



1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioner appeals Yamhill County's denial of his request  
4 for a plan amendment and zone change.

5 FACTS

6 Petitioner requested an amendment to the Yamhill County  
7 Comprehensive Plan changing the designation on his property  
8 from "Agricultural/Forestry Large Holding" (AFLH) to "Very Low  
9 Density Residential" (VLDR). Petitioner also asked that the  
10 zoning designation on his property be changed from  
11 "Agricultural/Forestry, 20 Acre Minimum" (AF-20) to "Very Low  
12 Density Residential, 5 Acre Minimum" (VLDR-5).

13 The soils on petitioner's property are predominantly Class  
14 III, and also a Class II suitability for Douglas Fir  
15 production. These soil types qualify the land for designation  
16 as agricultural land and forestry land under the provisions of  
17 LCDC Goals 3 and 4 and the Yamhill County Comprehensive  
18 Plan.<sup>1</sup> The county's plan and zoning designations for this  
19 property are designed to preserve it for agricultural and  
20 forest uses. The Yamhill County plan and zoning ordinance have  
21 been acknowledged by LCDC as being in compliance with statewide  
22 planning goals.

23 Within about four miles of petitioner's property there are  
24 some 600 acres of land designated as VLDR which are zoned  
25 Agricultural/Forestry with a 10 acre minimum lot size. Within  
26 five miles of his property, there are 1,200 acres of similarly

1 designated lands with five acre minimum lot sizes.

2 ASSIGNMENT OF ERROR

3       Petitioner makes a single assignment of error which the  
4 Board understands to include two assertions: first, petitioner  
5 says his property is not commercial farm land and should not be  
6 designated as such; second, petitioner complains that the  
7 county used improper criteria when deciding whether land should  
8 be designated for farm use or other uses. Based on these two  
9 claims, petitioner argues that he was entitled to residential  
10 use plan and zoning designations for his property.

11       The parties agree that in order to meet the criteria for  
12 plan change and zone change as requested, petitioner must take  
13 an exception to Goals 3 and 4. One of the Goal 2 exceptions  
14 criteria requires petitioner to address whether there are  
15 alternative locations within the area which could be used for  
16 the development of very low density residential home sites.<sup>2</sup>  
17 If suitable alternative sites exist, the exception may not be  
18 granted. The board of commissioners found there were other  
19 properties in the area which were planned and zoned for very  
20 low density residential use. The county board therefore  
21 concluded the applicant did not meet the "alternative sites"  
22 location criterion in Goal 2 and denied the request.

23       Petitioner does not challenge the county's conclusion that  
24 he is unable to meet the alternative lands criterion. Indeed,  
25 petitioner stated in the proceedings below that he could not  
26 meet this criterion. See Record III-7, I-1, and II-4. Rather,

1 petitioner claims the standard is inappropriate. The Board  
2 understands petitioner to say that lands should only be subject  
3 to exclusive farm use zoning when they are found suitable for  
4 agricultural production under the second half of the definition  
5 of agricultural land contained in Goal 3. See Footnote 1,  
6 supra. In other words, petitioner argues land should only be  
7 designated for agricultural use when it (1) contains Class I-IV  
8 soils and (2) when it can be shown that the land is suitable  
9 for farm uses considering economic and other factors.

10 Petitioner says his land does not qualify under this broad  
11 test.<sup>3</sup> Petitioner is mistaken about how to apply the  
12 definition of agricultural land in Goal 3. Meyer v Lord, 37 Or  
13 App 59, 586 P2d 367, rev den (1979).

14 The time to argue about the appropriateness of the  
15 definitions of agricultural land contained in Goal 3 and forest  
16 land in Goal 4 is long past. See ORS 197.225 and ORS 183.410.  
17 Further, the time to appeal the county's application of Goals 3  
18 and 4 and the plan and ordinance criteria for changing a plan  
19 designation for property is when the plan and zoning were  
20 adopted, not now. ORS 197.830. Petitioner conceded below that  
21 he could not meet the alternative lands test necessary to  
22 obtain an exception; and, indeed, we find nothing in the record  
23 to show petitioner's view to be mistaken. We conclude the  
24 county was correct in its refusal to change the plan  
25 designation for this property.

26 Petitioner's argument about the zone change fails for the

1 same reason. The Yamhill County Zoning Ordinance provides:

2 "An amendment to the Official Zoning Map may be  
3 authorized... provided that the applicant demonstrates  
4 the following:

4 "4. That there are no other lands in the County  
5 already zone for the proposed uses, or if there  
6 are such lands, that they are either unavailable  
7 or unsuitable due to location, size or other  
8 factors." Yamhill County Ordinance No. 310,  
9 1982, §1207.02(b)(4).

8 This particular "other lands" criterion is similar to the  
9 Goal 2 "alternative locations" criterion. In this case, the  
10 county's finding there are many acres nearby bearing the zoning  
11 designation requested by petitioner precludes the county from  
12 finding in petitioner's favor. Petitioner has not demonstrated  
13 the unsuitability of these appropriately zoned parcels.  
14 Petitioner therefore is not entitled to the requested zone  
15 change.<sup>4</sup>

16 The decision of Yamhill County denying petitioner's  
17 requested plan and zone change is affirmed.

FOOTNOTES

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Goal 3 defines agricultural land as follows:

4 "AGRICULTURAL LAND - In western Oregon is land of  
5 predominantly Class I, II, III, IV, V and VI soils as  
6 identified in the Soil Capability Classification System of  
7 the United States Soil Conservation Service, and other  
8 lands which are suitable for farm use taking into  
9 consideration soil fertility, suitability for grazing,  
10 climatic conditions, existing and future availability of  
11 water for farm irrigation purposes, existing land use  
12 patterns, technological and energy inputs required, or  
13 accepted farming practices. Lands in other classes which  
14 are necessary to permit farm practices to be undertaken on  
15 adjacent or nearby lands, shall be included as agricultural  
16 land in any event."

11 Goal 4 defines forestry land as follows:

12 "Forest Lands - are (1) lands composed of existing and  
13 potential forest lands which are suitable for commercial  
14 forest uses; (2) other forested lands needed for watershed  
15 protection, wildlife and fisheries habitat and recreation;  
16 (3) lands where extreme conditions of climate, soil and  
17 topography require the maintenance of vegetative cover  
18 irrespective of use; (4) other forested lands in urban and  
19 agricultural areas which provide urban buffers, wind  
20 breaks, wildlife, and fisheries habitat, livestock habitat,  
21 scenic corridors and recreational use."

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19 "PART II - EXCEPTIONS: When, during the application of the  
20 statewide goals to plans, it appears that it is not  
21 possible to apply the appropriate goal to specific  
22 properties or situations, then each proposed exception to a  
23 goal shall be set forth during the plan preparation phases  
24 and also specifically noted in the notices of public  
25 hearing. The notices of hearing shall summarize the issues  
26 in an understandable and meaningful manner.

23 "If the exception to the goal is adopted, then the  
24 compelling reasons and facts for that conclusion shall be  
25 completely set forth in the plan and shall include:

25 "(a) Why these other uses should be provided for;

26 "(b) What alternative locations within the area could be

1 used for the proposed uses;

2 "(c) What are the long term environmental, economic, social  
3 and energy consequences to the locality, the region or  
4 the state from not applying the goal or permitting the  
5 alternative use;

6 "(d) A finding that the proposed uses will be compatible  
7 with other adjacent uses."

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10 3 Petitioner does not discuss the suitability of his land for  
11 forestry use.

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14 4 We understand petitioner's frustration with the plan  
15 designation and zone applied to his property. However, the  
16 record shows these lands to fall under the agricultural and  
17 forestry provisions of the plan. Because a change to these  
18 designations is only possible through an exception and because  
19 petitioner is unable to meet all exceptions criteria, we must  
20 affirm the decision.  
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