



1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 This appeal is one of three related appeals concerning  
4 the establishment of an Urban Services Boundary (USB) for  
5 the unincorporated area of eastern Washington County located  
6 between the City of Portland (hereafter Portland) and the  
7 City of Beaverton (hereafter Beaverton). In City of  
8 Portland v. City of Beaverton, \_\_\_ Or LUBA \_\_\_ (LUBA No. 92-  
9 225, May 6, 1994), decided this date, we remand Beaverton's  
10 November 10, 1992 decision amending its comprehensive plan  
11 to adopt a USB. In City of Portland v. Washington County,  
12 \_\_\_ Or LUBA \_\_\_ (LUBA No. 93-195, May 6, 1994), also decided  
13 this date, we remand Washington County's October 26, 1993  
14 decision amending its comprehensive plan to adopt a USB.

15 The ordinance challenged in this appeal amends  
16 Portland's acknowledged comprehensive plan to define and  
17 designate a USB. The challenged decision adopts the  
18 following definition:

19 "[An Urban Services Boundary is] a line within  
20 which the City plans for public facilities and  
21 urban services in areas of potential future  
22 annexation to the City. Furthermore, the USB is a  
23 general, not a precise, line which is  
24 approximately 400' wide. Its precise location  
25 will be determined when the Boundary Commission  
26 acts on annexation or extraterritorial proposals  
27 for specific properties within or contiguous to  
28 the 400'-wide USB line." Record 7.

29 In addition, the challenged decision directs that the  
30 current Urban Planning Area Agreement between the Portland

1 and Washington County be amended at some time in the future  
2 to reflect both the challenged decision and the Interim USB  
3 Agreement Proposal prepared during a Metropolitan Service  
4 District (Metro) sponsored attempt to reach agreement  
5 between Portland, Beaverton and Washington County concerning  
6 the location of a USB. See City of Portland v. Washington  
7 County, supra, slip op at 5.

8 **MOTION TO INTERVENE**

9 Beaverton moves to intervene on the side of petitioner  
10 in this proceeding. There is no opposition to the motion,  
11 and it is allowed.

12 **INTRODUCTION**

13 As explained in City of Portland v. City of Beaverton,  
14 supra, slip op at 2-3:

15 " \* \* \* Beaverton, Portland and Washington County  
16 have attempted over a number of years to reach  
17 agreement on a location for a USB in the  
18 unincorporated area between Beaverton and  
19 Portland. Such a USB would separate those  
20 portions of the unincorporated area that  
21 ultimately will receive urban services from and be  
22 annexed by Beaverton, from those portions that  
23 ultimately will receive urban services from and be  
24 annexed by Portland. Those negotiations have not  
25 produced agreement among the county and two cities  
26 on the appropriate location for Portland's and  
27 Beaverton's USB." (Footnote omitted.)

28 In City of Portland v. City of Beaverton and City of  
29 Portland v. Washington County, we discuss the legal and  
30 factual context in which the decisions challenged in these  
31 appeals arise, and we do not repeat that discussion here.

1 In those decisions we explain that Washington County  
2 presently has jurisdiction over this unincorporated area for  
3 public facilities planning purposes, but both Portland and  
4 Beaverton assert potential interests in providing urban  
5 services to and annexing property in this area.

6 In our decisions in the other two appeals, we conclude  
7 neither Beaverton nor Washington County may unilaterally  
8 amend its acknowledged comprehensive plan in the manner they  
9 have attempted. We reach this conclusion because the  
10 Beaverton and Washington County comprehensive plans, as  
11 amended, are rendered inconsistent with the provisions of  
12 Portland's acknowledged comprehensive plan which apply in  
13 this area of overlapping planning interests. In this appeal  
14 we are presented with the question of whether Portland may  
15 amend its acknowledged comprehensive plan provisions for the  
16 disputed unincorporated area in ways that are inconsistent  
17 with the acknowledged comprehensive plans of Beaverton and  
18 Washington County. We conclude it may not.

19 **FIRST ASSIGNMENT OF ERROR**

20 Portland's acknowledged comprehensive plan includes  
21 Public Facilities Policy 11.1(B), which provides, in part,  
22 as follows:

23 "Outside its boundaries of incorporation, the City  
24 of Portland shall:

25 "(1) Acknowledge the City's role as principal  
26 provider of urban services within the City's  
27 established Urban Services Boundary and plan  
28 for the eventual delivery of urban services

1           according to a phased program of improvements  
2           meeting the service needs of individual  
3           areas.

4           "\* \* \* \* \*"

5           The challenged decision, in conjunction with the above  
6 plan policy, changes the existing land use planning status  
7 quo under the acknowledged comprehensive plans of the three  
8 parties.<sup>1</sup> As we explain in City of Portland v. Washington  
9 County, supra, slip op at 8:

10           "[T]he acknowledged comprehensive plans of all  
11 three jurisdictions, and the [Urban Planning Area  
12 Agreements] that were entered into to secure  
13 acknowledgment of those plans, explicitly defer  
14 the issue of which city may ultimately annex, or  
15 be responsible for providing urban services to,  
16 particular portions of the disputed unincorporated  
17 area."

18 The challenged decision asserts, unilaterally, that Portland  
19 will be the principal provider of urban services within the  
20 disputed unincorporated area.<sup>2</sup> Such an assertion is  
21 inconsistent with the acknowledged comprehensive plans of

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<sup>1</sup>Because all three of the plan amendments challenged in these related appeals are remanded, they were never deemed acknowledged under ORS 197.625. See Von Lubken v. Hood River County, 118 Or App 246, 249, 846 P2d 1178, rev den 316 Or 529 (1993). Therefore, for purposes of each of these appeals, the relevant acknowledged comprehensive plans are the acknowledged comprehensive plans of the county and two cities, as they existed prior to the respective city and county decisions challenged in these three appeals.

<sup>2</sup>Portland's and Beaverton's acknowledged comprehensive plans assert both annexation and urban service provision interests in the disputed unincorporated area. However, neither of those acknowledged comprehensive plans claim the right to be "principal provider of urban services" within the disputed area or any portion of that area.

1 Washington County and Beaverton. For the reasons explained  
2 in City of Portland v. Washington County, the challenged  
3 decision therefore violates Statewide Planning Goal 2 (Land  
4 Use Planning) and improperly exercises the coordination  
5 obligation and authority explicitly assigned by ORS  
6 197.190(1) and 268.385(1) to Metro.<sup>3</sup>

7 **REMAINING ASSIGNMENTS OF ERROR**

8 In view of our disposition of the first assignment of  
9 error, we do not consider petitioners' remaining assignments  
10 of error.

11 The city's decision is remanded.

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<sup>3</sup>During the 1993 legislative session, the legislature amended a number of statutory provisions concerning intergovernmental coordination and adopted new provisions. Some of those new and amended provisions may be relevant to the decision challenged in this appeal on remand. However, the 1993 legislative amendments were not in effect when the challenged decision was adopted and all statutory references in this opinion are to the Oregon Revised Statutes as they existed on the date of the challenged decision. ORS 197.190(1) was recodified in 1993 and now appears at ORS 195.025(1)(1993).