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2 Steven M. Claussen, Portland, represented petitioners Washington County Farm
3 Bureau and Oregon Farm Bureau.

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5 Mary Kyle McCurdy, Portland, represented petitioners 1000 Friends of Oregon,
6 Coalition for a Livable Future and Malinowski Farm.

7 Lawrence S. Shaw, Senior Assistant Counsel, and Kenneth D. Helm, Assistant
8 Counsel, Portland, represented Metro.

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10 Jeff H. Bachrach, Portland, represented intervenors-respondent.

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12 GUSTAFSON, Board Member; HANNA, Board Member, participated in the
13 decision.

14
15 DISMISSED 02/26/99

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioners appeal Metro's resolution expressing its intent to amend the urban growth
4 boundary to include lands in urban reserve areas.

5 **MOTIONS TO INTERVENE**

6 Springville Road Joint Venture, Clifford Joss, Mildred Joss, Ryland Homes, Inc. and
7 Phil DeNardis (intervenors) move to intervene on the side of respondent. There is no
8 opposition to their motion, and it is allowed.

9 **JURISDICTION**

10 Metro moves to dismiss these consolidated appeals on the ground that the decision
11 challenged is not a final decision or determination and thus not a decision over which LUBA
12 has jurisdiction. ORS 197.015(10)(a); 197.825(1).

13 The challenged decision, Resolution 98-2726B, was adopted by the Metro Council on
14 December 17th, 1998, and is entitled "For the Purpose of Expressing Council Intent to
15 Amend the Urban Growth Boundary to Add Urban Reserve Area 65 in Washington
16 County."¹ Attached to the challenged resolution is Exhibit B, a 27-page statement of
17 findings of fact and conclusions of law that makes a number of findings regarding criteria
18 applicable to the proposed urban growth boundary (UGB) amendment. In pertinent part, the
19 decision resolves that the Metro Council expresses its intent to adopt an ordinance amending
20 the Urban Growth Boundary to add land in Urban Reserve Area 65. The decision is
21 supported by a 26-page statement of findings, which states in relevant part:

22 "these Findings are adopted to support the Resolution of Intent to Amend, and
23 the simultaneous initiation by the Metro Council of a district boundary
24 annexation to include the Area 65 property. The amendment of the UGB to

¹The parties have neglected to supply us with a copy of the challenged resolution itself, although we have been given a copy of the findings attached to the decision. Our description of the challenged decision is thus based on the parties' representations and quoted material in their motions.

1 include the Area 65 property will become effective after finalization of the
2 property's annexation into the district's boundary. These Findings, and the
3 supporting evidence, provide the complete record to support both the
4 subsequent annexation into the district's boundary and the effectuation of the
5 UGB amendment. To the extent allowed by state law, it shall not be
6 necessary for the Metro Council to consider further evidence or testimony
7 directed at the legislative amendment criteria, because all applicable criteria
8 have been addressed and satisfied as explained by these Findings and the
9 adoption of the Resolution of Intent to Amend."

10 In its motion to dismiss, Metro explains that Resolution 98-2726B involves land
11 currently outside Metro's jurisdictional boundaries that the Metro Council has determined
12 should be brought within the Metro UGB, and accordingly, the Metro Council followed the
13 procedures at Metro Code (MC) 3.01.015(h)(5). MC 3.01.015(h)(5) provides:

14 "When the council acts to approve a legislative amendment including land
15 outside the district:

16 "(A) Initial action shall be by resolution expressing intent to amend the
17 UGB if and when the affected property is annexed to the district
18 within six months of the date of adoption of the resolution; or

19 "(B) The district may initiate a district boundary annexation concurrent
20 with a proposed UGB amendment;

21 "(C) The council shall take final action, within 30 calendar days of notice
22 that annexation to the district has been approved." (Emphasis added).

23 Metro explains that the challenged decision is the "initial action" described in
24 MC 3.01.015(h)(5)(A). It appears that simultaneously with that initial action the Metro
25 council chose to initiate a district boundary annexation pursuant to MC 3.01.015(h)(5)(B).
26 According to Metro, the "final action" required by MC 3.01.015(h)(5)(C) is contingent on
27 annexation of the property within Metro's district boundaries. Metro states that, assuming
28 that contingency occurs, the council will then take "final action" pursuant to
29 MC 3.01.015(h)(5)(C). According to Metro,

30 "[t]here is no guarantee in this process that 'final action' after the resolution of
31 intent and annexation to the district will be approval of the UGB amendment.
32 [MC 3.01.015(h)(5)(C)] does not state that approval will be, or must be,
33 granted if annexation to Metro is timely approved. This part of the process

1 only commits Metro to take 'final action' within 30 days. That 'final action'
2 may or may not be adoption of an ordinance to amend the UGB. If so, that
3 would be a final land use action subject to the Board's jurisdiction." Motion
4 to Dismiss 4.

5 Metro contends that the challenged resolution is not a "final" land use decision
6 because it is merely the "initial action" in a prescribed three step process. An "initial action"
7 under MC 3.01.015(h)(5)(A), Metro argues, cannot constitute a final land use decision
8 because MC 3.01.015(h)(5)(C) expressly requires a subsequent "final action" at which Metro
9 is committed only to making a decision regarding the proposed UGB amendment. Metro
10 represents that the Metro Council is not obligated by the resolution adopted under
11 MC 3.01.015(h)(5)(A) to approve that amendment, and further that nothing in
12 MC 3.01.015(h)(5) prohibits the Metro Council from reopening the record in the course of
13 taking "final action" under MC 3.01.015(h)(5)(C).

14 Intervenors oppose Metro's motion, arguing that the challenged decision is a "final"
15 land use decision because by the terms of the findings quoted above the decision actually and
16 finally approves the proposed UGB amendment. According to intervenors, any subsequent
17 actions under MC 3.01.015(h)(5)(B) and (C) will operate only to make that amendment
18 effective rather than final. Intervenors argue that the interpretation of MC 3.01.015(h)(5)(C)
19 proffered by Metro in its motion to dismiss is contrary to the intent of the Metro Council
20 expressed in the quoted findings, which clearly state that the UGB amendment will become
21 "effective" upon annexation of the property within Metro's district boundary. Accordingly,
22 intervenors contend that Metro has made a final, appealable decision, and has simply chosen
23 to implement that decision at a later date.

24 The difficulty with intervenors' argument is that the plain terms of
25 MC 3.01.015(h)(5)(C) require that Metro take "final action" once annexation is complete. In
26 short, the Metro Code expressly provides when and under what circumstances a decision
27 under MC 3.01.015(h)(5) becomes "final." In relevant part, OAR 661-010-0010(3) defines a
28 "final decision" for purposes of LUBA's jurisdiction as follows:

1 "Unless a local rule or ordinance specifies that the decision becomes final at a
2 later time than defined in this section, a decision becomes final

3 "(a) when it is reduced to writing, bears the necessary signatures of the
4 decision maker(s), and

5 "(b) if written notice of the decision is required by law, when written notice
6 of the decision is mailed to persons entitled to notice." (Emphasis
7 added).

8 The present case appears to present a circumstance where "a local rule or ordinance
9 specifies that the decision becomes final at a later time" than otherwise defined in OAR 661-
10 010-0010(3). Thus, even if intervenors are correct that, for all practical purposes, the
11 challenged decision is Metro's last word on the proposed UGB amendment, by the terms of
12 MC 3.01.015(h)(5)(C) that decision does not become "final" until Metro takes "final action."

13 Petitioners also oppose Metro's motion, arguing that the challenged decision is a
14 "final" land use decision because it is Metro's last word with respect to the second stage of
15 the process, the decision to annex land within Metro's boundary. We addressed a similar
16 argument in ODA/DLCD v. Metro, ___ Or LUBA ___ (LUBA Nos. 99-004/008/014/020,
17 February 26, 1999) and 1000 Friends of Oregon v. Metro, ___ Or LUBA ___ (LUBA Nos.
18 99-013/005/019, February 26, 1999) and resolved that argument adversely to petitioners. For
19 the reasons expressed in those decisions, we reject petitioners' similar argument in the
20 present appeal that Metro's decision is the final land use decision with respect to the
21 annexation of territory into Metro's boundaries.

22 Accordingly, we conclude that Metro's decision is not a final land use decision with
23 respect to either the annexation of territory into Metro's boundaries or the proposed UGB
24 amendment, and thus that we lack jurisdiction over these appeals.²

²Given Metro's representations regarding MC 3.01.015(h)(5)(C), if Metro ultimately takes "final action" under MC 3.01.015(h)(5)(C) with respect to the territory that is the subject of these appeals and amends the UGB, on any appeals of that decision, we will not expect to hear from Metro that we lack jurisdiction because the final appealable land use decision was not that "final action" but an earlier event.

1 These appeals are dismissed.