrated that the county's interpretation of CCZO 221 to allow the uses authorized by the disputed exception on intervenors' 70.8-acre parcel, because all of those uses are airport related development, is a reversible interpretation under ORS 197.829(1).

**SEVENTH ASSIGNMENT OF ERROR**

In their final assignment of error, petitioners argue "The Exceptions Granted by the County Do Not Provide a Mechanism for Ensuring that Only Uses Justified by the Exception Will Be Allowed on the Parcel." Petition for Review 42.

The challenged decision includes two conditions number 2 on different pages of the record:

> "2. The approximately 27.8 acre site zoned Airport Industrial (AI) shall only be used for those uses identified and justified in the Exception Statement and as allowed by State Statute. Other uses listed in the Airport Industrial (AI) Zone may not be located on this site without new Exceptions to the Statewide Planning Goals." Record 10.

> "2. Any private campground development on the 43 acre Primary Forest-76 (PF-76) site shall be limited in scope to that identified and justified in the Exception Statement and as allowed by State Statute. Any expansion or change in use shall not be located on this site without a new Exception to the Statewide Planning Goals." Record 19.

Petitioners do not attempt to explain why these conditions are inadequate to ensure that only the uses justified by the exception are constructed. Petitioners' point appears to be

that the precise companies or the precise "Uses Permitted Outright" or "Uses Permitted Under Prescribed Conditions" that will be constructed are not known. Petitioners make no attempt to explain why the more general description of those uses as airport related development is legally impermissible.

The seventh assignment of error is denied.

The county's decision is remanded in accordance with our resolution of the third assignment of error.