BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

CITY OF WOODBURN, CITY OF
SILVERTON and CITY OF STAYTON,
Petitioners,

vs.

MARION COUNTY,
Respondent,

and

FRIENDS OF MARION COUNTY,
BOB LINDSAY,
MANTON CARL and LOLITA CARL,
Intervenors-Respondent.

LUBA No. 2002-175

FINAL OPINION
AND ORDER

Appeal from Marion County.

N. Robert Shields, Woodburn, Richard D. Rodeman, Corvallis and Wallace W. Lien, Salem, filed a joint petition for review on behalf of petitioners.

Jane Ellen Stonecipher, County Counsel, Salem, filed a response brief and argued on behalf of respondent.

Mary Kyle McCurdy, Portland, filed a response brief and argued on behalf of intervenors-respondent.

BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member, participated in the decision.

AFFIRMED 10/01/2003

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

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal a county decision amending the urbanization element of the county comprehensive plan to include the Urban Growth Management Framework (Framework).

MOTION TO FILE REPLY BRIEF

Petitioners move to file a reply brief, to respond to arguments in the response briefs that LUBA lacks jurisdiction to consider the issues presented in this appeal. There is no opposition to the motion, and we agree with petitioners that the reply brief is warranted. OAR 661-010-0039.

FACTS

In December 1998, the county board of commissioners amended the county's periodic review work task program to include a new work element under Statewide Planning Goal 14 (Urbanization).[1] The purpose of the new work task, work task 10, was to "establish an urban growth management framework and implementation strategy to coordinate and address growth issues with the 20 cities in Marion County in a comprehensive manner." Record 18. After several years of work by planning staff, the county initiated a legislative proceeding to amend the county comprehensive plan to include the proposed framework. The county conducted a hearing August 28, 2002. In response to concerns raised by petitioners and others, planning staff revised the framework. The county commissioners adopted the revised framework on December 4, 2002, as Ordinance 1166. On December 20, 2002, Petitioners appealed Ordinance 1166 to LUBA.

[1] A periodic review "work task" is a task included in an approved "work program" during periodic review of a local government's comprehensive plan and land use regulations pursuant to OAR Chapter 660, Division 25. A "work program" is a "detailed listing of tasks necessary to revise or amend the local comprehensive plan or land use regulations to assure the plan and regulations achieve the statewide planning goals." OAR 660-025-0020(4).

Meanwhile, on December 9, 2002, the county submitted Ordinance 1166 to the Department of Land Conservation and Development (DLCD) to satisfy periodic review work task 10. Petitioners appeared before DLCD and raised a number of objections. DLCD rejected petitioners' objections and approved work task 10. Petitioners appealed DLCD's order to the Land Conservation and Development Commission (LCDC). On July 22, 2003, LCDC issued an order that rejected most of petitioners' objections, but remanded for the county to clarify that residential "efficiency standards" set out in the framework and discussed below are merely nonmandatory "guidelines" for cities to use in establishing that city land use decisions are consistent with Goal 14, rather than mandatory criteria that the cities are required to comply with in adopting certain land use decisions.[2]

ORDINANCE 1166

The challenged decision amends the Urbanization Element of the Marion County Comprehensive Plan (MCCP) in a number of ways. We summarize the most significant amendments below.

A. Urban Area Planning

The challenged decision amends the "urban area planning" section of the Urbanization Element to state that "applicable provisions of the [Framework]" must be considered when adopting decisions regarding the "area identified for future urbanization," in addition to the requirements of Goal 14. Record 24.

B. Urban Growth Policies

The challenged decision amends the "urban growth policies" section of the Urbanization element to include a statement that the Framework "provides policies and coordination guidelines that focus on specific growth issues pertaining to transportation,

[2] The parties provided us with a copy of the July 22, 2003 LCDC order, which incorporates portions of DLCD's March 6, 2003 order and an April 21, 2003 staff report. Such documents are subject to official notice. *See Schatz v. City of Jacksonville*, 22 Or LUBA 799, 801 (1992) (LUBA may take official notice of LCDC enforcement orders).

environment, economic development and housing to guide cities in evaluating future land needs and land use decisions." Record 26. The decision then amends policies 10 and 11 to specify that annexation decisions must be consistent with, among other things, any "growth management agreement/compact." Record 27. Further, the decision adds policy 12, which requires that "[a]n updated intergovernmental agreement or compact between the County and a city that is consistent with the [Framework] shall be required as each city goes through Periodic Review or updates its comprehensive plan where County concurrence is necessary." *Id.*

C. Framework Standards

Finally, the challenged decision adds the Framework itself to the Urbanization Element. The Framework explains its purpose as follows:

> "The [Framework] is a coordination planning strategy that provides a guide cities may follow when considering urban expansion needs and decisions in response to growth issues. The Framework identifies the areas of interest for the County regarding urbanization and possible measures in the form of coordination guidelines, that cities may choose to pursue to accommodate efficient growth. Within the context of the Framework, coordination guidelines are defined as being 'flexible directions or measures that may be utilized to address specific policy statements.'
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> "The Framework is intended to provide direction and assistance for the cities through a checklist of factors for consideration in making decisions regarding the impacts of growth. The decision as to how to use the Framework and which guidelines may be important and applicable, is up to the cities. The County recognizes there may be several ways to approach and resolve an issue and the Framework provides flexibility for the cities in coordinating planning efforts with the County." Record 28-29
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> "* * * Included in the Framework strategy are land efficiency standards for cities to consider in analyzing land needs. Application of the efficiency standards would be for the entire area of an urban growth boundary. Where a common boundary exists for two cities as with the cities of Keizer and Salem, each city may be able to have a different standard provided the overall efficiency of both cities combined meets the standard applied to the Salem-Keizer boundary. When plans meet these efficiency standards, the County considers the land use to be sufficiently efficient. Plans that fall below these standards or provide alternative efficiency measures will need further County

review in consideration with other applicable factors of the Framework." Record 30.

The Framework specifies "land efficiency standards" for each city within the county, expressed as a number of housing units per gross acre.[3] The Framework states that these standards "should be met before a city can amend its Urban Growth Boundary." Record 35. The Framework further explains:

> "The [land efficiency] standard measures the average density for all new residential development in units per gross buildable acre after removing land needed for schools, parks or that are environmentally constrained areas (unbuildable lands). Housing through redevelopment counts as new units, but [does not count as] land consumption, effectively increasing the efficiency measurement. The efficiency standard is not a minimum residential density standard applied to urban areas. The standard is a measurement of the overall residential land efficiency of all new housing types and provides a means of evaluating the residential use of buildable lands within an urban growth boundary. The standard does not establish minimum densities for residential land use types, does not establish minimum lot sizes or housing mix targets that a city may choose to utilize in analyzing and developing housing strategies to address its residential needs. Land efficiency is a measurement tool of the number of dwelling units developed in relation to the acres of buildable land available to accommodate those units." Record 35-36.

The Framework also suggests that "alternate methods" may satisfy the land efficiency standards:

> "Land efficiency and the standard can also be met through alternate methods such as utilizing a city's Goal 10 housing and land need analysis that is coordinated with the County and surrounding cities. The efficiency standard represents the average density for new housing that will be zoned and allowed under clear and objective standards by the city. * * *" Record 36.

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[3] The following table, based on the table at Record 37, summarizes the Framework land efficiency standards:

UGB 2050 Population	**Housing Density Per Gross Acre**
Less than 1,000	No Standard
1,000 to 2,500	5
2,500 to 10,000	6
10,000 to 25,000	7
Greater than 25,000	8
City of Salem	9

The Framework further contemplates that the land efficiency standards "may be replaced by different standards or measures based on a coordinated city plan, and adopted in an Urban Growth Management Agreement between a city and the County." Record 37. However, the Framework provides that "the efficiency standard applicable to a city shall not be reduced by more than one housing unit per acre." *Id.*

Finally, the Framework adopts several "coordination guidelines," including a statement that "[c]oordination efforts will strive to ensure that retail land uses over 60,000 sq. ft. or 300 employees per building are located in the urban growth boundaries of cities that are in excess of 10,000 people." Record 34.

D. Urban Growth Boundary Agreements

An understanding of the current urban growth boundary agreements (UGBAs) each petitioner has with the county is of considerable assistance in understanding the parties' arguments regarding the Framework. Petitioners attach to the petition for review the UGBAs for the cities of Woodburn, Silverton and Stayton, and represent that each imposes substantially similar requirements. The following summarizes the salient provisions of the City of Woodburn's UGBA, found at Petition for Review App 36-41.

Under the UGBA, county and city responsibility for land use decision making in the urban growth area (the unincorporated area between the city boundary and the UGB) is set out as follows:

> 1. *Generally*. The county is the land use decision maker. The city must be given an opportunity to comment on the proposed land use decision, but city concurrence with land use decisions in the urban growth area is not required. The land use decision must be consistent with the *city's* comprehensive plan and with the *county's* land use regulations.
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> 2. *Approval of urban densities and urban uses in the urban growth area*. The county may only allow urban densities or urban uses in the urban growth area prior to annexation if the city agrees in writing. Both the city and county comprehensive plans apply to such decisions.

3. *Annexation decisions*. The *city* may annex property in the urban growth area. The *county* may comment on annexation proposal, but county concurrence with annexation proposals is not required.

4. *UGB Amendments*. Either the city or the county may initiate UGB amendments, but both the city and county must approve the amendment.

5. *City Comprehensive Plan Amendments that Affect the Urban Growth Area*. The county must concur with such amendments before the city can adopt them.

With that overview, we turn to the parties' arguments regarding the Framework.

JURISDICTION

The county and intervenors-respondent (together, respondents) argue that all of the issues raised by petitioners' twelve assignments of error are within LCDC's exclusive jurisdiction.[4]

LUBA has exclusive jurisdiction to review land use decisions, with the pertinent exception of "those matters over which [DLCD] has review authority under ORS 197.628 to 197.650." ORS 197.825(2)(c). ORS 197.644(2) provides that "[LCDC] shall have exclusive jurisdiction for review of the evaluation, work program and completed work program tasks as set forth in ORS 197.628 to 197.650." LCDC's rules governing periodic review further provide:

"1. [LCDC], pursuant to ORS 197.644(2), has exclusive jurisdiction to review the evaluation, work program, and all work program tasks for compliance with the statewide planning goals.

"* * * * *

"2. [LUBA] shall have exclusive jurisdiction over land use decisions described in section (1) of this rule for issues that do not involve

[4] Intervenors-respondent filed a response brief that primarily addresses the jurisdictional question, but also incorporates the county's brief if LUBA reaches the merits. The county's response brief incorporates the jurisdictional arguments in intervenors-respondent's brief, and also addresses the merits of petitioners' 12 assignments of error.

> compliance with the statewide planning goals, and over all other land use decisions as provided in ORS 197.825." OAR 660-025-0040.

Not surprisingly, it is often possible to frame the same or a similar "issue" as a matter of compliance with a statute, comprehensive plan or land use regulation, or as a matter of compliance with a statewide planning goal or administrative rule implementing a statewide planning goal. In such circumstances, this Board has held, the issue of compliance with a statute, plan or land use regulation is within LUBA's jurisdiction only if the statutory, plan or code obligation goes beyond or is different from the obligation imposed by the goal or rule. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA 426, 430-31 (2001), *aff'd* 179 Or App 468, 40 P3d 556 (2002).

Petitioners' 12 assignments of error each invoke some authority other than the goals or rules implementing the goals. These authorities tend to fall into one of two groups: (1) statutes, or (2) city and county comprehensive plans and land use regulations. Respondents argue that in one way or another each issue raised under these assignments of error involves the county's obligations under Statewide Planning Goal 2 (Land Use Planning), specifically Goal 2's coordination and consistency requirements.[5] Respondents further argue that some assignments of error involve matters directly related to Goal 2, Part I's requirement for an

[5] Goal 2 is "[t]o establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions." Goal 2 also provides, in relevant part:

> "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.
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> "All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. * * * The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units."

"adequate factual base," Goal 2, Part II's requirement for analysis of alternatives, and Goal 14's urbanization factors.

A. Statutes Governing County Authority

The first through fourth assignments of error allege that the county exceeded its authority in several ways under several statutes.

1. First and Second Assignments of Error

The first and second assignments of error argue that the framework's land efficiency standards and other requirements appear to apply by their terms within the corporate boundaries of cities within Marion County. If so, petitioners argue, adoption of the Framework exceeds the county's authority and is inconsistent with ORS 197.005(3) and ORS 203.040.[6] Respondents argue that the framework merely establishes "guidelines" that apply when the county is asked to concur with a city-proposed urban growth boundary expansion, and that the land efficiency standards do not apply within the corporate boundaries of cities. To the extent petitioners challenge the land efficiency standards themselves, respondents argue that county adopted those standards to fulfill its obligations under Goals 2 and 14, and thus review of those standards lies with LCDC.

The question of whether LUBA has jurisdiction to consider the first and second assignments of error is difficult to divorce from the merits of these assignments of error. Much of their force is lost if, as the respondents contend, the Framework consists simply of

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[6] ORS 197.005(3) provides:

> "Except as otherwise provided in [ORS 197.005(4)], 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."

ORS 203.040 provides:

> "Except by consent of the governing body or the electors of a city and except in cities not regularly operating as such through elected governmental officials, ordinances adopted under ORS 203.030 to 203.075 in exercise of the police power shall not apply inside an incorporated city."

guidelines governing county decisions to concur or not to concur in city-initiated UGB decisions. On the other hand, the first and second assignments of error must be approached differently if, as petitioner contends, the Framework constitutes approval standards that cities are obligated to apply directly in making city land use decisions. As the LCDC order found, the county's intent was the former, and LCDC remanded the county's decision to clarify language that inadvertently suggested that the Framework imposes mandatory approval criteria. We agree with respondents (and LCDC) that the intent and effect of the Framework is not to require cities to apply Framework requirements directly to city land use decisions as approval criteria. That being the case, we do not agree with petitioner's premise that the Framework applies directly to city decisions involving land within corporate boundaries.

That said, even if the Framework does not apply directly to city decisions, petitioners apparently regard adoption of "guidelines" that apply to county concurrence with city decisions to exceed the county's authority under the cited statutes. According to petitioners, it is inconsistent with these statutes for counties to adopt legislation that effectively forces cities to conform to county policies in order to gain county concurrence for decisions that require county concurrence. Petitioners argue that nothing in ORS chapters 195 or 197 or elsewhere authorizes a county to function as a superior planning agency with powers to dictate city policy choices, directly or indirectly. We understand petitioners to argue that the county may not achieve by indirect coercion what the statutes would prohibit if done directly.

Our view of the jurisdictional question is colored by LCDC's exercise of its jurisdiction in its review of Ordinance 1166. Petitioners made similar arguments regarding county authority before DLCD and LCDC, citing ORS 197.025 and 197.040.[7] DLCD chose

[7] ORS 195.025(1) provides, in relevant part:

> "In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within

to treat those statutory arguments as challenging the county's authority to coordinate and ensure consistency between city and county comprehensive plans, under Goal 2. DLCD ultimately concluded that the county has "broad authority under ORS 195.025 and Goal 2 to affect the content of city comprehensive plans through coordination." March 6, 2003 Order at 4. Specifically, DLCD found that the Framework "[land] efficiency standard does not exceed the county's authority or result in requirements that will lead to conflicting plans. Marion County did not violate Goal 2 in adopting Ordinance 1166." *Id.* at 7. LCDC's order did not incorporate those DLCD findings, and LCDC ultimately sustained petitioners' objection regarding the county's authority, at least in part, by remanding Ordinance 1166 to clarify that the land efficiency standards are only guidelines. July 22, 2003 Order at 2. It is clear from both orders that DLCD and LCDC believe that petitioners' arguments regarding the county's authority to adopt the Framework ultimately raise issues cognizable under Goal 2.

As we have explained, we have jurisdiction over petitioners' arguments under these assignments of error only if the statutory authority cited imposes a different obligation from the goals or rules or to the extent the statutory obligation goes beyond that imposed by the goals or rules. It is not clear to us, as the DLCD and LCDC orders appear to suggest, that the county's authority and obligations under Goal 2 are coextensive with its authority or limitations on that authority under the cited statutes. However, we need not and do not explore that question further, because even assuming the cited statutes impose different obligations or limits than Goal 2, petitioners have not demonstrated that adoption of the Framework exceeds the county's authority under any of the cited statutes. We have already rejected petitioners' main premise that the Framework applies directly within the cities' corporate boundaries. We also disagree with petitioners' more limited premise, that the

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> the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. * * *"

county cannot effectively force cities to comply with the land efficiency standards in order to gain county concurrence. Nothing in the cited statutes limits what considerations the county may apply in deciding whether or not to concur in a city-initiated UGB amendment. The current UGBAs between the county and the cities appear to allow the county to withhold its concurrence to a proposed UGB amendment for any or no reason. We see no statutory violation in adopting guidelines that inform the city what considerations will suffice to gain the county's concurrence.

In sum, to the extent any of the issues raised under the first and second assignments of error are within our jurisdiction, petitioners have failed to demonstrate that the Framework is inconsistent with any of the cited statutes, or otherwise provide a basis for reversal or remand.

2. Third Assignment of Error

The third assignment of error argues that the county exceeded its statutory coordination authority under ORS 195.025(1) and 195.036 by adopting standards and population estimates that (1) are inconsistent with standards and policies in petitioners' comprehensive plans and land use regulations; and (2) will ultimately require petitioners to adopt conforming amendments to their comprehensive plans and land use regulations.[8] According to petitioners, the coordination authority granted by ORS 195.025(1) is quite limited, and does not allow the county to effectively force the cities to amend their plans and land use regulations.

[8] The pertinent portion of ORS 195.025(1) is quoted above, at n 7. ORS 195.036 provides:

> "The coordinating body under ORS 195.025 (1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary."

Respondents argue that county adoption of population estimates and land efficiency standards are exercises of the county's Goal 2 and Goal 14 obligations, and thus within LCDC's jurisdiction.

We agree with respondents that the issue of the consistency of county standards with city standards is an issue properly raised under Goal 2 under the circumstances of this case. *See* discussion below of the fifth through eleventh assignments of error. As noted above, it is not clear to us that the county's coordination authority under Goal 2 is as extensive as its coordination authority under ORS 197.025(1). However, to the extent there is a difference, petitioners have not demonstrated that the county exceeded its statutory authority in adopting Ordinance 1166. As explained, the Framework standards are guidelines to cities in seeking county concurrence, where county concurrence is required. Nothing in the Framework requires the cities to conform their comprehensive plans and land use regulations to county standards, even assuming such a requirement would exceed the county's authority under ORS 197.025(1) and 195.036.

3. Fourth Assignment of Error

The fourth assignment of error argues that the Framework effectively requires cities within Marion County to apply land efficiency standards that are not part of the cities' acknowledged comprehensive plans and land use regulations, in order to gain county concurrence to proposed UGB amendments. Petitioners argue that doing so is inconsistent with ORS 197.175(2)(d), which requires cities and counties to make land use decisions and limited land use decisions in compliance with acknowledged plan and land use regulations.[9]

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[9] ORS 197.175(2) provides, in relevant part:

"Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

"(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;

"(b) Enact land use regulations to implement their comprehensive plans;

We understand petitioners to argue that city application of standards that are *not* part of the city's acknowledged plan and land use regulations is inconsistent with ORS 197.175(2)(d). Conversely, we understand petitioners to argue, the cities *must* apply the standards and policies in their comprehensive plan and land use regulations, pursuant to ORS 197.175(2)(d). As petitioners argue elsewhere, acknowledged city comprehensive plan standards and policies may assume or require less housing density than required by the land efficiency standards.[10] Therefore, we understand petitioners to argue, the challenged decision places the cities in a Catch-22: if the cities apply the county land efficiency standards to gain the county's concurrence they violate ORS 197.175(2)(d), and if they do not apply the county land efficiency standards, the county may withhold its concurrence.

Respondents argue that adoption of the land efficiency standards as guidelines to city decision making is a proper exercise of the county's Goal 2 and Goal 14 obligations. On the merits, respondents contend that nothing prohibits the cities from complying with ORS 197.175(2)(d) by adopting the framework standards into their own plans and codes.

To the extent this assignment of error complains that Framework standards are inconsistent with city comprehensive plan or code standards, that complaint is properly raised under Goal 2, and therefore beyond our jurisdiction in the present case. Petitioners' Catch-22 argument rests on petitioners' apparent view that ORS 197.175(2)(d) prohibits a

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> "(c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;
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> "(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations; and
>
> "(e) Make land use decisions and limited land use decisions subject to an unacknowledged amendment to a comprehensive plan or land use regulation in compliance with those land use goals applicable to the amendment."

[10] For example, under the third assignment of error petitioners argue that the City of Silverton's comprehensive plan based its land need and supply calculations on an average density of 6.26 units per acre, less than that required by the land efficiency standards.

city from applying standards that are not adopted as part of the city's acknowledged plan or code. Putting aside for the moment the correctness of that view, we do not see that that issue is governed by Goal 2 or any other Statewide Planning Goal or rule. Accordingly, we conclude that we have jurisdiction over that issue.

On the merits, we disagree with petitioners that ORS 197.175(2)(d) is properly understand as requiring that a city apply *only* standards included in the city's comprehensive plan or land use regulations. The statute says that land use and limited land decisions must be in compliance with the acknowledged plan and land use regulations, but is silent with respect to compliance with other standards. It is not uncommon for cities and counties to apply applicable state or federal statutes in making land use decisions. Nor is it uncommon for cities and counties to enter into intergovernmental agreements under which the county or city may apply the plan provisions or land use regulations of the other. Application of such standards would violate ORS 197.175(2)(d), under petitioners' view of that statute. We decline to so interpret the statute.

B. City and County Comprehensive Plan Provisions and Land Use Regulations

1. Fifth Through Eleventh Assignments of Error

The fifth through eleventh assignments of error contend that the challenged comprehensive plan amendments are inconsistent with various city or county comprehensive plan provisions and city or county land use regulations.[11] We agree with respondents that

[11] We briefly summarize what we understand to be the essential issues presented in the fifth through eleventh assignments of error.

The fifth assignment of error argues that the framework limits large employers or large commercial centers to cities with populations that exceed 10,000 persons, which would exclude petitioners Silverton and Stayton. Petitioners argue that this limitation is inconsistent with the economic development goals in the comprehensive plans of these cities. The sixth assignment of error argues that the framework subjects city annexation decisions to county comprehensive plan policies, contrary to city land use regulations governing annexations. The seventh assignment of error contends that the framework unilaterally modifies the process for amending the cities' urban growth boundaries that is set out in the urban growth boundary agreements (UGBAs) each petitioner has with the county. Petitioners contend that the UGBAs are acknowledged land use regulations, and

these assignments of error raise issues that can and should be framed as Goal 2 coordination and consistency issues. As noted, Goal 2 requires that county plans and actions related to land use "shall be consistent with the comprehensive plans of cities," among other entities. An argument that the county's comprehensive plan amendment is inconsistent with a city comprehensive plan provision is, on its face, an issue that is squarely within Goal 2. We have difficulty imagining any such inconsistency argument that would fall outside Goal 2's coordination and consistency requirements. Even if theoretically possible, petitioners make no attempt to demonstrate that the consistency issues raised in the fifth through eleventh assignments of error involve requirements that are different from, or go beyond, the requirements of Goal 2. *Citizens Against Irresponsible Growth v. Metro*, 40 Or LUBA at 430-31. Accordingly, LCDC has exclusive jurisdiction to review such arguments, under the present circumstances.

2. Twelfth Assignment of Error

The twelfth assignment of error merits additional discussion. In that assignment, petitioners argue that the county's comprehensive plan and its urban zoning ordinance together set out certain criteria applicable to the challenged decision, and further require that the county's decision include findings showing that the amendment meets those criteria.[12]

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that the county erred in adopting framework requirements that are inconsistent with or unilaterally modify the UGBAs. In the eighth and ninth assignments of error, petitioners argue that the county failed to gain the concurrence of the petitioner cities in adopting the framework, as required by the UGBA each city has with the county. Because each UGBA is incorporated into petitioners' comprehensive plans, petitioner also argues that adoption of the framework violates, and is an impermissible collateral attack upon, those comprehensive plans. In the tenth assignment of error, petitioners contend that framework requirements to apply land efficiency standards to the area between city limits and the urban growth boundary is inconsistent with each city's UGBA with the county, which specify that the county's comprehensive plan does not apply within that area. The eleventh assignment of error argues that adoption of the framework is a "Regional Planning Action" and thus the county's unilateral adoption of the framework without gaining petitioners' concurrence is inconsistent with procedures regarding regional planning actions included in the county's comprehensive plan, as well as petitioners' comprehensive plans.

[12] Petitioners cite to Marion County Urban Zoning Ordinance (MCUZO) 43.01, which states that "[p]rocedures and criteria for legislative plan amendments shall be as provided in Chapter 38 for legislative zone amendments." In turn, MCUZO 38 sets out the following criteria applicable to legislative zone amendments:

Petitioners contend that the single paragraph the challenged decision adopts as findings is inadequate to address the applicable criteria.[13]

Respondents contend that the issues raised under the twelfth assignment of error are within LCDC's exclusive jurisdiction because the challenged decision was adopted pursuant to county comprehensive plan amendment provisions that were originally adopted pursuant to Goal 2. Therefore, respondents argue, issues related to findings that may be required by such comprehensive plan amendment provisions are ultimately issues that are cognizable under Goal 2. Respondents also argue that the criteria petitioners cite to are not applicable to the challenged decision, and further argues that the lack of adequate findings is not in itself a basis for reversal or remand of a legislative decision.

We disagree with respondents that the issue of compliance with a local findings requirement is a matter of Goal 2 compliance, simply because that findings requirement or related plan amendment criteria were adopted pursuant to Goal 2. In our view, whether jurisdiction to review such a findings challenge lies with LCDC or LUBA under the present

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> "(a) Compliance with the statewide land use goals and related administrative rules is demonstrated.
>
> "(b) Conformance with the Comprehensive Plan goals, policies, and intent is demonstrated.
>
> "(c) The proposed change is in the public interest and will be of general public benefit."

Finally, petitioners cite to MCUZO 38.08, which requires that "a zoning ordinance legislative amendment shall include findings showing that the amendment meets the applicable criteria."

[13] The findings supporting the challenged decision consist of the following:

> "The amendments to the Marion County Comprehensive Land Use Plan [MCLUP] Urbanization Element are based on consideration and analysis of the provisions of ORS Chapters 195, 197 and 215, OAR Chapter 660, Division 25, the Statewide Planning Goals, the [MCLUP], and evidence obtained during the public hearing. Due consideration was given to the evidence and testimony in the hearing record, and information resulting from the Marion County Urban Growth Management Project. The Board [of Commissioners] finds that the Growth Management Framework and Implementation Strategy amendments to the [MCLUP] Urbanization Element conform with the provisions of the criteria stated above upon which the decision is to be based." Record 19.

circumstances depends upon what criteria or considerations the findings are intended to demonstrate compliance with. Findings challenges are necessarily derivative of the underlying criteria or considerations the findings address. We see no basis for LUBA to exercise jurisdiction over the issue of compliance with a local findings requirement, if the substantive criterion that the finding is intended to demonstrate compliance with involves matters within LCDC's jurisdiction, *i.e.*, compliance with statewide planning goals and administrative rules.

As noted, MCUZO 38.05 and 38.08 require the county to adopt findings demonstrating that the proposed legislative amendment: (1) complies with applicable statewide planning goals and rules; (2) conforms with "Comprehensive Plan goals, policies, and intent"; and (3) "is in the public interest and will be of general public benefit." As we have explained, the adequacy of findings addressing statewide planning goals and rules is not within our jurisdiction. We also believe that issues regarding whether the challenged amendment "[c]onforms with Comprehensive Plan Goals, policies, and intent" are issues that can and should be framed as Goal 2 consistency arguments. Accordingly, the derivative issue of whether the county adopted adequate findings addressing MCUZO 38.05(a) and (b) is not within our jurisdiction.

MCUZO 38.05(c), on the other hand, is a criterion that does not require addressing the statewide planning goals or evaluating whether the proposed amendment is consistent with city or county comprehensive plans. Accordingly, we have jurisdiction over the issues raised in the twelfth assignment of error to the extent the county is required by MCUZO 38.05 and 38.08 to adopt findings demonstrating that the proposed legislative plan amendment "is in the public interest and will be of general public benefit."

As noted, respondents contend that MCUZO 38.05 and 38.08 do not apply at all to the challenged decision. Respondents reason that the MCUZO applies only to decisions that affect land within urban growth boundaries, and that the Framework does not apply within

urban growth boundaries. Further, respondents argue that Ordinance 1166 was adopted as part of the county's periodic review pursuant to OAR Chapter 660, Division 25, and not pursuant to MCUZO Chapter 43.

Nothing in OAR Chapter 660, Division 25 cited to us suggests that plan amendments adopted pursuant to those rules may not also be subject to local code requirements governing plan amendments. If MCUZO 38.05 and 38.08 apply to the challenged decision by virtue of MCUZO 43.01, we do not see that the rule preempts application of those local code requirements. We agree with petitioners that MCUZO 43.01 appears to make legislative plan amendments such as the challenged decision subject to the criteria, and the findings requirement, in MCUZO Chapter 38. If there is anything in the MCUZO or other county legislation that supports a different conclusion, respondents have not cited it to us.

Finally, respondents argue that the inadequacy of findings supporting a legislative decision is not, in itself, a basis for reversal or remand. It is true that, as a general matter, there are no goal, rule or statute requirements that legislative land use decisions be supported by findings.[14] However, local plan or code provisions may require findings to support legislative decisions, in which case the absence of findings required by code for a legislative decision, or the adoption of purely conclusory findings, can provide a basis for reversal or remand. *Manning v. Marion County*, 42 Or LUBA 56, 63 (2003); *Foster v. Coos County*, 28 Or LUBA 609, 612 (1995).

The county's findings do not specifically address the MCUZO 38.05(c) requirement for a demonstration that the plan amendment "is in the public interest and will be of general public benefit." However, we do not see that specific or detailed findings are necessary to address such a nebulous criterion. It is abundantly clear from the county's findings and from

[14] However, even there is no express findings requirement there must be enough in the way of findings or accessible material in the record of a legislative decision to show that applicable criteria were applied and that required considerations were indeed considered, to permit LUBA and the court to exercise their review functions. *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002).

the narrative text of the Framework itself that the county believes adoption of the Framework is in the public interest and will benefit the public. *See* Record 20 (Ordinance 1166 is "necessary to protect the public health, safety and welfare"); Record 22 ("The Framework provides a growth management policy guide for use by the County and cities to help ensure future growth and expansion issues are coordinated, and that growth can be accommodated in a manner that integrates the varied planning interests of both the County and cities."); Record 28 (the purposes of Framework include "[p]rotect[ing] farm, forest, and resource lands" and "fostering the efficient use of land[.]"), among many other examples. Admittedly, the challenged decision does not use the words "public interest" or "public benefit," but use of magic words is not necessary. *Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 20-21, 569 P2d 1073 (1977).

DECISION

For the reasons set forth above, the issues raised under the fifth through eleventh assignments of error are not within our jurisdiction, and therefore we do not address those assignments. To the extent the first through fourth and twelfth assignments of error raise matters within our jurisdiction, petitioners have failed to demonstrate a basis for reversal or remand.

The county's decision is affirmed.