

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

3
4 CAROL CROCKETT,
5 *Petitioner,*

6
7 vs.

8
9 CURRY COUNTY,
10 *Respondent,*

11
12 and

13
14 OREGON DEPARTMENT OF TRANSPORTATION,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2009-006

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from Curry County.

23
24 James D. Brown, Portland, filed the petition for review and argued on behalf of
25 petitioner. With him on the brief was the Law Office of James D. Brown.

26
27 M. Gerard Herbage, County Counsel, Gold Beach, filed a joint response brief. With
28 him on the brief was Bonnie E. Heitsch.

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30 Bonnie E. Heitsch, Assistant Attorney General, Salem, filed a joint response brief and
31 argued on behalf of intervenor-respondent. With her on the brief was M. Gerard Herbage.

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

35
36 AFFIRMED

03/27/2009

37
38 You are entitled to judicial review of this Order. Judicial review is governed by the
39 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a decision approving a conditional use permit application for a weigh station on U.S. Highway 101.

MOTION TO INTERVENE

The Oregon Department of Transportation (ODOT) moves to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

MOTION FOR REPLY BRIEF

Petitioner moves to file a reply brief to respond to four alleged “new matters” raised in the response brief. ODOT objects, arguing that the reply brief is not “confined solely to new matters raised in the respondent’s brief.” OAR 661-010-0039.

In our view, three of the four alleged new matters warrant a reply brief. The exception is the first issue, which involves a dispute over the scope or characterization of petitioner’s preferred interpretation of a county code provision. We agree with ODOT that in disputing the contours of petitioner’s interpretation the response brief does not raise a new matter within the meaning of OAR 661-010-0039. Accordingly, we will consider the reply brief only from page 2, line 18 to the end of page 5. The reply brief is allowed, in part.

FACTS

ODOT proposes to relocate an existing weigh station on U.S. Highway 101 from within the City of Brookings to a new site just south of the city’s urban growth boundary (UGB). The preferred new site is located on the eastern portion of the existing highway right of way, which is zoned Public Facilities (PF). A weigh station is a conditional use in the PF zone.

The area to the west of the preferred new site between the Highway 101 right of way and the Pacific Ocean is within the county’s Harbor Bench Farm District (HBFD), an 850-acre area with special agricultural soils and conditions that is recognized for horticultural

1 production, especially lily bulbs. Most of the land within the HBFD is zoned for agricultural
2 use. In the late 1990s, as part of periodic review, the City of Brookings expanded its UGB to
3 include lands in or near the northern portion of the HBFD. *See Hummel v. LCDC*, 152 Or
4 App 404, 954 P2d 824 (1998) (affirming approval of the UGB expansion). In conjunction
5 with that UGB expansion, the county created a special overlay zone, the Harbor Bench Farm
6 Overlay Zone (HB Overlay Zone) that applies to that northern portion of the HBFD. The HB
7 Overlay Zone is codified at Curry County Zoning Ordinance (CCZO) 3.290 to 3.293. As a
8 result of the UGB amendment, that northern portion of the HBFD subject to the overlay zone
9 is nearly surrounded by lands within the expanded UGB and is no longer contiguous with the
10 southern portion of the HBFD. The proposed weigh station is located south of the UGB and
11 the area of the HBFD that is subject to the HB Overlay Zone and is not adjacent to any
12 property in that overlay zone. However, the portion of the Highway 101 right of way that
13 includes the site of the proposed weigh station is adjacent to lands within the southern
14 portion of the HBFD that are in commercial agricultural production.

15 The proposed weigh station is located near the base of the Harbor Hills coastal
16 terrace, a hilly area that is a source of irrigation water for the HBFD. Several culverts near
17 the site convey storm water under the highway to the farm district and ultimately to the
18 ocean. In addition, the proposed site is located near the point where Highway 101 transitions
19 from two lanes to four lanes going north into the UGB. The proposed weigh station will
20 intercept only north-bound truck traffic.

21 Opponents to the project raised concerns regarding traffic impacts and the impact of
22 new impervious surfaces on erosion and stormwater flows on the farm district to the west.
23 The planning commission denied the proposed weigh station based on these concerns. On
24 appeal to the board of county commissioners, the commissioners reversed the planning
25 commission denial and approved the permit. Petitioner appealed the commissioners' initial
26 decision to LUBA, and LUBA subsequently granted the county's motion for voluntary

1 remand. On remand, the county adopted supplemental findings and again approved the
2 application. This appeal followed.

3 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

4 Conditional use standards are set out in CCZO Article 7. CCZO 7.040 provides that
5 conditional uses must meet general standards set out in CCZO 7.040(1) (a) through (g), as
6 well as “the standards of the zone in which the conditional use is located and the other
7 standards in this ordinance[.]” The county found that the proposed weigh station complied
8 with the general standards at CCZO 7.040(1) and petitioner does not dispute those findings.
9 The remaining subsections of CCZO 7.040(2) through (19) set out special conditional use
10 standards for particular uses (*e.g.* schools or home occupations) and for certain overlay zones
11 or districts, including the HBFD, which is addressed under CCZO 7.040(19).

12 CCZO 7.040(19) was adopted in 2001 as part of the same ordinance that adopted the
13 HB Overlay Zone and the regulations at CCZO 3.290 that govern the overlay zone.
14 CCZO 7.040(19) provides, in full:

15 **“Harbor Bench Farm District.**

16 “a) If the proposed use is located on a lot or parcel zoned for
17 nonagricultural use and is adjacent to land zoned for commercial
18 agricultural use and is in agricultural use then the proposed use shall
19 not force a significant change in, or significantly increase the cost of
20 accepted and typical farming practices on the agricultural land.

21 “b) As a condition of approval a written easement shall be recorded with
22 the deed of the lot or parcel zoned for non-agricultural use by the land
23 owner which recognizes the rights of the owners of land zoned for
24 commercial agricultural use to conduct farming operations consistent
25 with accepted and typical farming practices used for commercial
26 farming within the Harbor Bench Farm District.

27 “c) *If the proposed use located on a lot or parcel zoned for*
28 *nonagricultural use within the Harbor Bench Farm District* includes
29 the development of a structure or the creation of an impervious ground
30 surface, the person proposing the use shall be required to direct all
31 drainage from the structure or impervious surface away from adjacent
32 or nearby lands zoned for commercial farm use and into the existing

1 storm drainage system. The owner of the nonfarm use parcel may
2 divert surface water drainage onto farm land to receive water for a use
3 beneficial to agriculture. The written agreement shall contain a
4 provision that the owner of the nonfarm parcel will re-direct the
5 surface water drainage into the existing storm water drainage system at
6 any time the farm land owner no longer desire to receive such water.

7 “d) All residential and commercial outdoor lighting shall be directed away
8 from adjacent farm land.” (Emphasis added).

9 Petitioner argued to the county, and argues now to LUBA, that CCZO 7.040(19) is
10 intended to protect agricultural lands within the HBFD as a whole, not limited to the HB
11 Overlay Zone, and is applicable to the proposed weigh station because the weigh station is
12 “adjacent” to commercial agricultural land within the HBFD.¹ Petitioner notes that CCZO
13 7.040(19)(c), unlike the other three standards in CCZO 7.040(19), explicitly applies to a
14 “proposed use located on a lot or parcel zoned for nonagricultural use within the Harbor
15 Bench Farm District[.]” Because CCZO 7.040(19)(a), (b) and (d) do not include such
16 limiting language, petitioner argues, those three standards therefore are intended to apply to
17 proposed conditional uses on lands *outside* the HBFD that are located adjacent to agricultural
18 land *within* the HBFD, such as the present case. Therefore, petitioner argues, the county
19 erred in failing to apply CCZO 7.040(19)(a), (b) and (d).

20 The commissioners rejected that argument, relying in part on context provided by
21 CCZO 3.290, part of the regulations adopted in 2001 governing the HB Overlay Zone, which
22 states that the purpose of the overlay zone is to protect agricultural uses from “nonfarm uses
23 located within the farm district.”²

¹ Petitioner also argues that the site of the proposed weigh station is located within the HBFD, and therefore CCZO 7.040(19) applies even under the county’s interpretation discussed below. Petitioner’s apparent theory is that the Highway 101 right of way forms the border of the HBFD and therefore falls within the HBFD. However, as the county found, the comprehensive plan defines the HBFD in relevant part as the area *west* of Highway 101, between the highway and the ocean, and therefore does not include the highway right of way. Petitioner offers no focused challenge to that finding, and we reject the argument.

² The commissioners’ decision states, in relevant part:

1 Petitioner argues that the county fails to appreciate that CCZO 3.090 applies only to
2 the HB Overlay Zone, and that as its title indicates CCZO 7.040(19) applies to the HBFD as
3 a whole. According to petitioner, the county’s findings fail to address the differences
4 between CCZO 7.040(19)(a), (b) and (d), which do not include any limitation to lands
5 “within the Harbor Bench Farm District,” and subsection (c), which includes that specific
6 limitation. Petitioner contends that the county’s interpretation of CCZO 7.040(19) that does
7 not apply at all to lands outside the HBFD is inconsistent with the express language of that

“CCZO 7.040(19) addresses uses that are located within the boundaries of the Harbor Bench Farm District and adjacent to other uses within the district. The [Harbor Bench Farm District Overlay Zone] ordinance reads as follows:

“CCZO 3.290 Harbor Bench Farm District Overlay Zone (HBFO)

“Purpose of Classification: The purpose of the HBFO zone is to reduce impact to the commercial agricultural uses within the Harbor Bench Farm District as defined in the Curry County Comprehensive Plan from nonfarm uses located within the farm district.

“* * * * *

“It would be contrary to the ordinance language and our intent to apply the Harbor Bench Farm District to lands adjacent to the district. The use of the language ‘within the Harbor Bench Farm District’ precludes an interpretation that the regulatory provisions of the District apply to land outside the district boundaries.

“It is noted that CCZO 7.040(19)(a) applies ‘if the proposed use is located on a lot or parcel zoned for nonagricultural use and is adjacent to land zoned for commercial agricultural use[.]’ [T]he term ‘adjacent’ refers to nonagricultural lands located next to lands zoned for commercial agricultural use within the HBFO, not to nonagricultural lands located adjacent to the District itself. This interpretation is reinforced in subsection (c) which specifies that ‘If the proposed use located on a lot or parcel zoned for nonagricultural use within the Harbor Bench Farm District includes the development of a structure or the creation of an impervious ground surface[.]’

“A careful reading of the ordinance makes it clear that the uses regulated by this ordinance are only those wholly within the [HBFD]. The District encompasses both agricultural and non-agricultural uses. We affirm that the intention of the overlay zone is to allow the two types of uses to co-exist within the district, and to allow continuation of the unique, small agricultural uses interspersed with more developed parcels. CCZO 7.040(19) does not apply to review of this application.” Record 22 (emphasis, footnote and ellipses omitted).

1 provision, and further is inconsistent with comprehensive plan policies intended to protect
2 agricultural uses within the district, and is therefore reversible under ORS 197.829(1).³

3 The county and ODOT (together, respondents) argue that the commissioners correctly
4 interpreted CCZO 7.040(19) as not applying to proposed conditional uses on lands outside
5 the HBFD. Respondents concede that CCZO 3.290 governs only the HB Overlay Area, but
6 argues that CCZO 3.090 was adopted in the same 2001 legislation as CCZO 7.040(19) and is
7 pertinent context. Respondents attach to their brief the ordinances that adopted both code
8 provisions and associated comprehensive plan amendments, as well as the adopted legislative
9 findings and other documents that supported those ordinances. According to respondents,
10 the legislative findings support the county’s position that the county intended
11 CCZO 7.040(19) to apply only to proposed conditional uses within the HBFD, not to
12 proposed conditional uses on lands outside the HBFD. Respondents also cite to several
13 comprehensive plan policies regarding the HBFD that, in respondents’ view, support the
14 county’s interpretation. In turn, petitioner cites to different portions of the legislative history
15 and the applicable comprehensive plan policies, in support of her argument that the county’s
16 intent in adopting CCZO 7.040(19) was to broadly protect commercial agricultural uses
17 within the HBFD from adverse impacts of non-farm development, whether that development
18 is within the HBFD or on lands outside the HBFD but adjacent to farm land within the
19 HBFD.

³ ORS 197.829(1) provides, in relevant part:

“[LUBA] 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[.]”

1 We agree with respondents that, when relevant context and legislative history is
2 considered, the commissioners' interpretation of CCZO 7.040(19) is consistent with the
3 express language, purpose or underlying policy of that code provision, or at least as
4 consistent as petitioner's preferred interpretation, and therefore not reversible under the
5 somewhat deferential standard of review we must apply under ORS 197.829(1). *Church v.*
6 *Grant County*, 187 Or App 518, 69 P3d 759 (2003).

7 The text of CCZO 7.040(19) is ambiguous, and it is not clear from that provision
8 alone whether it is intended to apply to lands outside the HBFD. That CCZO 7.040(19)(c)
9 refers to lands within the HBFD, but subsections (a), (b) and (d) do not, perhaps carries a
10 negative implication that the latter subsections are intended to apply to lands *outside* the
11 HBFD, as petitioner argues. However, nothing in CCZO 7.040(19) says that, and if that was
12 the county's intent we believe the county would have made that intent clearer. It is
13 reasonable to presume that, absent language to the contrary, regulations governing a
14 particular district are intended to apply to or govern only land within that district. As
15 explained below, the county knows how to draft regulations that are intended to protect
16 agricultural land within the HBFD but that expressly apply to lands outside the HBFD, and in
17 fact the county appeared to do so with respect to a different code provision that was adopted
18 in the same legislation that adopted CCZO 7.040(19).

19 As respondents note, CCZO 7.040(19) was adopted in 2001 by Ordinance 01-02,
20 which added three new provisions to the CCZO: Section 7.040(19), Section 3.390, and
21 Section 4.010(4). CCZO 4.010(4) requires a 30-foot setback and a fence between residential
22 uses on lands within the urban growth boundary that are also adjacent to lands zoned for
23 agricultural use.⁴ Given its provenance, the apparent intent of CCZO 4.010(4) is to protect

⁴ CCZO 4.010(4) provides:

“Required dwelling setback for those parcels located within an Urban Growth Boundary (UGB) and which have a common boundary with land zoned for agricultural purposes (EFU

1 agricultural lands within the HB Overlay Zone and perhaps the HBFD as a whole from the
2 impacts of urban residential uses that are outside that zone or district, but adjacent to
3 agricultural lands. There is no express language in CCZO 7.040(19) indicating a similar
4 intent to regulate uses outside the HBFD in order to protect agricultural lands within the
5 HBFD.

6 Moreover, as the county’s findings note, CCZO 3.390, which was adopted to protect
7 the northern portion of the HBFD subject to the overlay zone, expressly provides that it is
8 intended to protect the HBFD “from nonfarm uses located within the farm district.” The HB
9 Overlay Zone accomplishes that in two ways, both of which involve CCZO 7.040(19). First,
10 CCZO 3.291 makes any permitted use in the underlying base zones that requires a
11 development or building permit subject to the conditional use standards at CCZO 7.040(19).⁵
12 Second, CCZO 3.292 makes all conditional uses allowed in the underlying base zones
13 subject to CCZO 7.040(19).⁶ That approach of cross-referencing specific applicable
14 conditional use standards in CCZO 7.040 for particular uses or areas is generally followed in

or AFD) shall be thirty (30) feet from the boundary with the agricultural land. In addition the boundary common with the agricultural land shall be fenced with a solid fence at least six (6) feet high or a fence that is not solid but is screened with a hedge of sufficient density to provide reasonable buffering for sound and dust.”

⁵ CCZO 3.291 provides:

“The following uses are permitted in the Harbor Bench Farm District Overlay Zone. Uses requiring development/building permits shall be subject to the standards referenced in Section 7.040(19).

- “1. Farm uses as provided by Oregon Revised Statute Chapter 215 if allowed in the underlying zone.
- “2. Uses permitted outright in the underlying zone.”

⁶ CCZO 3.292 provides:

“The following uses may be allowed provided * * * the Planning Director approves the proposed use based upon relevant standard[s] for review in this ordinance. Number in parenthesis following the uses indicated the standards described in Section 7.040 that must be met to approve the use.

- “1. Uses permitted conditionally and other uses allowed in the underlying zone (19).”

1 the county’s other zones and overlay zones, including the PF zone. CCZO 3.202.
2 However, no other zone or CCZO code provision brought to our attention references CCZO
3 7.040(19) or requires compliance with that provision, only the HB Overlay Zone. Thus, the
4 only code provisions that expressly invoke and require application of CCZO 7.040(19) are
5 part of an overlay zone that explicitly states that it is intended to protect the HBFD from
6 “nonfarm uses located within the district.” That context lends some support to the county’s
7 interpretation that CCZO 7.040(19) was not intended to apply to protect the HBFD as a
8 whole from nonfarm uses located *outside* the district. Petitioner suggests no logical reason
9 why the county would choose to limit the application of CCZO 7.040(19) within the HB
10 Overlay Zone to lands within the district, but with respect to the rest of the HBFD expand the
11 application of CCZO 7.040(19) to lands outside the district. For that matter, petitioner
12 suggests no logical reason why the county would choose to limit CCZO 7.040(19)(c) to lands
13 within the district, but choose to apply CCZO 7.040(19)(a), (b) and (d) to lands outside the
14 district.⁷ That in turn suggests that the language in CCZO 7.040(19)(c) referring to lands
15 within the HBFD represents a drafting variation rather than a deliberate choice to expand the
16 scope of CCZO 7.040(19)(a), (b) and (d) to govern lands and uses outside the HBFD.

17 Although the parties do not cite it, there is additional context that is contrary to
18 petitioner’s view that CCZO 7.040(19)(a), (b) and (d) are intended to be applied to lands
19 outside the HBFD. CCZO 7.040(19)(b) requires that as a condition of development the
20 owner of land zoned for non-agricultural use record a written easement recognizing the right
21 of commercial agricultural operators within the HBFD to conduct farming operations, with
22 reference to “Exhibit A.” Exhibit A is attached as part of Appendix A to the respondents’

⁷ It is perhaps ironic that CCZO 7.040(19)(c) concerns the impacts of stormwater runoff from new structures and impervious surfaces, which is petitioner’s primary concern with respect to the proposed weigh station, that new impervious surfaces will increase stormwater runoff onto farm lands within the HBFD. Thus, even under petitioner’s interpretation, the county would not apply CCZO 7.040(19)(c) to the proposed weigh station to address issues with stormwater runoff.

1 brief, and recites in relevant part that the easement burdens property that is “situated within
2 the Harbor Bench Farm District[.]” The county apparently adopted Exhibit A
3 contemporaneously with or as part of the ordinances that adopted CCZO 7.040(19). That
4 context undercuts petitioners’ argument that CCZO 7.040(19)(b) is intended to be applied to
5 lands outside the HBFD, and suggests that the similar lack of reference to the HBFD in
6 subsections (a) and (d) also was not intended to indicate that those subsections apply to lands
7 outside the HBFD.

8 Finally, both petitioner and respondents cite to various comprehensive plan
9 provisions and legislative findings adopted in 2001 when the county adopted
10 CCZO 7.040(19) to support their respective positions. In our view, none of the plan
11 provisions and findings cited to our attention provides particularly strong support for either
12 the county’s interpretation or petitioner’s interpretation.

13 In sum, petitioner has not established that, considering text, context, legislative
14 history and applicable comprehensive plan policies, the county’s interpretation is
15 inconsistent with the express language, purpose or underlying policy of CCZO 7.040(19).
16 Accordingly, we must affirm that interpretation. ORS 197.829(1).

17 The first and second assignments of error are denied.

18 **THIRD AND FOURTH ASSIGNMENTS OF ERROR**

19 Petitioner argues that the county erred in failing to apply the county’s Transportation
20 System Plan (TSP) Goals and Objectives as approval criteria and failing to adopt adequate
21 findings addressing whether the proposed weigh station is consistent with several TSP Goals
22 and Objectives. A note at the end of the conditional uses listed in the PF zone at CCZO
23 3.202 states:

24 “NOTE: If review of a conditional use request under this Section indicates
25 that the proposed use or activity is inconsistent with the Transportation
26 System Plan, the procedure for a plan amendment shall be undertaken prior to
27 or in conjunction with the conditional use permit review.”

1 Based on this note, petitioner argues that the county must evaluate the proposed weigh
2 station against TSP Goals 1-3 and their Objectives in the TSP and determine whether the
3 proposed conditional use is consistent with those goals and objectives.⁸ Petitioner contends
4 that the proposed weigh station is inconsistent with some or all of the cited TSP goals and/or
5 objectives, and therefore the county must amend the TSP prior to or in conjunction with
6 approving the weigh station.

7 The county rejected that argument, finding that the cited TSP goals and objectives are
8 not applicable approval criteria for a conditional use application and further that the proposed
9 weigh station is not inconsistent with the TSP.⁹

⁸TSP Goal 1 is to “Preserve the function, capacity, level of service, and safety of the state highways.” Objectives under Goal 1 include “Develop access management standards” and “Develop alternative, parallel routes,” among others.

TSP Goal 2 is to “Improve and enhance safety and traffic circulation and preserve the level of service on local street systems.” Objectives under Goal 2 include “Develop an efficient local road network that would maintain a level of service C or better” and “Improve and maintain existing roadways.”

TSP Goal 3 is to “Identify the 20-year roadway system needs to accommodate developing or undeveloped areas without undermining the rural nature of the County.” Objectives under TSP Goal 3 include “Adopt policies and standards that address street connectivity, spacing and access management” and “Improve the access onto and off of arterial roadways to encourage growth.”

⁹ The county’s findings state, in relevant part:

“The county finds that the [TSP] is not an applicable review criterion for this application. * * * The [TSP] goals are aspirational and the objectives set out specific actions that the county can take to meet the goals. * * * The objectives require the county to adopt standards, procedures and ordinances, and guide decision making for investments in the transportation system to improve the transportation network in the county. The TSP is implemented by ordinances and comprehensive plan policies that the county adopted to support the broad objectives of the TSP. These Goals and Objectives were used to make decisions about various potential improvement projects described in Chapter 2 of the TSP. The Goals and Objectives were not intended to provide review criteria for individual development applications.

“* * * * *

“* * * A Note at the end of the list of conditional uses in the PF zone, CCZO 3.202, states: ‘If review of a conditional use request under this Section indicates that the proposed use or activity is inconsistent with the Transportation System Plan, the procedure for a plan amendment shall be undertaken prior to or in conjunction with the conditional use permit review.’ We find the proposed weigh station is not inconsistent with the [TSP].

1 Petitioner contends that because the proposed weigh station is not provided for or
2 considered in the TSP, the functions, capabilities and levels of service on this portion of
3 Highway 101 do not account for the traffic impacts of the weigh station. Therefore,
4 petitioner argues, the county must at adopt findings evaluating whether the weigh station is
5 inconsistent with TSP Goal 1, to “[p]reserve the function, capacity, level of service and
6 safety of the state highways,” and inconsistent with TSP Goal 2, to improve safety on local
7 streets that might be impacted by the weigh station. Petitioner cites to testimony from
8 neighbors raising concerns whether the proposed weigh station will have traffic impacts that
9 are inconsistent with the function, capacity, level of service and safety of that portion of
10 Highway 101, and the safety of nearby local streets.

11 The TSP goals petitioner cites to are extremely general provisions that, as the county
12 found, do not function as independently applicable approval criteria with respect to a
13 conditional use permit. Further, the objectives associated with each TSP goal appear to be
14 planning directives to the county rather than anything resembling approval criteria for
15 individual requests for development approval.

16 We agree with petitioner, however, that the note at the end of the list of conditional
17 uses in the PF zone does require the county to determine whether the proposed conditional
18 use is “inconsistent” with the TSP. The county found that the proposed weigh station is not
19 inconsistent with the TSP, and explained why. Petitioner argues that the county’s findings

“The TSP defers to [ODOT] for operation, maintenance and decisions regarding improvements to Highway 101. * * * The proposed weigh station is located on Highway 101, on existing right-of-way. Highway 101 is * * * totally within the jurisdiction of the ODOT. Weigh stations are a use that is consistent with operation of a statewide highway. In addition, this weigh station is not a new use in this area; it is merely replacing an existing weigh station in Brookings.

“Further, there is no requirement that a county TSP include all improvements to the highway in order to be consistent with the plan. OAR 660-012-0020(2) requires the TSP to identify a description of major improvements—not all improvements. Construction of a weigh station is not generally considered a major improvement to the highway and would not typically be included in a TSP. * * * We find the proposed weigh station is consistent with the Curry County TSP.” Record 22-23 (citations omitted).

1 are inadequate. Petitioner apparently understands the note to require the county to determine
2 whether the proposed use is authorized by or planned for under the TSP. If not, petitioner
3 appears to argue, the proposed use is “inconsistent” with the TSP and the TSP must be
4 amended to authorize or plan for the use. Further, petitioner argues that the obligation to
5 determine whether the proposed use is inconsistent with the TSP requires an open-ended
6 evaluation of TSP policies such as Goals 1-3, and an affirmative finding, based on traffic
7 studies or other evidence, that the proposed use will not change the highway’s functional
8 classification, capacity or level of service, or impact traffic safety.

9 The county has a much more limited view of its obligations under the note. The
10 county found that a weigh station is not the kind of major improvement that must be included
11 in the TSP under the applicable administrative rules, and therefore the fact that the TSP does
12 not specifically authorize or plan for the weigh station does not mean that it is inconsistent
13 with the TSP. Further, the county obviously does not believe that the note requires the
14 applicant to undertake the affirmative obligation of showing that the proposed use is
15 “consistent” with generally worded goals and planning mandates such as TSP Goals 1-3 or
16 their objectives. As we understand the county’s view, the applicant need only demonstrate
17 that the proposed use is not “inconsistent” with a specific TSP provision that would conflict
18 with the proposed use. Because the county found no specific TSP provision that conflicts
19 with placing a weigh station on that stretch of Highway 101, and in fact the TSP largely
20 defers to ODOT how Highway 101 will be operated, maintained or improved, the county
21 concluded that the proposed use is not inconsistent with the TSP.

22 While both interpretations are plausible and the county might well have chosen to
23 adopt petitioner’s view of what is required to show that the proposed use is not
24 “inconsistent” with the TSP, petitioner has not demonstrated that the county’s more limited
25 view of that obligation is inconsistent with the express language, purpose or underlying

1 policy of any code or TSP provision. Accordingly, we must affirm the county's
2 interpretation. ORS 197.829(1).

3 The third and fourth assignments of error are denied.

4 The county's decision is affirmed.