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

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FRIENDS OF BENTON COUNTY, )  
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Petitioner, )  
 )  
vs. )  
 )  
BENTON COUNTY, FRED D. )  
BUNSEN and CITY OF ADAIR )  
VILLAGE, )  
 )  
Respondents. )

LUBA No. 84-055

FINAL OPINION  
AND ORDER

Appeal from Benton County.

Richard P. Benner, Portland, filed the Petition for Review and argued the cause on behalf of Petitioner.

Jeffrey G. Condit, Corvallis, filed the response brief and argued the cause on behalf of Respondent County.

Steven W. Black, Corvallis, filed the response brief and argued the cause on behalf of Respondent City of Adair Village.

BAGG, Chief Referee; DuBay, Referee; KRESSEL, Referee; participated in this decision.

AFFIRMED 10/03/84

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

1 Opinion by Bagg.

2 NATURE OF THE DECISION

3 Petitioner appeals adoption of Benton County Ordinance  
4 25M. The ordinance amends the county's comprehensive plan  
5 policy controlling extension of sewer services to areas outside  
6 urban growth boundaries. The ordinance is an amendment to an  
7 acknowledged comprehensive plan and is subject to our review  
8 under the provisions of ORS 197.825.

9 FACTS

10 The Benton County Comprehensive Plan was acknowledged on  
11 February 22, 1984. The plan included a policy permitting

12 "the creation or extension of sewer services to areas  
13 outside of urban growth boundaries only in the event  
14 of a designated 'health hazard' according to the  
15 procedure in state law. This procedure includes fact  
16 gathering, public hearings, and affirmative decision  
17 by the Board of Commissioners and an appropriate  
18 annexation or creation of a service district." Benton  
19 County Comprehensive Plan, Public Facilities and  
20 Services Element, paragraph 7.

21 The county plan provided no other means to extend sewer  
22 services to areas outside of urban growth boundaries. Another  
23 policy in the Public Facilities and Services Element, however,  
24 provided for county and affected city cooperation in developing  
25 growth management plans to guide provision of sewer service to  
26 urbanizable areas.

27 The new ordinance permits the county to create community  
28 service sewage systems to serve rural service centers or rural  
29 residential areas under certain limited circumstances. The  
30 county may permit extension of services to an area designated

1 as a "health hazard" under the provisions of state law (ORS  
2 431.705 to 431.760), or the county may permit extension of  
3 services

4 "to serve an area designated Industrial or Rural  
5 Residential on the Comprehensive Plan Map for which an  
6 exception to the Statewide Planning Goals has been  
7 taken...." Record, 1.

8 If this second alternative is utilized, findings must be made  
9 showing the following:

10 "(1) That the provision of municipal sewer services  
11 outside urban growth boundaries is compatible  
12 with policies in the city's comprehensive plan;  
13 and

14 "(2) That provision of municipal sewer service by a  
15 city does not impair the city's long-term  
16 commitment to or ability to service land either  
17 within the city or within the city's urban growth  
18 boundary; and

19 "(3) That the proposed extension of municipal sewer  
20 services will not service any intervening rural  
21 lands, and that no connections shall be allowed  
22 in areas zoned Exclusive Farm Use or Forest  
23 Conservation; and

24 "(4) That the extension of municipal sewer services  
25 shall not be a basis for future determination of  
26 commitment of intervening lands; and

27 "(5) That there is no other feasible alternative for  
28 servicing the proposed development, considering  
29 soil suitability for subsurface sewage disposal,  
30 costs of a subsurface system, and the long term  
31 viability of such a system to function  
32 successfully; and

33 "(6) That, in the case of Rural Residential  
34 development, the minimum lot size proposed to be  
35 serviced by municipal sewer services or a  
36 community sewage system shall be no smaller than  
37 two acres; the two acres minimum lot size does  
38 not preclude the approval of a planned unit  
39 development (PUD) which would allow lots smaller

1 than two acres in size, in accordance with  
Article XIV of the Zoning Ordinance."

2 See also ORS 197.732 controlling goal exceptions.

3 The amendment was undertaken at the request of the City of  
4 Adair Village and the developer of "Logsdon Ridge," a proposed  
5 planned unit development south of Adair Village. The site is  
6 presently designated "rural residential" in the county zoning  
7 ordinance. Under current zoning regulations, the site could  
8 accommodate 244 units.<sup>1</sup> Because the rural residential  
9 designation includes provision for planned unit developments,  
10 the density could be increased to 305 units. See Benton County  
11 Zoning Ordinance, Article XIV.02 and XIV.04(5).

12 FIRST ASSIGNMENT OF ERROR

13 "Ordinance 25M Violates Goal 11 by Authorizing (sic)  
14 Extension of an Urban Service Inappropriate for Rural  
15 Development"

15 Goal 11 provides, in pertinent part, that

16 "[u]rban and rural development shall be guided and  
17 supported by types and levels of urban and rural  
18 public facilities and services appropriate for, but  
19 limited to, the needs and requirements of the urban,  
20 urbanizable and rural areas to be served. A provision  
for key facilities shall be included in each plan. To  
meet current and long-range needs, a provision for  
solid waste disposal sites, including sites for inert  
waste, shall be included in each plan."<sup>2</sup>

21 Petitioner advises that Goal 11 limits provision of sewer  
22 services to developed areas outside urban growth boundaries.  
23 Petitioner contends that while Goal 11 does not say urban  
24 facilities such as sewer services may not be extended beyond  
25 urban growth boundaries, the only circumstance under which such  
26

1 extension of services may occur is where an area is already  
2 developed. It is not permissible under Goal 11, according to  
3 petitioner, to extend an urban service such as a sewer to an  
4 undeveloped area in order to allow the area to develop. There  
5 must be buildings on the ground, not simply in the planning  
6 stage or permitted under existing zoning and other land use  
7 regulations. Petitioner cites City of Sandy v. Clackamas  
8 County, 3 LCDC 139, 148-149 (1979) for the proposition that it  
9 is not "appropriate" under Goal 11 to provide urban services to  
10 a proposed use outside an urban growth boundary.<sup>3</sup>

11 To petitioner, Ordinance 25M is not "appropriate" under the  
12 goal because the sewers permitted under the ordinance exceed  
13 services "appropriate" for rural areas. It is petitioner's  
14 position that septic tanks and drain fields are the "common  
15 sanitary facility in rural areas." Petition for Review at 7.  
16 Also, sewers are not appropriate under the goal because they  
17 require an urban level of development to pay for them.  
18 Petitioner explains that sewers and the level of development  
19 needed to pay for them "tend to commit areas to urbanization  
20 and make them eligible for incorporation." Petition for Review  
21 at 8.

22 Petitioner also attacks the criteria in Ordinance 25M  
23 controlling extension of services to areas for which an  
24 exception has been taken. In sum, petitioner claims the  
25 criteria do not fully address Goal 11, do not address the  
26 appropriateness of sewers to the particular area to be served,

1 and do not limit the overall density to rural densities.<sup>4</sup>

2 We agree with petitioner that Goal 11 permits extension of  
3 an urban service, such as a sewer system, only when it can be  
4 shown that the particular service is "appropriate" and limited  
5 to the needs of the area to be served. Extension of sewer  
6 services to a rural area must be appropriate for and limited to  
7 rural needs. Provision of services to facilitate an urban  
8 level of development in a rural area is a violation of Goal  
9 11. City of Sandy, supra.

10 The approval criteria are written broadly enough to allow  
11 an urban level of service in rural areas. For example, a  
12 planned unit development, such as proposed for the Logsdon  
13 Ridge area, may be considered an urban level development in a  
14 rural area. Extension of services to facilitate establishment  
15 of such a development rather than to serve an existing  
16 development is a violation of Goal 11's limit of services  
17 appropriate for and limited to the needs of a rural area.

18 The ordinance, however, permits extensions of sewers to  
19 areas (1) designated as a health hazard or, (2) designated  
20 industrial or rural residential for which "an exception to  
21 statewide planning goals has been taken."<sup>5</sup> Ordinance 25M,  
22 Record 1. We interpret the latter provision to authorize sewer  
23 services only where an exception to each and every pertinent  
24 statewide goal, including Goal 11, is taken. Were we to  
25 interpret the ordinance to require an exception only to  
26 resource goals, (i.e., Goals 3 or 4), Ordinance 25M would

1 authorize sewer services in violation of Goal 11. The  
2 violation exists because the ordinance does not strictly limit  
3 services to rural needs as required by Goal 11. An exception  
4 to Goals 3 or 4 does not immediately convert an otherwise rural  
5 area into an urban or urbanizable area. See 1000 Friends of  
6 Oregon v. Wasco County Court, 68 Or App 765, \_\_\_ P2d \_\_\_  
7 (1984). Because the rural status of the land does not change,  
8 an exception to Goal 11 is required before an urban level sewer  
9 service may be extended to a rural area.<sup>6</sup> See OAR  
10 660-04-010(2)(1).

11 Ordinance 25M states that under appropriate conditions,  
12 which include the taking of a goal exception, sewer services  
13 may be extended to rural areas. The ordinance does not limit  
14 the number or kind of exceptions required to be taken. We read  
15 it to require an exception to all applicable goals, including  
16 Goal 11. If the county takes an exception to Goal 11 for the  
17 purposes of allowing an urban capacity sewer extension to a  
18 rural area under the ordinance, a challenge under ORS 197.732  
19 may then be made. At present, the ordinance is not  
20 objectionable under Goal 11.<sup>7</sup>

21 The first assignment of error is denied.

22 SECOND ASSIGNMENT OF ERROR

23 "Ordinance 25M Violates Goal 11 by Authorizing  
24 Creation of Community Sewage Systems Inappropriate for  
Rural Development"

25 In this assignment of error, petitioner acknowledges LCDC  
26 has interpreted Goal 11 to allow provision of sewers to rural

1 service centers.<sup>8</sup> Petitioner does not quarrel with that  
2 portion of Ordinance 25M which allows extension of services to  
3 rural service centers. Petitioner's objection under this  
4 assignment of error, however, is that the ordinance also allows  
5 sewage systems for rural residential areas, whether they are  
6 developed or not. Because of the petitioner's view that sewer  
7 service systems may not be extended to undeveloped rural areas,  
8 the ordinance violates Goal 11.

9 We believe this complaint is subject to our holding under  
10 the first assignment of error. The ordinance is not  
11 objectionable because it provides an exception must be taken to  
12 Goal 11 and whatever other goal or goals may be appropriate.

13 The second assignment of error is denied.

14 The decision of Benton County is affirmed.

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FOOTNOTES

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Should a suggested rezoning be made, the site could accommodate a maximum of 400 units. This potential rezoning is not part of this appeal.

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The goal defines "rural facilities and services" as "facilities and services which the governing body determines to be suitable and appropriate solely for the needs of rural use."

Urban facilities and services, under the goal "refers to key facilities and to appropriate types and levels of at least the following: police protection; fire protection; sanitary facilities;...."

"Key facilities" are "[b]asic facilities that are primarily planned for by local government but which must also be provided by private enterprise and are essential to the support of more intensive development, including public schools, transportation, water supply, sewage and solid waste disposal."

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In the City of Sandy case, the urban use was a 90,000 square foot shopping center.

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Petitioner concedes the fifth criterion appears to respond to Goal 11's requirement that a proposed level of services be appropriate for rural development only. The fifth criterion allows sewers when no alternative is feasible. Petitioner states that the criterion "and the ordinance, would comply with Goal 11 if it authorized sewers only when there is no feasible alternative to serve existing development in a rural area." Petition for Review at 11.

1 Petitioner complains, however, the criterion allows  
2 development too dense for septic systems simply on  
3 demonstration that sewers would be less expensive.  
4 Petitioner argues the ordinance allows a developer to  
5 choose an urban level of development in a rural area in  
6 contravention of Goal 11.

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6 The parties have not advised whether there is an  
7 exception to a statewide planning goal(s) for the Logsdon  
8 Ridge site.

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9 Nothing in ORS 197.732 limits an exception to resource  
10 goals. 1000 Friends of Oregon v. Wasco County Court,  
11 supra.

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11 7  
12 Of course, we do not pass on the question of whether  
13 an exception may be validly taken for the particular  
14 development mentioned by petitioner.

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15 The parties agree a rural service center as used in  
16 the ordinance is a built up but not incorporated area.

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