

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 The challenged decision amends the Washington County
4 Comprehensive Framework Plan for the Urban Area--one of
5 several planning documents which, together, comprise the
6 acknowledged Washington County Comprehensive Plan (hereafter
7 plan). The decision adopts the following definition as part
8 of the plan:

9 "Urban Service Area and Boundary. An area
10 identified by a city for the long-range planning
11 for and provision of urban public facilities and
12 services and potential annexation to a city. A
13 city may provide urban public facilities and
14 services directly, jointly with other service
15 providers, or through contract with other cities
16 or service districts. Designation of an urban
17 service boundary for a city establishes that city
18 as the only city that, in addition to the county
19 and any special service districts, may eventually
20 provide public facilities and services within the
21 urban service boundary area." Record III 9.¹

22 The decision also adds the following implementing strategy
23 under plan Policy 15 ("Roles and Responsibility for
24 Servicing Growth"):

25 "Review requests by cities to formally recognize
26 city urban service areas and boundaries.
27 Following coordination with affected cities,
28 service providers and interested parties, the
29 County may designate exclusive urban service areas

¹As explained below in the text, this appeal is one of three related appeals. The records in the related appeals are part of the record in this appeal. The record in LUBA No. 92-225 shall be cited as Record I. The record in LUBA No. 93-142 shall be cited as Record II. The record in LUBA No. 93-195 shall be cited as Record III.

1 and boundaries by legislative amendment to Map 4
2 of the Comprehensive Framework Plan for the Urban
3 Area." Record III 9.

4 Finally, the decision adopts a map delineating the City of
5 Beaverton Urban Service Area and Boundary (USB).²

6 **MOTION TO INTERVENE**

7 The City of Beaverton moves to intervene in this
8 proceeding on the side of respondent. There is no
9 opposition to the motion, and it is allowed.

10 **FACTS**

11 This appeal is one of three related appeals concerning
12 the establishment of a USB for the unincorporated area of
13 Washington County located between the City of Portland
14 (hereafter Portland) and the City of Beaverton (hereafter
15 Beaverton). In City of Portland v. City of Beaverton, ___
16 Or LUBA ___ (LUBA No. 92-225, May 6, 1994), decided this
17 date, we remand Beaverton's November 10, 1992 decision
18 amending its comprehensive plan to adopt a USB. In
19 Washington County v. City of Portland, ___ Or LUBA ___ (LUBA
20 No. 93-142, May 6, 1994), also decided this date, we remand
21 Portland's August 4, 1993 decision amending its
22 comprehensive plan to adopt a USB.

²The Urban Service Area and Boundary is sometimes referred to as the Urban Service Boundary (USB). We use the shortened acronym USB in this opinion.

1 The factual context for the current appeal is set out,
2 in part, at pages 2 to 3 of respondent's brief in City of
3 Portland v. City of Beaverton, supra, as follows:

4 "The adoption of [USBs] inside the Regional Urban
5 Growth Boundary [UGB] in the Portland metropolitan
6 region began with work by the cities of Portland
7 and Gresham with Multnomah County in 1983. In
8 1985, at the request of the [Portland Metropolitan
9 Area Local Government] Boundary Commission,
10 Beaverton initiated the process of locating [a
11 USB].

12 "The initial step taken to attempt to locate the
13 Beaverton/Portland [USB] was the formation of an
14 Urban Service Task Force (a citizen group) and
15 supporting Urban Service Technical Advisory
16 Committee (USTAC). The USTAC was comprised of
17 representatives of all local governments and
18 service providers in the affected unincorporated
19 area. * * *

20 "The cities of Beaverton and Tigard were able to
21 reach agreement on their segment of the Washington
22 County boundary and it was adopted by the Councils
23 of both cities in 1986.

24 "The USTAC was unable to arrive at a
25 Beaverton/Portland boundary, but discussions
26 between the two entities continued from 1987
27 forward, and staff work on both sides continued
28 culminating in the 1987 joint release of four
29 proposed boundaries for further study and public
30 review. * * * Significant citizen involvement was
31 begun with the release of this report by both
32 entities including public meetings and hearings
33 and three major public opinion surveys conducted
34 by the City of Beaverton in 1986.

35 "The last major round of public hearings and
36 intergovernmental discussions began with
37 Portland's proposal to unilaterally adopt [its]
38 preferred urban service boundary alternative in
39 1990. Due to significant opposition from the
40 public and affected service providers, including

1 [Beaverton], joint Planning Commission meetings
2 were initiated that year and led to the formation
3 of a joint subcommittee of the two Planning
4 Commissions to work on criteria to be used for the
5 setting of a [USB].

6 "A major joint public hearing was held on
7 September 25, 1991 by both Planning Commissions.
8 The hearing was widely publicized and was held to
9 receive public input on [a USB] which the joint
10 [sub]committee prepared. * * *"

11 Beaverton and Portland were not able to reach agreement
12 on a USB at the conclusion of the joint planning commission
13 hearings. Thereafter, Beaverton conducted additional
14 proceedings leading to adoption, on November 10, 1992, of a
15 USB that extends eastward to the Washington County line.
16 The USB adopted by Beaverton generally abuts Portland's
17 existing westerly city limits. Portland appealed that
18 decision to this Board. City of Portland v. City of
19 Beaverton, supra.

20 Portland's petition for review in this appeal sets out
21 the remaining factual context for this case, as follows:

22 "In March of 1993, Beaverton and Portland agreed
23 to participate in a USB case assessment initiated
24 by Metro [the Metropolitan Service District] with
25 an Oregon Dispute Resolution Program Grant to
26 determine whether mediation was a viable
27 alternative to litigation. * * * On [May] 3, 1993,
28 the case assessor concluded that the parties to
29 the dispute were willing to participate in non-
30 litigation dispute resolution under some
31 conditions for some aspects of the dispute. * * *

32 " * * * * "

33 "On June 24 1993, the parties held the final
34 meeting under Metro's state funded mediation

1 grant. At that meeting, Portland proposed a new
2 alternative USB reflecting neighborhood and
3 physical boundaries formed by existing development
4 and topography. Subsequently, the case mediator
5 prepared an 'Interim USB Agreement Proposal' which
6 was put forward as a mechanism to protect all the
7 parties' interests and hold the disputed area and
8 issues to a narrow focus, while developing the
9 information, dialogue and joint decisions needed
10 to resolve the smaller disputed area and other
11 issues of concern. * * * " Petition for Review 6-
12 7.

13 On August 4, 1993, Portland adopted an ordinance
14 amending its comprehensive plan to establish a USB.
15 Portland's ordinance directed that its UPAA with Washington
16 County be amended to reflect an intent to carry out the
17 Interim USB Agreement Proposal that resulted from the above
18 described Metro mediation effort. The USB adopted by
19 Portland includes portions of the disputed unincorporated
20 area that Beaverton previously included in its USB.
21 Portland's decision was appealed to this Board. Washington
22 County v. City of Portland, supra.

23 Thereafter, on October 23, 1993, Washington County
24 adopted the ordinance challenged in this appeal. The
25 challenged ordinance amends the acknowledged county
26 comprehensive plan to incorporate the USB previously adopted
27 by Beaverton and challenged in LUBA No. 92-225.

28 **INTRODUCTION**

29 The central dispute in this appeal results, in large
30 part, from the manner in which annexation and urban service
31 provision issues are deferred in the acknowledged Washington

1 County, Beaverton and Portland comprehensive plans.³ The
2 three acknowledged comprehensive plans do not identify which
3 city or other service provider will provide urban services
4 to the disputed unincorporated area where the cities' and
5 county's planning interests overlap.⁴ Neither do the

³As already noted, in separate decisions issued this date, we remand Beaverton's and Portland's decisions amending their acknowledged comprehensive plans to designate USBs. Because those plan amendments are remanded by this Board, 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 this appeal, 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.

⁴Policy 15 of the county plan, "Roles and Responsibility for Servicing Growth," provides as follows:

"It is the Policy of Washington County to work with service providers, including cities and special districts, and the Portland Metropolitan Area [Local Government] Boundary Commission, to insure that facilities and services required for growth will be provided when needed by the agency or agencies best able to do so in a cost effective and efficient manner."

A number of implementing strategies follow Policy 15 in the county plan. Among other things, those strategies state that the county will "[e]stablish a coordination system with all cities, special districts and private companies that now or will provide services to the present unincorporated area." Neither Policy 15 nor its implementing strategies determine whether Portland or Beaverton will be the city responsible for providing urban services to or the city to annex territory in the unincorporated area between Beaverton and Portland. Policy 15 and its implementing strategies leave that issue open.

The acknowledged Beaverton Public Facilities Plan provides, in part, as follows:

"The Beaverton Public Facilities Plan is a City Limits Plan rather than an Urban Planning Area Plan. The decision to limit the City's public facility planning effort to the current City limits was one that was made in cooperation with Washington County. From the City's standpoint, this decision is the result of the uncertainty about the location of the city's

1 acknowledged comprehensive plans identify particular parts
2 of the disputed unincorporated area for future annexation by
3 Portland or Beaverton. Rather, Beaverton and Portland
4 separately entered into Urban Planning Area Agreements
5 (UPAAs) with the county in which the county and each city
6 recognizes the other's planning interests in the
7 unincorporated areas outside each city. The unincorporated
8 areas in which city planning interests are recognized in the
9 Washington County/Beaverton and Washington County/Portland
10 UPAAs significantly overlap.⁵ Each city agrees in its UPAA

ultimate urban service delivery boundaries. The Cities of Beaverton, Hillsboro, Portland, Tigard, and Washington County and effected [sic] special service districts are all working to build a consensus on the location of [the] Beaverton Urban Service Boundary. * * *" Beaverton Public Facilities Plan 3.

The acknowledged Portland Comprehensive Plan includes the following policy under the plan's Metropolitan Coordination Goal:

"1.3 Urban Services Boundary

"The city shall establish and maintain, in cooperation with neighboring jurisdictions, an Urban Services Boundary for the City of Portland that defines a rational service area within which the City can meet the service needs most effectively and at the lowest cost. The Urban Services Boundary shall be consistent with the regional Urban Growth Boundary and may be amended from time to time in accordance with the Comprehensive Plan." Portland Comprehensive Plan 19.

⁵The Washington County/Portland UPAA designates areas within the City of Portland in which the county asserts an urban planning interest. The Washington County/Beaverton UPAA is limited to the unincorporated area outside the Beaverton city limits and does not designate areas within the City of Beaverton in which the county asserts an urban planning interest.

1 to conduct studies in the future which might lead to
2 adoption of USBs.⁶

3 In summary, the acknowledged comprehensive plans of all
4 three jurisdictions, and the UPAAAs that were entered into to
5 secure acknowledgment of those plans, explicitly defer the
6 issue of which city may ultimately annex, or be responsible
7 for providing urban services to, particular portions of the
8 disputed unincorporated area. The challenged decision
9 changes the status quo under the acknowledged plans by
10 adopting Beaverton's USB and designating Beaverton as the
11 only city that may ultimately annex, and be responsible for
12 providing urban services to, property within the Beaverton
13 USB.

14 **SECOND AND FOURTH ASSIGNMENTS OF ERROR**

15 **A. Introduction**

16 Petitioner contends the county's action violates
17 Statewide Planning Goal 2 (Land Use Planning) in two ways.
18 Petitioner contends the county improperly assumed the
19 coordination role that is assigned by statute to Metro. ORS
20 197.190(1) and 268.380.⁷ Petitioner contends the county

⁶Copies of the UPAAAs are attached as an appendix to Washington County's brief in LUBA No. 92-225. Intervenor-Respondent Washington County's Brief App 7-25. Apparently, those UPAAAs were acknowledged as part of Washington County's comprehensive plan. Respondent's Brief 5. We take official notice of those agreements.

⁷These statutory provisions are central to our resolution of this appeal and are discussed more fully later in this opinion. During the 1993 legislative session, the legislature amended a number of statutory

1 should have adopted the product of the Metro sponsored
2 mediation effort described above. Second, petitioner
3 contends the county's action to amend its plan so that it
4 now is inconsistent with Portland's acknowledged
5 comprehensive plan, violates the consistency requirement of
6 Goal 2.

7 Most of our prior cases concerning coordination issues
8 differ from the present case in two important ways. First,
9 in many of those cases, the comprehensive plans of the
10 competing planning entities had not yet been acknowledged by
11 the Land Conservation and Development Commission (LCDC) as
12 complying with the statewide planning goals. Rajneesh v.
13 Wasco County, 13 Or LUBA 202 (1985); Perkins v.
14 Rajneeshpuram, 10 Or LUBA 88, aff'd 68 Or App 726 (1984),
15 aff'd as modified 300 Or 1 (1985); Home Builders v.
16 Portland, 4 Or LUBA 245, 251-52 (1981); Metropolitan Serv.
17 Dist. v. Clackamas Cty, 2 Or LUBA 300, 306 (1981); Twin
18 Rocks Water Dist. v. Rockaway, 2 Or LUBA 36, 45-46 (1980);
19 Home Builders Ass'n v. Corvallis, 1 Or LUBA 14, 21 (1980).
20 Second, those cases generally did not involve actual plan-
21 to-plan conflicts, but rather only conflicting views by

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).

1 different units of government about the desirability of the
2 proposed land use decision. See e.g. Davenport v. City of
3 Tigard, 23 Or LUBA 565, 576, aff'd 116 Or App 248 (1992);
4 Davenport v. City of Tigard, 22 Or LUBA 577, 587 (1992);
5 Tektronix, Inc. v. City of Beaverton, 18 Or LUBA 473 (1989).

6 Bear Creek Valley Sanitary Authority v. Jackson County,
7 2 Or LUBA 72 (1980), rev'd 53 Or App 823, (1981), aff'd 293
8 Or 121 (1982) (BCVSA), involved a conflict between an
9 unacknowledged county comprehensive plan and a provision in
10 an urban planning area agreement between a county and a
11 sanitary district. The context in which BCVSA was decided,
12 therefore, differed from the present case in both of the
13 ways noted above. However, in resolving that case, the
14 Oregon Court of Appeals and Supreme Court touched upon the
15 central issue presented in this case, and we therefore
16 discuss that case briefly before proceeding.

17 The central question in BCVSA concerned the authority
18 of the county to adopt comprehensive plan provisions
19 governing delivery of sewerage service. However,
20 coordination issues were present in that case as well. LUBA
21 concluded that the county "exceeded its authority" in
22 adopting certain challenged plan policies, because those
23 policies improperly usurped the sanitary district's
24 authority to plan for and provide sewerage service. BCVSA,
25 supra, 2 Or LUBA at 82.

1 In reversing LUBA's decision, the court of appeals
2 concluded "the sanitary district's policy-making role is
3 subordinate to that of the county * * *." Jackson County v.
4 Bear Creek Authority, 53 Or App 823, 829, 632 P2d 1349
5 (1981), aff'd 293 Or 121 (1982). That conclusion was based
6 on ORS 197.185(1) and 197.175, which require that both the
7 county and the sanitary district exercise their planning
8 responsibilities "in accordance with the statewide planning
9 goals." The court went on to explain that "[t]o avoid a
10 standoff between planning agencies, Goal 2 * * * requires
11 that special district plans be consistent with the
12 comprehensive plan of counties."⁸ Id. In affirming the
13 court of appeals' decision, the Oregon Supreme Court
14 recognized the possibility that the sanitary district and
15 county might adopt inconsistent plans and that both of those
16 plans might, nevertheless, be consistent with the statewide
17 planning goals. However, because the question was not
18 presented in that case, the Oregon Supreme Court explicitly
19 left open the question of whether, upon LCDC acknowledgment
20 of the county's comprehensive plan, Goal 2 might require
21 that the sanitary district's plan be amended to make it

⁸Goal 2 provides, in relevant part, as follows:

"City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268."

1 consistent with the county's. Jackson County v. Bear Creek
2 Authority, 293 Or 121, 129, 645 P2d 121 (1982).

3 The appellate court decisions in BCVSA recognize the
4 important questions presented in this appeal. When planning
5 jurisdictions are unable to agree about whether to adopt a
6 new land use policy which conflicts with an affected
7 jurisdiction's existing land use policy, how is the standoff
8 resolved? That question generates a second and equally
9 important question. How is such a standoff resolved so that
10 the comprehensive plans of the competing jurisdictions
11 remain coordinated and consistent? In BCVSA, the statutory
12 and statewide planning goal bases suggested for resolving
13 such a standoff were ORS 197.185 and Goal 2, which the
14 courts suggested make a special district's land use planning
15 subservient to that of a county. The appellate courts also
16 suggested the final resolution of the standoff would occur
17 in the context of LCDC acknowledgment of the competing
18 jurisdictions' plans, with Goal 2 requiring consistent
19 plans.

20 In the present appeal, the city's and county's plans
21 are both acknowledged, so an LCDC acknowledgment proceeding
22 will not provide a forum for maintaining consistent
23 comprehensive plans. In addition, neither ORS 197.175, nor
24 Goal 2 by itself, provides a basis for concluding a county
25 plan predominates, where a standoff occurs. Under ORS
26 197.175, both cities and counties are charged to adopt and

1 amend their plans in conformance with the goals, but Goal 2
2 does not explicitly establish any hierarchy between county
3 and city comprehensive plans, as it does between county and
4 special district plans. See n 8, supra.

5 Therefore, authority for Washington County, Beaverton
6 and Portland to resolve the standoff that exists between
7 them, if such authority exists, must lie elsewhere. We
8 conclude below that such authority exists in ORS 197.190(1)
9 and 268.385(1), which specifically require, and assign
10 responsibility for, regional coordination of land use
11 planning within the Metropolitan Service District. However,
12 before turning to those statutes, we first generally discuss
13 the manner in which local governments satisfy their Goal 2
14 obligation to coordinate land use planning with other
15 governmental units that are affected by their land use
16 planning decisions.

17 **B. Goal 2 Coordination Requirement**

18 **1. Coordination Generally**

19 Goal 2 requires that a county's comprehensive plan "and
20 related implementing measures shall be coordinated with the
21 plans of affected governmental units."⁹ (Emphasis added.)

⁹As the below quoted legislative findings adopted in support of Senate Bill 100 in 1973 make clear, coordination is a central concern of this state's land use planning program.

"The Legislative Assembly finds that:

1 There is no dispute that Portland is an "affected
2 governmental unit," within the meaning of Goal 2. The
3 definition of "comprehensive plan" contained in ORS
4 197.015(5) describes what is required for a comprehensive
5 plan to be "coordinated," as follows:

6 "A [comprehensive] plan is 'coordinated' when the
7 needs of all levels of governments, semipublic
8 and private agencies and the citizens of Oregon
9 have been considered and accommodated as much as
10 possible."

11 In Rajneesh v. Wasco County, supra, 13 Or LUBA at
12 209-11, we explained the statutory obligation to coordinate
13 involves essentially two steps:

14 "1. The makers of the plan [must engage] in an
15 exchange of information between the planning

"(1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

"(2) To promote coordinated administration of land uses consistent with the comprehensive plans of adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with goals.

"(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

"(4) The promotion of coordinated statewide land conservation and development requires the creation of a statewide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state." ORS 197.005.

1 jurisdiction and affected governmental units,
2 or at least invite such an exchange.

3 "2. The jurisdiction [must use] the information
4 to balance the needs of all governmental
5 units as well as the needs of citizens in the
6 plan formulation or revision."

7 In Rajneesh, we described the above quoted steps as
8 "procedural," but the requirement to coordinate is both
9 procedural and substantive. Our prior cases generally have
10 focused on the procedural requirements for coordination and
11 provide little guidance on the ultimate substantive
12 requirement. The substantive requirement is achieved
13 through the balancing of the needs of all affected
14 governmental units and selecting a particular course of
15 action from among the competing proposed courses of action.
16 Because each planning entity with legitimate planning
17 interests in a particular area may strike the balance
18 somewhat differently, Goal 2 requires that where
19 comprehensive plans overlap, they must be consistent. Goal
20 2 imposes this consistency requirement explicitly ("[c]ity
21 [and] county * * * plans * * * shall be consistent with the
22 comprehensive plans of cities and counties * * *"). See n
23 8, supra.

24 **2. Consistency Requirement**

25 In many situations where affected local governments
26 disagree about whether a proposed action adequately
27 addresses their needs, "consistency" is not an issue. This
28 is because city and county comprehensive plans generally do

1 not directly assert planning interests outside the planning
2 entity's municipal jurisdiction. Therefore, while changes
3 in the comprehensive plans of nearby jurisdictions may have
4 indirect consequences for or impacts on a city or county
5 plan, those changes will not amount to a conflict or result
6 in an inconsistency.

7 For example, a city's proposal to redesignate a
8 "collector" street located wholly within its city limits as
9 a "local" street is not likely to result in an inconsistency
10 with the comprehensive plans of affected jurisdictions. See
11 Davenport v. City of Tigard, 23 Or LUBA 565 (1992). In
12 other words, if the plans of nearby jurisdictions assert no
13 planning interest in how a city classifies streets within
14 its municipal jurisdiction, the city's decision to change
15 the classification of such a street will not conflict with
16 the plans of those nearby jurisdictions, even if those
17 jurisdictions would prefer retention of the current
18 classification for some reason. Similarly, a city
19 comprehensive plan amendment that simply recommends a
20 proposed roadway alignment in an unincorporated area outside
21 the city is unlikely to be "inconsistent" with the county
22 comprehensive plan for that unincorporated area. Tektronix,
23 Inc. v. City of Beaverton, 18 Or LUBA 473 (1989). A
24 planning "recommendation," by its nonmandatory nature, may
25 either be accepted or rejected without violating Goal 2's
26 requirement for "consistency." See also Lee v. City of

1 Portland, 3 Or LUBA 31, 37 (1981), aff'd 57 Or App 798
2 (1982) (change in location of fire station results in
3 insufficient impacts on nearby jurisdictions to trigger
4 coordination obligation).

5 On the other hand, where a city and county have adopted
6 an urban growth boundary and the acknowledged comprehensive
7 plan of the city actually includes plan and zoning
8 designations for the unincorporated area of the county
9 inside the UGB, the county may not unilaterally amend its
10 acknowledged comprehensive plan in a way that is
11 inconsistent with the city's comprehensive plan. DLCD v.
12 Clatsop County, 14 Or LUBA 358, aff'd 80 Or App 152 (1986).
13 While the county may retain land use planning jurisdiction
14 over the unincorporated area in such circumstances, where
15 the acknowledged plan of the city also asserts a direct
16 planning interest over that unincorporated area, the county
17 may not unilaterally amend its plan to make it inconsistent
18 with the acknowledged plan of the city, without violating
19 the consistency requirement of Goal 2.¹⁰ Id.

20 Some of our cases can be read to suggest that once a
21 local government has performed its obligations under Goal 2,

¹⁰As we have already suggested, ORS 197.190(1) and ORS 268.385(1), discussed below, provide an important exception to this principle. No issue was presented in DLCD v. Clatsop County as to whether the county might, as an exercise of its ORS 197.190(1) "coordination" authority, determine that the county needs to be served by the proposed change outweighed any city needs that would be furthered by maintaining the existing acknowledged plan and zoning designations.

1 as described in Rajneesh, to seek the views of affected
2 jurisdictions and consider those views, it may proceed to
3 adopt or amend its plan in a way that is inconsistent with
4 the plan of an affected jurisdiction. See e.g. Perkins v.
5 Rajneeshpuram, supra; Metropolitan Serv. Dist. v. Clackamas
6 Cty, supra. However, except as explained below, we do not
7 believe a local government may, consistent with Goal 2,
8 unilaterally take action to amend its acknowledged
9 comprehensive plan to adopt a provision that is inconsistent
10 with the provisions of the acknowledged comprehensive plan
11 of an affected jurisdiction.

12 In summary, where a proposed comprehensive plan
13 amendment is opposed by one or more affected local
14 governments, but will not actually conflict with the
15 affected local government's plan, the entity proposing the
16 comprehensive plan amendment satisfies its coordination
17 obligation under Goal 2 by following the two steps set out
18 in Rajneesh. After having done so, the entity proposing the
19 change may adopt that amendment and satisfy its Goal 2
20 coordination obligation, even though the affected local
21 government would prefer the status quo under the existing
22 plan or a different course of action than the one proposed.

23 However, where a proposed amendment to an acknowledged
24 comprehensive plan is inconsistent with provisions in the
25 acknowledged comprehensive plan of an affected local
26 government, a local government that lacks ORS 197.190(1)

1 coordination responsibility may not alter the acknowledged
2 (and at least theoretically consistent) status quo by
3 adopting or amending a comprehensive plan provision that is
4 inconsistent with the acknowledged comprehensive plan of an
5 affected local government.

6 **C. Metro's Coordination Responsibility Under**
7 **ORS 197.190(1) and 268.385(1)**

8 Although Goal 2 requires that all units of government
9 coordinate their land use planning obligations, ORS
10 197.190(1) imposes an overriding coordination responsibility
11 on counties and the Metropolitan Service District.

12 "In addition to the responsibilities stated in
13 ORS 197.175, each county thorough its governing
14 body shall be responsible for coordinating all
15 planning activities affecting land uses within the
16 county, including planning activities of the
17 county, cities, special districts and state
18 agencies, to assure an integrated comprehensive
19 plan for the entire area of the county. [T]he
20 governing body of the Metropolitan Service
21 District shall be considered the county review,
22 advisory and coordinative body for Multnomah,
23 Clackamas and Washington Counties for the areas
24 within that district."¹¹

25 Outside the Metropolitan Service District, a county is
26 charged by ORS 197.190(1) with responsibility to ensure the

¹¹The legislative provisions creating and specifying the powers of the Metropolitan Service District appear at ORS chapter 268. ORS 268.385(1) provides as follows:

"For purposes of ORS 197.190, the [Metropolitan Service District] shall exercise within the district the review, advisory and coordinative functions assigned under ORS 197.190(1) to each county and city that is within the district."

1 comprehensive plans of jurisdictions within its boundaries
2 are coordinated and consistent, so that those comprehensive
3 plans, together with the county's plan, make up "an
4 integrated comprehensive plan for the entire area of the
5 county." Within the Metropolitan Service District,
6 ORS 197.190(1) and 268.385(1) assign this function to
7 Metro.¹²

8 The disputed unincorporated area is located within the
9 Metropolitan Service District and within the acknowledged
10 UGB adopted by Metro. Therefore, it is Metro that is
11 charged by statute with the obligation "to assure an
12 integrated comprehensive plan within the [Metropolitan
13 Service District]." In order for that plan to be
14 "integrated," it must be "coordinated" and "consistent," as
15 provided by Goal 2.

16 Unincorporated areas located within a UGB are likely
17 areas for potential conflict between a county and one or
18 more cities. Goal 14 (Urbanization) recognizes the
19 potential for such conflict inside UGBs. Goal 14,
20 Implementation Guideline 6 provides as follows:

¹²In the preacknowledgment era, the counties' and Metro's performance of coordination functions under ORS 197.190(1) was subject to review by LCDC when comprehensive plans were first acknowledged. In the postacknowledgment era, coordination decisions by Metro and the counties are reviewable by this Board, to the extent such decisions are land use decisions. ORS 197.835. Such coordination decisions presumably could give rise to issues reviewable by LCDC in periodic review. See ORS 197.628.

1 "Plans should provide for a detailed management
2 program to assign respective implementation roles
3 and responsibilities to those governmental bodies
4 operating in the planning area and having
5 interests in carrying out the goal."

6 Prior to adoption of the decision challenged in this
7 appeal, the plans of Washington County, Beaverton and
8 Portland were acknowledged as complying with Goal 2 and,
9 therefore, were "coordinated," "consistent," and part of the
10 required integrated comprehensive plan for the area the
11 county has now included within the Beaverton USB. Prior to
12 the disputed action, the plans of Washington County,
13 Beaverton and Portland all asserted planning interests in
14 this unincorporated area and, as previously explained, left
15 open to future study and decision making the questions of
16 which city will ultimately annex and be responsible for
17 providing certain urban services in the disputed
18 unincorporated area. Therefore, although decision making
19 concerning ultimate annexation and service provision was
20 deferred, the three plans were consistent.

21 By acting unilaterally to amend its acknowledged plan
22 in a way that is inconsistent with Portland's acknowledged
23 plan, the county has gone beyond its coordination obligation
24 and authority under Goal 2 and ORS 197.190(1) and has
25 exercised a coordination function explicitly assigned by
26 statute to Metro. If the disputed Beaverton USB is to
27 prevail, Portland's existing (and acknowledged)
28 comprehensive plan provisions which conflict with that

1 decision must be amended, to again achieve "an integrated
2 comprehensive plan for the area" included within the
3 Beaverton USB. In the circumstance where affected
4 jurisdictions (1) have acknowledged plans which directly
5 assert overlapping planning interests, and (2) cannot agree
6 on "coordinated, consistent" plan amendments, only the
7 county or Metropolitan Service District with ORS 197.190(1)
8 coordination authority may unilaterally direct a change in
9 the acknowledged status quo. In the present case, Metro has
10 authority under ORS 197.190(1) and 268.385(1) to balance the
11 needs of Beaverton, Portland and Washington County and
12 determine that the proposed Beaverton USB, or some other
13 USB, results in "the needs [of all three jurisdictions
14 being] considered and accommodated as much as possible."
15 ORS 197.015(5). Washington County may not unilaterally
16 force that change in the acknowledged status quo on
17 Portland.¹³

¹³This case and the two related appeals vividly demonstrate the problem with interpreting ORS 197.190(1) and 268.385(1) to allow the county and cities to proceed, without Metro having exercised its coordination obligation under those statutes. Each jurisdiction has balanced the needs of all affected jurisdictions, albeit from the deciding body's perspective. Those three decisions have resulted in three appeals to this Board; and Metro, the body the legislature charged with regional coordination under ORS 197.190(1) and 268.385(1), is not a party to any of those appeals and has not taken a position concerning whether, from Metro's perspective, any of the adopted USBs appropriately balances the competing needs of the cities and county. The challenged decisions either ignore the statutory directive to Metro in ORS 197.190(1) and 268.385(1) or render that directive meaningless.

1 The statutory assignment of this coordination authority
2 and obligation to Metro is made even clearer by other
3 statutory powers assigned to Metro. ORS 268.380(2) imposes
4 the following responsibility on Metro:

5 "Review the comprehensive plans in effect on
6 January 1, 1979, or subsequently adopted by the
7 cities and counties within the district and
8 recommend or require cities and counties, as it
9 considers necessary, to make changes in any plan
10 to assure that the plan conforms to the district's
11 metropolitan area goals and objectives and the
12 statewide planning goals."¹⁴ (Emphases added.)

13 Therefore, Metro may, under ORS 197.190(1) and
14 268.385(1), determine that a decision to adopt the disputed
15 Beaverton USB, or perhaps some other USB, accommodates the
16 relevant needs of Washington County, Beaverton and Portland
17 as much as possible, and therefore is "coordinated," within
18 the meaning of that term in ORS 197.015(5) and Goal 2. In
19 addition, pursuant to ORS 268.380(2), Metro may require any
20 existing acknowledged comprehensive plans that are
21 inconsistent with the new USB's accommodation of needs be
22 amended to maintain consistency, as required by Goal 2.

23 The county and Beaverton contend Metro has not adopted
24 regional goals and objectives or functional plans that
25 govern the current disagreement between the three
26 jurisdictions over the proper location of the USB in the

¹⁴ORS 268.390(4) also authorizes Metro to "recommend or require cities and counties, as it considers necessary, to make changes in any plan to assure that the plan and any actions taken under it conform to the district's functional plans * * * and its urban growth boundary * * *."

1 disputed area. Even if the county and Beaverton are correct
2 in this contention, ORS 197.190(1) and 268.385(1) and Goal 2
3 directly impose the relevant coordination and consistency
4 obligations on Metro. ORS 268.380(2) authorizes Metro to
5 require cities and counties to amend their plans, where
6 necessary to maintain coordination and consistency under
7 Goal 2. Metropolitan area goals and objectives and
8 functional plans may supplement Metro's coordination
9 authority and obligation, but they are not a necessary
10 precondition to Metro's exercise of its coordination
11 authority, where a city's or county's adoption of a
12 particular USB will necessitate changes in one or more
13 acknowledged comprehensive plans to maintain plan
14 consistency under Goal 2.

15 As a final point, petitioner suggests the Metro
16 sponsored mediation was an exercise of Metro's coordination
17 obligation under ORS 197.190(1) and 268.285(1). We do not
18 agree. Both statutes require that Metro's decision to
19 coordinate be an action taken "through its governing body."
20 There is no indication in the record that the Metro
21 governing body ever took action to adopt the recommendation
22 of the mediator as its own choice. While we agree with
23 petitioner that it would be inappropriate for this Board to
24 dictate any specific method or procedure for Metro to use in
25 exercising its statutory coordination function, where the
26 statutes do not mandate any specific method or procedure,

1 whatever method Metro selects must constitute an action by
2 the Metro governing body. Here, there is no indication in
3 the record that the Metro governing body delegated its
4 coordination responsibility to the mediator.¹⁵ Although the
5 record includes a proposed resolution for adoption by the
6 Metro governing body to accept the mediator's proposal,
7 there is no indication the Metro governing body ever adopted
8 that resolution.

9 The second and fourth assignments of error are
10 sustained.

11 **FIRST ASSIGNMENT OF ERROR**

12 Petitioner contends the challenged decision violates
13 Goal 2 because it is not based upon an adequate factual
14 foundation. Moreover, petitioner contends the analysis
15 required by Goal 2 of alternative courses of action and
16 ultimate policy choices, taking into consideration social,
17 economic, energy and environmental needs, is lacking.

18 We conclude above the county lacks authority to adopt
19 the challenged decision, absent a decision by Metro under
20 ORS 197.190(1) and 268.385(1) that the USB chosen by the
21 county is the one that, in Metro's view, accommodates the
22 needs of all affected local governments as much as possible.
23 However, even if the USB challenged here is ultimately

¹⁵We express no view here concerning whether the Metro governing body could so delegate its coordination authority under ORS 197.190(1) and 268.385(1).

1 embraced by Metro, the analysis and factual base that may
2 ultimately support such a conclusion by Metro will likely be
3 different than that supporting the challenged decision. In
4 these circumstances, consideration of this assignment of
5 error would serve no useful purpose, and we decline to do
6 so.

7 **THIRD ASSIGNMENT OF ERROR**

8 As noted earlier in this opinion, the 1993 legislature
9 adopted new legislation concerning the provision of urban
10 services and amended a number of existing statutes governing
11 coordinated provision of urban services. Or Laws 1993, ch
12 804. Petitioner contends the challenged decision violates a
13 number of requirements imposed by Oregon Laws 1993, chapter
14 804.

15 As the challenged decision recognizes, Oregon Laws
16 1993, chapter 804 became effective November 4, 1993. The
17 decision challenged in this appeal became final October 26,
18 1993. Because the challenged decision was final before
19 Oregon Laws 1993, chapter 804 took effect, any alleged
20 inconsistencies between the challenged decision and Oregon
21 Laws 1993, chapter 804 provide no additional basis for
22 remand.

23 The third assignment of error is denied.¹⁶

¹⁶The county did adopt findings addressing the requirements of Oregon Laws 1993, chapter 804. We express no view concerning the adequacy of these findings.

1 The county's decision is remanded.