

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

MARSON TRUCKING, INC., )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
CLACKAMAS COUNTY, )  
 )  
Respondent, )  
 )  
and )  
 )  
WAYNE CARTER, RUBY CARTER, DAVE )  
IMHOLT, LINDA IMHOLT, ROY SAWYER, )  
DEANNA HAMILTON, TERRY KENNEDY, )  
SHEILA KENNEDY, ROBERT MATZKA, )  
SUSAN MATZKA, AL MORELLI, JOANNE )  
MORELLI, ANTHONY PASCUA and )  
JANET PASCUA, )  
 )  
Intervenors-Respondent. )

LUBA No. 92-124  
FINAL OPINION  
AND ORDER

Appeal from Clackamas County.

Jeff H. Bachrach, Portland, filed the petition for review and argued on behalf of petitioner. With him on the brief was O'Donnell, Ramis, Crew & Corrigan.

Michael E. Judd, Oregon City, filed a response brief on behalf of respondent.

John H. Hammond, West Linn, filed a response brief and argued on behalf of intervenors-respondent. With him on the brief was Hutchinson, Hammond, Walsh, Herndon & Darling.

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

AFFIRMED 01/08/93

You are entitled to judicial review of this Order.

1 Judicial review is governed by the provisions of ORS  
2 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals respondent's denial of its request  
4 for comprehensive plan and zoning map amendments for an  
5 approximately 66 acre parcel.

6 **MOTION TO INTERVENE**

7 Wayne Carter, Ruby Carter, Dave Imholt, Linda Imholt,  
8 Roy Sawyer, Deanna Hamilton, Terry Kennedy, Sheila Kennedy,  
9 Robert Moazka, Susan Matzka, Al Morelli, Joanne Morelli,  
10 Anthony Pascua and Janet Pascua move to intervene on the  
11 side of respondent in this appeal. There is no opposition  
12 to the motion, and it is allowed.

13 **FACTS**

14 Petitioner seeks to have the Clackamas County  
15 Comprehensive Plan (plan) map designation for its property  
16 changed from Agriculture to Forest and to have the Clackamas  
17 County Zoning and Development Ordinance map designation  
18 changed from EFU-20 (Exclusive Farm Use, 20 Acre) to TT-20  
19 (Transitional Timber, 20 Acre). Storage of logging trucks  
20 is an allowable conditional use in the TT-20 zone but is not  
21 allowable in the EFU-20 zone, except as a temporary use.  
22 Additional relevant facts are stated in the decision, as  
23 follows:

24 "[Petitioner] moved its business onto the subject  
25 property several years ago. This company is in  
26 the business of hauling logs from the forest to  
27 mill sites for logging companies and making local  
28 deliveries to mills in the Mulino and Molalla

1 area. This move to the subject property was not  
2 authorized by Clackamas County. [Petitioner] used  
3 a recently constructed pole building for the  
4 storage and light maintenance of logging trucks.  
5 They also rocked an area adjacent to this building  
6 for outside storage of these logging trucks.

7 "On October 27, 1989, the Planning Division staff  
8 approved a temporary permit for [petitioner] for a  
9 use not otherwise allowed in the Exclusive Farm  
10 Use zoning district. This temporary permit was  
11 for use of the area of the recently constructed  
12 pole building for the storage of up to [nine]  
13 unloaded logging trucks. This temporary permit  
14 was granted for a period of [one] year.  
15 [Petitioner] stated a need for the temporary  
16 permit for a maximum of [three] years in order to  
17 relocate this trucking business.

18 "On December 31, 1990, the Clackamas County  
19 hearings officer considered the renewal of this  
20 temporary permit allowing the use of the property  
21 for storage of up to [nine] logging trucks. The  
22 hearings officer approved this temporary permit,  
23 subject to [eight] conditions. Condition [number  
24 four] stated all [trucks] shall depart from the  
25 subject property as near to 4:00 a.m. as  
26 possible[, and that trucks shall not] return to  
27 the subject property after 10:00 p.m.

28 "In a subsequent investigation, the Community  
29 Environment Section of the Department of  
30 Transportation and Development determined  
31 condition [number four] was not met and requested  
32 the planning director schedule a public hearing to  
33 revoke the temporary permit. A public hearing was  
34 scheduled and the Clackamas County hearings  
35 officer considered evidence regarding the  
36 revocation of the previously granted temporary  
37 permit. In a decision dated August 16, 1991, the  
38 hearings officer determined there was a continued  
39 violation of condition [number four] and he  
40 revoked the temporary permit. The applicant  
41 appealed the hearings officer's decision to the  
42 State Land Use Board of Appeals, which confirmed  
43 the county's decision. [Marson Trucking, Inc. v.  
44 Clackamas County, \_\_\_ Or LUBA \_\_\_ (LUBA No. 91-

1 134, December 23, 1991).]

2 "Since the time the temporary permit was revoked,  
3 the applicant has continued to use the subject  
4 property for the storage of up to [nine] logging  
5 trucks with no authorization from Clackamas  
6 County. Other improvements associated with this  
7 business are an above ground fuel storage tank  
8 within the rocked area adjacent to the pole  
9 building and at least one portable toilet.  
10 Employee vehicles are being parked along the  
11 gravel driveway providing access to this pole  
12 building." Record 110-11.

13 **DECISION**

14 **A. Comprehensive Plan Amendment**

15 The central dispute in this appeal is whether the  
16 county correctly applied plan Agriculture Policy 1.0 and  
17 Forest Policy 1.0 in denying the requested plan and zone map  
18 amendments. Agriculture Policy 1.0 provides as follows:

19 "The following areas shall be designated for  
20 Agriculture:

21 "a. Areas with predominantly Classes I-IV  
22 agricultural soil as defined by the U.S. Soil  
23 Conservation Service or identified as  
24 agricultural soil by more [detailed] data.

25 "b. Areas in parcels of 20 acres or larger.

26 "c. Areas primarily in agricultural use.

27 "d. Areas necessary to permit farming practices  
28 on adjacent lands or necessary to prevent  
29 conflicts with the continuation of  
30 agricultural uses.

31 "e. Other areas in soil classes different from  
32 SCS I-IV, when the land is suitable for farm  
33 use as defined in ORS 215.203(2)(a), taking  
34 into consideration soil fertility;  
35 suitability for grazing; climatic conditions;

1 existing and future availability of water for  
2 farm irrigation purposes; existing land use  
3 patterns; technological and energy inputs;  
4 and accepted farming practices."<sup>1</sup>

5 Forest Policy 1.0 provides as follows:

6 "The following areas shall be designated Forest:

7 "a. Areas with Douglas Fir Forest Site Class I,  
8 II, III, IV or V, as determined by the State  
9 and U.S. Forest Service.

10 "b. Areas generally in parcels of 20 acres or  
11 larger.

12 "c. Areas generally in forest use.

13 "d. Areas which are environmentally sensitive or  
14 otherwise require protection (watersheds,  
15 areas subject to erosion, landslides, etc.)  
16 should be designated Forest.

17 "e. Forested areas which buffer more intense land  
18 uses from areas of less intense use may be  
19 designated Forest."<sup>2</sup>

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<sup>1</sup>A total of 13 Agricultural Policies are included in the plan. In addition to Policy 1.0 quoted above in the the text, those policies range from directing that agriculturally related industries be encouraged (Agriculture Policy 2.0) to requiring that the county disseminate information on agricultural crops (Agriculture Policy 7.0). Plan Agriculture Policy 11.0 also directs that Exclusive Farm Use zones (including the EFU-20 zone) be applied to implement the plan Agriculture Policies. However, plan Agriculture Policy 13.0 provides that the county may apply forest zoning in agricultural areas, "provided the primary uses are forest and forest related and that permitted uses will not conflict with agricultural uses."

<sup>2</sup>A total of 15 Forest Policies are included in the plan. In addition to Policy 1.0 quoted in the the text, those policies range from directing that forest related industries be encouraged (Policy 2.0) to directing that roads be developed compatibly with forest uses (Policy 7.0). Policy 11.0 identifies the zoning districts that implement the Forest Goals and Policies, including the TT-20 zone requested by the applicant in this matter. Forest Policy 13.0 includes provisions similar to Agricultural

1           The challenged decision denies the request to change  
2 the plan map designation from Agriculture to Forest, based  
3 on Agriculture Policy 1.0 and Forest Policy 1.0. The county  
4 found the subject property satisfies all five of the  
5 Agriculture Policy 1.0 factors while only one of the Forest  
6 Policy 1.0 factors is satisfied.<sup>3</sup> On that basis the county  
7 denied the request.

8           Petitioner contends the county erred in two ways.  
9 First, petitioner contends the county erred by denying the  
10 request simply because all five of the factors listed under  
11 Agriculture Policy 1.0 are met while only one of the factors  
12 listed under Forest Policy 1.0 is met. Second, petitioner  
13 argues that having concluded that at least one of the  
14 factors under Forest Policy 1.0 is met, the county was bound  
15 to apply all relevant plan goals and policies, balance those  
16 goals and policies, and explain in its findings why the  
17 proposed Forest plan designation for subject property is or  
18 is not justified.

19           Under ORS 197.175(2)(d), the county is required to  
20 assure that amendments to its plan, including amendments to  
21 its plan map, comply with the acknowledged comprehensive  
22 plan. DLCD v. Polk County, 21 Or LUBA 463, 465 (1991). The

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Policy 13.0, see n 1 supra, and allows application of EFU zones to property the plan designates as Forest, in limited circumstances.

<sup>3</sup>The subject property is located in an area of parcels exceeding 20 acres in size, satisfying both Forest Policy 1.0 factor b and Agriculture Policy 1.0 factor b.

1 county concedes that in making certain types of land use  
2 decisions a number of Agricultural Policies or Forest  
3 Policies might apply, and to the extent those plan  
4 provisions impose conflicting requirements, the county must  
5 adopt findings balancing those conflicting plan provisions  
6 in determining whether the request is consistent with the  
7 plan. See Waker Associates, Inc. v. Clackamas County, 111  
8 Or App 189, 826 P2d 20 (1992)(conditional use required to  
9 "[satisfy] the goals and policies of the comprehensive Plan  
10 which apply to the proposed use."); Rowan v. Clackamas  
11 County, 19 Or LUBA 163, aff'd 103 Or App 130 (1990)(same).<sup>4</sup>  
12 However, the county and intervenors argue the requirement  
13 that a plan map amendment comply with the plan begs the  
14 question of which plan provisions apply to such an  
15 amendment.

16 The county argues it correctly determined that, unlike  
17 the conditional use decisions at issue in Waker, Rowan, and  
18 Deters, the requested plan map change is governed solely by  
19 Agriculture Policy 1.0 and Forest Policy 1.0. The county  
20 explains in its brief as follows:

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<sup>4</sup>Petitioners also cite Deters v. Board of County Commissioners of Clackamas, 1 Or LUBA 217, 227 (1981). Deters involved a request for a zone change and conditional use approval, and both of those approvals required compliance with the comprehensive plan. The case draws a distinction between zone changes and conditional uses which "violate" the plan and those that only "seem to conflict." In the latter instance, Deters determines that a balancing of those plan provisions with which the proposal conflicts with those plan provisions that are promoted or furthered is required.

1            "[The subject] property is currently designated  
2            Agriculture in the County Comprehensive Plan. In  
3            this request, petitioner asks that designation be  
4            changed to Forest. Policies 1.0 of both the  
5            Agriculture and Forest sections of the  
6            comprehensive plan set out the specific criteria  
7            for so designating property. \* \* \* In determining  
8            whether to grant the proposed plan change, the  
9            County, reasonably enough, evaluated the subject  
10           property under each of these sets of criteria.  
11           when this analysis showed that the present  
12           Agriculture designation is consistent with all  
13           five factors, but the proposed Forest designation  
14           would be consistent with only one, the requested  
15           plan amendment was denied. This method of  
16           analysis was correct, and no further analysis was  
17           needed or appropriate.

18           "Petitioner's main argument in the petition for  
19           review is that the County should not have limited  
20           its consideration to Agriculture and Forest  
21           Policies 1.0. Petitioner claims the County 'has  
22           created and relied on a new approval standard.'  
23           It is difficult to understand how applying  
24           policies designed to govern exactly the question  
25           presented, the plan designation of property,  
26           constitutes creation of a new approval standard.

27           "Petitioner also argues there is no explanation  
28           why other plan goals and policies were ignored.  
29           The obvious answer is these policies are not aimed  
30           at the designation of property." Respondent's  
31           Brief 2-3.

32           We agree with the county and intervenors. The  
33           strongest argument in petitioner's favor is that the plan  
34           does not make it as clear as it might that Forest Policy 1.0  
35           and Agriculture Policy 1.0 are the sole determinants of  
36           whether land should be designated on the plan map as  
37           Agriculture or Forest. However, such an interpretation of  
38           Agriculture Policy 1.0 and Forest Policy 1.0 is reasonable

1 and is certainly within the rather broad discretion the  
2 county enjoys in interpreting and applying its plan. Clark  
3 v. Jackson County, 313 Or 508, 836 P2d 710 (1992); Goose  
4 Hollow Foothills League v. City of Portland, 117 Or App 211,  
5 \_\_\_ P2d \_\_\_ (1992); West v. Clackamas County, 116 Or App 89,  
6 \_\_\_ P2d \_\_\_ (1992); Cope v. City of Cannon Beach, 115 Or App  
7 11, 836 P2d 775 (1992).

8 We reject petitioner's challenge to the county's  
9 decision denying the requested change of the plan map  
10 designation from Agriculture to Forest.

11 **B. Zone Change**

12 The only reason given by the county for denying the  
13 zone change is its denial of the requested plan map  
14 amendment. Petitioner repeats the arguments it makes in  
15 challenging the plan map amendment. As noted above, the  
16 plan explicitly identifies the zoning that may be applied to  
17 property that is designated Agriculture on the plan map.  
18 The requested TT-20 zoning is not among the zones  
19 Agriculture Policy 11.0 identifies as implementing the  
20 Agriculture plan map designation. While Agriculture Policy  
21 13.0 apparently might permit the application of the TT-20  
22 zone despite the Agriculture plan map designation, in  
23 limited circumstances, petitioner does not argue such  
24 circumstances exist here.

25 We reject petitioner's challenge to the county's  
26 decision denying the requested change of the zoning map

1 designation from EFU-20 to TT-20.

2 The county's decision is affirmed.