

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON  
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4 HANK CALDWELL and  
5 DEBBIE CALDWELL,  
6 *Petitioners,*  
7

8 vs.  
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10 KLAMATH COUNTY,  
11 *Respondent,*  
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13 and  
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15 DOUGLAS E. ADKINS and  
16 DEBORAH L. ADKINS,  
17 *Intervenors-Respondent.*  
18

19 LUBA No. 2003-115  
20

21 FINAL OPINION  
22 AND ORDER  
23

24 Appeal from Klamath County.  
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26 Alan D. B. Harper, Medford, filed the petition for review and argued on behalf of  
27 petitioners. With him on the brief was Hornecker, Cowling, Hassen & Heysell, L.L.P.  
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29 No appearance by Klamath County.  
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31 Michael P. Rudd, Klamath Falls, filed the response brief on behalf of intervenors-  
32 respondent. With him on the brief was Brandsness, Brandsness & Rudd, P.C. William D.  
33 Bunch argued on behalf of intervenors-respondent.  
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35 BRIGGS, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,  
36 participated in the decision.  
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38 AFFIRMED

10/30/2003  
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40 You are entitled to judicial review of this Order. Judicial review is governed by the  
41 provisions of ORS 197.850.

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**NATURE OF THE DECISION**

Petitioners challenge a decision that amends the county comprehensive plan map for a 565-acre parcel from Non-Resource to Rural Residential and rezones the property from Non-Resource (NR) to Rural Residential-10 (RR-10).

**MOTION TO INTERVENE**

Douglas E. Adkins and Deborah L. Adkins (intervenors), the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

**FACTS**

The subject property includes predominantly Class II-VI soils, and irrigation rights for 129 acres. The property has been grazed in the past in conjunction with grazing allotments on federal land. The property is subject to farm tax deferral.

In 1985, the Land Conservation and Development Commission acknowledged the county’s comprehensive plan and zoning maps. Those maps applied the NR plan and zoning designations to the subject property.<sup>1</sup> In 2003, intervenors applied to change the plan map and zoning designations from NR to RR-10. The NR designation permits the siting of dwellings on 20-acre parcels. The RR-10 zoning designation permits the siting of dwellings on 10-acre parcels.

Petitioners, neighboring property owners, appeared before the county, and testified that, notwithstanding the NR designations, the subject property includes agricultural land within the meaning of Statewide Planning Goal 3 (Agricultural Land). Petitioners argued that because the property includes agricultural land, the county may not approve the plan and

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<sup>1</sup> Klamath County Comprehensive Plan (KCCP) Land Use Planning Policy 11 states:

“Lands which are not agricultural or forest lands as defined in Statewide Planning Goals 3 and 4 shall be designated Non-Resource (NR) and [are] subject to the regulations of the Non-Resource (NR) zone contained in the Land Development Code.” KCCP 12.

1 zoning map amendments without taking an exception to Goal 3 pursuant to OAR Chapter  
2 660, division 4. The county approved the plan map amendment and zone change without  
3 taking an exception to Goal 3. This appeal followed.

4 **ASSIGNMENT OF ERROR**

5 Petitioners contend that a plan amendment requires application of all of the statewide  
6 planning goals. ORS 197.175(2).<sup>2</sup> As a result, petitioners argue that the county must address  
7 whether the subject property includes “agricultural land” within the meaning of Goal 3.<sup>3</sup> In  
8 this case, petitioners argue, the county erred in relying on the acknowledged NR plan map  
9 designation to conclude that the subject property does not include “agricultural land.”  
10 Petitioners contend that the evidence clearly shows that the property is comprised of  
11 predominately Class I through VI soils, has irrigation rights, is subject to farm tax deferral,  
12 and has been farmed in the recent past. Petitioners contend that there is no credible evidence  
13 to the contrary and, therefore, the county must find that the property includes agricultural  
14 land subject to Goal 3, and must take an exception to Goal 3 pursuant to OAR Chapter 660,  
15 division 4 before the county may approve the proposed RR-10 designation.<sup>4</sup>

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<sup>2</sup> ORS 197.175(2) provides, in relevant part:

“\* \* \* [E]ach \* \* \* county in this state shall:

“(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by [LCDC.]”

<sup>3</sup> Goal 3 defines “agricultural land:”

“[I]n eastern Oregon[, including Klamath County, agricultural land] is land [comprised] of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States [Natural Resources] Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.”

<sup>4</sup> Petitioners further argue that, since 1993, the determination of whether property is correctly classified as agricultural lands is not dependent on the property’s zoning designation. Rather, petitioners contend, Land Conservation and Development Commission (LCDC) administrative rules govern the determination of whether

1           Petitioners also argue that (1) OAR Chapter 660, division 33 includes approval  
2 criteria that the county must apply to the proposed plan map amendment and zone change;  
3 (2) the county erred in applying OAR Chapter 660, division 5 rather than OAR Chapter 660,  
4 division 33; and (3) the county erred in applying an “economically productive” standard in  
5 its determination that the subject property is not agricultural land.

6           According to intervenors, acknowledgment of the NR designation for the subject  
7 property established, as a matter of law, that the subject property does not include Goal 3-  
8 protected agricultural land. Intervenors argue that the county is not required to revisit that  
9 determination in the context of a quasi-judicial plan amendment and zone change.

10           In *Urquhart v. Lane Council of Governments*, 80 Or App 176, 721 P2d 870 (1986),  
11 the court considered whether a proposal to amend an acknowledged zoning designation  
12 requires a local government to revisit a decision not to protect the subject property under  
13 some of the statewide planning goals. In that case, the city had initially designated property  
14 as Open Space on its zoning map, but had failed to list the property on its Goal 5 Open Space  
15 inventory. There was some evidence in the record that the property had attributes that the city  
16 valued as Goal 5 open space. LUBA remanded the city’s rezoning decision, concluding that  
17 the city had to determine whether the property was inadvertently omitted from the city’s  
18 Open Space inventory and, if so, whether the proposed zoning designation conflicted with  
19 the Goal 5 resource.

20           The Court of Appeals reversed LUBA, holding that, while a local government is  
21 obliged to consider the impact a proposed plan amendment may have on the entire plan’s  
22 continued compliance with the statewide planning goals, the local government is not obliged  
23 to consider whether a proposed amendment complies with goals that are *not* affected by the  
24 amendment itself. 80 Or App at 180-81. Therefore, the question before us is whether the

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property is properly classified as agricultural land. It is not apparent to us why such is the case, and petitioners do not provide any legal basis for that assertion. Even if petitioners’ assertion is true, it does not affect our analysis of petitioners’ arguments.

1 proposed zoning affects the county’s original determination that the subject property does not  
2 include “agricultural land” in a manner that affects the county’s compliance with Goal 3.

3 We conclude it does not. The county may have been mistaken in concluding that the  
4 subject property does not include agricultural lands that must be placed in zones  
5 acknowledged for agricultural use under Goal 3, and LCDC may have been mistaken in  
6 acknowledging that designation. However, we may not revisit that question in the context of  
7 an appeal of a decision to rezone the property from NR to RR-10. That decision does not  
8 implicate Goal 3.

9 The proposed amendment does not affect the county’s plan compliance with Goal 3.  
10 Therefore, the county did not err in refusing to reconsider the original plan and zoning map  
11 designations of the property, or in declining to require an exception to Goal 3 before  
12 approving the new plan and zoning map designations. Because Goal 3 does not apply, and  
13 the subject property does not include Goal 3-protected agricultural land as a matter of law,  
14 the county’s failure to comply with LCDC rules that apply to agricultural lands subject to  
15 Goal 3 also does not provide a basis for reversal or remand. The assignment of error is  
16 denied.

17 The county’s decision is affirmed.