

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioners appeal an amendment to the Jackson County
4 Comprehensive Plan and Zoning Map. The amendment changes the
5 land use designation on approximately 1000 acres of forest land
6 from Forest Resource (FR) to Woodland Resource (WR).

7 Petitioner asks us to reverse the decision.

8 FACTS

9 The property is composed of primarily Forest Site Class 4
10 and 5 soils with some Class II through IV Agricultural soils.
11 It is in a forested area, and adjacent lands vary in size from
12 less than 40 acres to 600 acres. The county's findings
13 identify the property as forest land.

14 The county comprehensive plan includes two zones which
15 control land uses on forest lands. The FR Zone is the more
16 restrictive of the two. The plan states as follows:

17 "Forest Resource Lands are areas where sustained
18 timber production and preservation of a
19 self-perpetuating forest environment is considered to
20 be the dominant land use. These lands are principally
21 located in the higher elevations and are described
22 later in this element; and are for the most part owned
23 and/or managed by the Bureau of Land Management, the
24 U. S. Forest Service, or wood products industry for
25 large scale commercial timber production; have parcel
26 sizes of 40 acres or greater; are specifically
27 assessed as forest land and/or have a cubic foot site
28 class rating of between +2 to 5 (site class is
29 discussed later in the element)."

30 Generally, Forest Resource Lands are found at and above the
31 2400 foot level. There are, however, Forest Resource Lands
32 below this level. The subject property lies between 2300 and

1 3200 feet in elevation.

2 The county plan describes Woodland Resource Lands as
3 follows:

4 "Woodland Resource land are recognized by Jackson
5 County as a second type of forest land. The resource
6 has been designated on the comprehensive plan and
7 zoning maps. Woodland Resource is defined as those
8 areas where production of timber and wood fiber is, or
9 can become, a primary use of land. Guided by multiple
10 use objectives, Woodland Resource lands are generally
11 located at lower elevations; are generally in private
12 nonindustrial ownerships with some wood product
13 industry and less productive publicly owned lands;
14 parcel sizes are predominantly greater than 20 acres;
15 are specially assessed as forest land; or have a cubic
16 foot site class potential for timber production; and
17 occur adjacent to and buffer the Forest Resource."

18 The county's findings, not challenged by petitioner,
19 explain that the rezoned property meets the criteria for
20 placement in a WR Zone. The findings discuss forest site
21 class, elevation, rainfall, productivity, history of
22 reforestation and other factors bearing on whether this
23 property should be zoned Forest Resource or Woodland Resource.

24 It is important to understand how zone changes in Jackson
25 County work. The county's land use planning regulations
26 include a comprehensive plan text and a single plan and zoning
map. Jackson County also has a land development ordinance
which includes subdivision and partitioning regulations. The
land development ordinance articulates the uses allowable in
each zone and provides other regulations controlling the use of
land. The land development ordinance does not include a zoning
map. The map included in the plan is the only map in the

1 county ordinance scheme which applies particular zoning
2 designations to individual parcels. The plan map resembles an
3 implementation measure or land use regulation in that it
4 applies zoning designations to individual parcels.¹

5 "FIRST ASSIGNMENT OF ERROR

6 "Jackson County improperly construed the applicable
7 law in concluding that the plan amendment adopted by
8 Order No. 287-85 complies with Goal 4, Forest Lands."

8 "SECOND ASSIGNMENT OF ERROR

9 "Jackson County violated Goal 4 by placing 1000 acres
10 of forest land in a plan designation implemented by
11 zoning ordinance that authorizes non-forest uses of
12 forest land inconsistent with the requirements of Goal
13 4."

12 In the first assignment of error, petitioner argues the
13 county erroneously applied its plan to this change instead of
14 Goal 4. In making this argument, petitioner explains that the
15 county order shows the only justification for the change is
16 based upon compliance with the WR Zone. Petitioner goes on to
17 say that the WR Zone allows uses which are not consistent with
18 Goal 4. Indeed, petitioner argues that LCDC's acknowledgement
19 of the Jackson County Plan "was inconsistent" with later stated
20 agency positions about the requirements of Goal 4. Petition
21 for Review at 9.

22 Petitioner's claim rests entirely on its view that the WR
23 Zone does not comply with Goal 4. Therefore, applying the WR
24 Zone to this forest land violates the goal, according to
25 petitioner. Petitioner makes no argument that the rezoning
26 violates Goal 4 because the property possesses physical

1 characteristics which are more suited for another zoning
2 designation. There is no claim that the county's findings are
3 defective or that the decision is not supported by substantial
4 evidence in the record. If we agree with petitioner, we are
5 required to declare that the allowable uses in the Woodland
6 Resource Zone violate Goal 4.

7 The second assignment of error also attacks the WR Zone.
8 Petitioners argument includes three reasons why the zone
9 violates Goal 4: (1) the small parcels increase prices for
10 forest land; (2) small parcel units are more expensive and less
11 efficient to manage for forest uses; and (3) owners of small
12 forest parcels have a history of failure.

13 The county plan and land development ordinance, including
14 the FR and WR Zones, have been acknowledged by the Land
15 Conservation and Development Commission (LCDC) as being in
16 compliance with statewide planning goals. The challenged
17 action does not change the text of the acknowledged plan or the
18 use categories (such as WR) in the acknowledged zoning
19 ordinance. Because the Jackson County Plan has been
20 acknowledged, our review of the amendment is controlled by the
21 following statute:²

22 "Notwithstanding the provisions of subsections 2
23 and 3 of this section, the board shall reverse or
24 remand a decision to adopt an amendment to an
25 acknowledged comprehensive plan or land use
26 regulation or a new land use regulation if the
amendment or new regulation does not comply with
the goals. The board shall find an amendment or
new land use regulation in compliance with the
goals; if:

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2 * * *

3 "(b) The amendment to an acknowledged comprehensive
4 plan or land use regulation or a new land use
5 regulation, on the whole, comply with the
6 purposes of the goals and any failure to meet
7 individual goal requirements is technical or
8 minor in nature." ORS 197.835(4) (b).

9 In order for us to agree with petitioner on either
10 challenge, we must find the provisions of the acknowledged WR
11 Zone do not comply with the goal's mandate to "conserve forest
12 lands for forest uses." In other words, we must find the zone
13 violates Goal 4.

14 We are not empowered to consider whether the terms of an
15 acknowledged ordinance violate statewide planning goals. As we
16 understand the statutory scheme, acknowledgement by LCDC
17 forecloses subsequent argument (as here) that the provisions of
18 the acknowledged measure fall short of goal requirements. Byrd
19 v. Stringer, 295 Or 311, 666 P2d 1332 (1983); Fujimoto v. Land
20 Use Board of Appeals, 52 Or App 875, 630 P2d 364, rev den 291
21 Or 662 (1981); Whitesides Hardware v. City of Corvallis, 68 Or
22 App 204, 680 P2d 1004 (1984).³

23 Petitioner urges us to conduct the goal violation on
24 inquiry under ORS 197.175(2) (a) (plan amendments must comply
25 with goals). We recognize that the decision in question
26 involves an amendment of the plan map. Nonetheless, we believe
the type of goal attack mounted here (i.e., that the use
provisions of the WR Zone are less restrictive than Goal 4
requires) is outside our jurisdiction. Alternatively, we
believe the goal inquiry is foreclosed under ORS 197.835(4) (a).

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The decision of Jackson County is affirmed.

1 CERTIFICATE OF MAILING

2 I hereby certify that I served the foregoing Final Opinion
3 and Order for LUBA No. 85-081, on January 21, 1986, by mailing
4 to said parties or their attorney a true copy thereof contained
in a sealed envelope with postage prepaid addressed to said
parties or their attorney as follows:

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13
14 Dated this 21st day of January, 1986.

15
16 Patti J. Kadaja
17 Patti J. Kadaja
Administrative Assistant