

NATURE OF THE DECISION

Petitioner appeals Ordinance 2006-11-02 (the Ordinance), a legislative amendment that adopts a rural community inventory and a rural residential land inventory into the Douglas County Comprehensive Plan (DCCP), and adds several policies and findings to the Rural Community and Rural Residential portions of the DCCP.

FACTS

In May 2006, the county produced a new inventory of the seventeen rural unincorporated communities in the county, documenting for each unincorporated community the amount of land currently zoned and available for residential uses. Later in 2006, the county produced a new inventory of rural residential lands in the county—lands zoned for rural residential use outside of urban growth boundaries and unincorporated communities. For each rural residential planning area the county documented the amount of developed and developable acreage.

Based on these inventories, the county then prepared amendments to the purpose, policy, policy implementation and findings sections of the Rural Community and Rural Residential portions of DCCP. The county planning commission recommended approval, and the county board of commissioners adopted the plan amendments and inventories on December 6, 2006. This appeal followed.

ORDINANCE 2006-11-02

We briefly set out the relevant comprehensive plan language adopted in Ordinance 2006-11-02.

A. Introduction

The Ordinance adds the following paragraph to the introductory section of the DCCP:

“In 2006, Douglas County published the Rural Community and Rural Residential Inventories which are a part of the Plan by reference. The data in these documents assesses current levels of rural development. Douglas

1 County's Inventories provide specific information which may assist Douglas
2 County or applicants in evaluating applications. The inventory data may be
3 used as part of the needed information to address applicable review standards
4 of the Statewide Planning Goals and implementing rules." Record 45.

5 **B. Rural Community Inventory**

6 The Ordinance amends the purpose statement of the Rural Community Inventory
7 section of the DCCP to state, in relevant part:

8 "The policies for Rural Residential [land in Rural Communities] are designed
9 to provide guidance to owners, applicants and the County on the desired level
10 of rural development opportunities in Douglas County. They are designed to
11 serve as a guide for future plan amendments or updates, whether quasi-
12 judicial or legislative, and to support and encourage applications that are
13 reviewed through the required goal and rule process.

14 *"The plan provisions do not, in themselves, justify a plan amendment but can*
15 *be considered and used in future applications reviewed by Douglas County."*
16 Record 42 (emphasis added).

17 In addition, the Ordinance adds Policy 7 to the Rural Community Inventory, which provides
18 that it is the county's policy to:

19 "Develop and maintain an inventory of Residential, Industrial, and
20 Commercial lands in each Rural Community to address any needed land
21 supplies that may be identified in future updates and changes to the County
22 Comprehensive Plan. Providing for other commercial and industrial uses
23 within or near existing Rural Communities is also important to each of the
24 Rural Communities and the economy of Douglas County." Record 38.

25 Policy 7 is implemented by Policy Implementation 4 and 5, which provide:

26 "4. RURAL RESIDENTIAL INFILL: Douglas County has a history of
27 steady population growth in its Rural Communities. The Rural
28 Residential home sites provided for in Rural Communities are
29 important to Douglas County's economy due to [their] close proximity
30 to resource lands and jobs located in rural Douglas County. Douglas
31 County's economy in large part is resource related. Rural
32 Communities provide home opportunities which [provide] shorter
33 travel distances to resource-related jobs, which reduces transportation
34 infrastructure costs, and provides housing which is often times made
35 affordable by reducing the trip lengths to and from jobs. The social
36 fabric of these Rural Communities [is] also a longstanding important
37 part of Douglas County's culture. *When Rural Residential lands*
38 *within a Rural Community reach a level of infill development which*

1 *reduces the Rural Residential land inventory below a 10-year land*
2 *supply, the County will consider adding lands with lower resource*
3 *potential, to the Rural Community based on reasons and identified*
4 *local need. This level of Rural Residential land inventory is needed to*
5 *accommodate the resource-related job base in Douglas County, and to*
6 *maintain Douglas County’s historic social fabric.*

7 “5. RURAL RESIDENTIAL NEW PARCEL INVENTORY: When the
8 potential Rural Community Rural Residential new parcel inventory
9 falls short of what is needed to maintain a 10-year inventory, the
10 County will consider adding lands with lower resource potential to the
11 Rural Community based on reasons and the identified local need.”
12 Record 38-39 (emphasis added).

13 Further, the Ordinance adds Finding No. 18 to the Rural Community Inventory, which states:

14 “18. Rural [Communities] in Douglas County have seen considerable infill
15 development since their creation. Douglas County’s population
16 growth rate is projected at an average 1.38% annually. When this
17 population growth rate is applied to the existing and potential
18 buildable lands in Douglas County’s Rural Communities, it appears
19 that 12 of Douglas County’s 17 Rural Communities are or will soon be
20 without new homesite opportunities.” Record 39.

21 Finally, the Ordinance adds the following language to the Rural Community Inventory
22 section:

23 “Expansion of Rural Communities is governed by provisions of the Oregon
24 Statewide Planning Goals (SWPG), and implementing rules. The process
25 requires specific information and justification as part of the review. This
26 Comprehensive Plan information is provided to assist owners, applicants and
27 the County in evaluating applications for expansion of a rural community.
28 The information may be used to address a part of the applicable review
29 standards.” Record 40.

30 **C. Rural Residential Lands Inventory**

31 The Ordinance amends the Rural Residential Lands Inventory purpose statement so
32 that it reads almost identically to the Rural Communities Inventory purpose statement quoted
33 above, providing that the plan provisions “do not, in themselves, justify a plan amendment
34 but can be considered and used in future applications reviewed by Douglas County.”

35 The Ordinance adopts policies and implementation measures similar to those adopted
36 under the Rural Communities Inventory section. The primary difference is that the policies

1 and implementation measures specify that the county will “support the addition” of new rural
2 residential land when the existing rural residential areas reach a 65 percent level of built or
3 committed use. Record 43, Policy 9. The amendments identify five rural residential
4 planning areas that are at or near the 65 percent “infill rate.”

5 The Ordinance also adopts several findings consistent with those policies, including a
6 finding that

7 “* * * In some PACs [planning advisory committee areas] Rural Residential
8 growth may be accommodated by infill and new development in existing
9 Rural Residential areas while in other PAC areas Douglas County may
10 consider new or expanded Rural Residential lands based on applicable criteria
11 and the guidance of the Comprehensive Plan.” Record 44.

12 With that overview of the challenged amendments, we turn to petitioner’s
13 assignments of error.

14 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

15 Petitioner contends that the challenged plan amendments appear to provide
16 justifications to expand rural communities or designate additional rural residential lands,
17 based on market demand for rural dwellings and continuation of past patterns of rural
18 development. According to petitioner, such policies, if applied to justify future expansions
19 of rural communities or rural residential areas in the county, would be inconsistent with
20 applicable statewide planning goals and administrative rules.

21 OAR 660-004-0022(2), the administrative rule governing reasons exceptions for rural
22 residential development on resource lands, provides that assumed “continuation of past urban
23 or rural population distributions” cannot be used as a reason for an exception to permit
24 residential development on resource lands. That rule also provides a general market demand
25 for housing cannot be a reason for such an exception.¹ Similarly, petitioner argues that

¹ OAR 660-004-0022(2) provides:

1 OAR 660-022-0022(4), the administrative rule governing reasons exceptions to expand
2 unincorporated communities, imposes those same limitations.² The apparent intent in
3 adopting the challenged amendments, petitioner argues, is to provide justifications for
4 expanding rural communities and rural residential areas based on a general market demand
5 for housing and continuation of past rural housing patterns, contrary to OAR 660-004-
6 0022(2) and (4).

7 Petitioner acknowledges that the ordinance does not actually adopt any reasons
8 exceptions or designate any rural residential land. However, petitioner argues that “the

“Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing, except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.”

² OAR 660-004-0022(4) provides, in relevant part:

“Expansion of Unincorporated Communities: For the expansion of an Unincorporated Community defined under OAR 660-022-0010(10), appropriate reasons and facts include but are not limited to the following:

“(a) A demonstrated need for additional land in the community to accommodate a specific rural use based on Goals 3-19 and a demonstration that either:

“(A) The use requires a location near a resource located on rural land; or

“(B) The use has special features necessitating its location in an expanded area of an existing unincorporated community, including:

“* * * * *

“(ii) For residential use, the additional land is necessary to satisfy the need for additional housing in the community generated by existing industrial, commercial, or other economic activity in the surrounding area. The plan must include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or UGB, and is most appropriate at the particular proposed location. The reasons cannot be based on market demand for housing, nor on a projected continuation of past rural population distributions.”

1 county seems to be trying to put into the comprehensive plan key policy conclusions,
2 disguised as ‘inventory information,’ which would then be beyond challenge (*i.e.*, not subject
3 to ‘collateral attack’) when they are later applied to specific properties or legislative
4 amendments” to expand unincorporated communities. Petition for Review 6.

5 The county responds that “nothing could be further from the truth.” Response Brief
6 7. According to the county, the challenged amendments begin and end with affirmations that
7 any conversion of resource land to residential use must comply with all applicable statewide
8 planning goals and administrative rules. The county contends that the inventories and most
9 of the plan amendments simply provide data and factual conclusions that petitioner does not
10 dispute. Read in context, the county argues, the policies and policy implementation
11 measures that petitioner objects to simply state that the county will consider conversion of
12 resource land to rural residential use when the need arises, without specifying what that need
13 might be, and without intending to suggest that that need can be demonstrated without
14 complying with the applicable goals, statutes and rules, including OAR 660-004-0022(2) and
15 (4).

16 Both petitioner and the county tend to cite those portions of the amendments that
17 support their view of its intended effect, and ignore those portions that appear to be contrary
18 to their respective views. The county is correct that at several places the amendments
19 indicate that any reasons exception to add land to rural communities or rural residential areas
20 must comply with applicable goals and rules, presumably including OAR 660-004-0022(2)
21 and (4). However, the amendments also state in various ways that the adopted plan
22 provisions “can be considered and used in future applications[.]” It is not clear how the
23 county intends the adopted plan provisions to be “considered and used.” If, as petitioner
24 suspects, the county has adopted DCCP policies that can be used to justify future reasons
25 exceptions on grounds that are prohibited by OAR 660-004-0022(2) or (4) or inconsistent

1 with other applicable law, then petitioner is correct that the challenged amendments are
2 inconsistent with applicable law.

3 However, we agree with the county that the challenged amendments need not be read
4 with that intent or to have that effect. Petitioner does not challenge the inventories
5 themselves, or the facts stated in the findings or policy statements. The data in the
6 inventories essentially present a snapshot of rural development in the county as of 2006.
7 That data could be potentially useful information in evaluating a proposed reasons exception
8 under OAR 660-004-0022(2) or (4) to add residential land to a rural community or to
9 designate new rural residential lands. For example, if an application to expand residential
10 lands in a rural community is justified by the need to house employees required by a new
11 industrial use in or near the community, it seems useful to know whether that community has
12 a sufficient supply of available residential land to provide any needed homes for employees.
13 We do not see that adding such factual information to the comprehensive plan purports to
14 establish any standard for evaluating reasons exceptions that could be contrary to applicable
15 goals and administrative rules.

16 The policy statements and policy implementation measures present a closer question.
17 Some of the language in the adopted policies can be read to express the viewpoint that
18 existing rural unincorporated communities and existing rural residential areas may be
19 expanded when there develops a local shortage of vacant rural residential lands, without
20 regard to whether that shortage is caused by general population growth, or a general “market
21 demand” for rural residential lands. A policy to that effect would be inconsistent with
22 OAR 660-004-0022(2) and (4), if it could be applied as a sufficient reason to expand a rural
23 unincorporated community or add to an existing rural residential area without also
24 establishing that the expansion is necessary to satisfy a housing need that is “generated by
25 existing industrial, commercial, or other economic activity in the surrounding area.”

1 OAR 660-004-0022(2) and (4)(a)(B)(ii). *See* n 2.³ This factual determination would need to
2 be made at the time expansion of a rural unincorporated community or an addition to an
3 existing rural residential area is proposed. While we agree with petitioner that there is some
4 danger that applicants for rural community rural residential area expansions in the future
5 might understand the policies to obviate the inquiry that is required by the rules to ensure
6 that rural residential areas and rural communities are not expanded via a reasons exception to
7 meet a general market demand for rural housing, we do not agree that they must be
8 understood to have that effect.

9 The operative language in the policy statements and policy implementation measures
10 is that the county will “consider” and “support” adding new rural residential lands when one
11 of two thresholds are met, either when land supply in a rural community falls below a 10-
12 year supply, or when the infill rate in rural residential areas exceeds 65 percent. Read at face
13 value, that operative language simply defines the thresholds at which the county will
14 “consider” and “support” an application to add new rural residential lands. By negative
15 implication, the county will not “consider” or “support” an application where those
16 thresholds are not met (*i.e.*, that involve rural communities or rural residential areas with
17 large inventories of vacant buildable land). Such applications might well be denied for the
18 reason that there is no need for additional lands. But it does not follow that applications to
19 expand rural communities that exceed the defined thresholds would necessarily be approved.
20 The policies do not state that a local shortage of rural residential land is itself a sufficient
21 reason to approve an exception to designate new rural residential lands, no matter the cause
22 of that shortage or the nature of the demand for residential lands at the time an expansion is
23 proposed. Read in context with the repeated statements that any reasons exception must

³ Under OAR 660-004-0022(4)(a)(B)(ii), expansion of a rural unincorporated community to satisfy rural housing needs also requires that the comprehensive plan “include an economic analysis showing why the type and density of planned housing cannot be accommodated in an existing exception area or UGB, and is most appropriate at the particular proposed location.”

1 comply with all applicable goals and rules, we agree with and accept the position expressed
2 in the county’s response brief that the challenged amendments do not purport to establish any
3 standard or justification for approving reasons exceptions to add new rural residential land to
4 rural communities. We read and understand statements that the adopted plan provisions “can
5 be considered and used in future applications” to refer to the factual data in the inventories
6 and the identified thresholds for consideration of future applications.

7 Accordingly, because petitioner has not demonstrated that the Ordinance adopts any
8 standard or justification for designating new rural residential land that is inconsistent with
9 any identified statewide planning goal or rule, these assignments of error are denied.

10 The county’s decision is affirmed.