

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

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1000 FRIENDS OF OREGON,)
)
Petitioner,)
)
vs.)
WASHINGTON COUNTY,)
)
Respondent,)
)
and)
)
METROPOLITAN SERVICE DISTRICT,)
)
Intervenor-Respondent.)

LUBA Nos. 88-106
88-107
88-108

FINAL OPINION
AND ORDER

Appeal from Washington County.

Robert L. Liberty and Keith A. Bartholomew, Portland, filed the petition for review and Robert L. Liberty argued on behalf of petitioner.

John M. Junkin, Hillsboro, and Lawrence R. Derr, Portland, filed a response brief and John M. Junkin argued on behalf of respondent.

Lawrence S. Shaw, Portland, filed a response brief and argued on behalf of intervenor-respondent.

Jack L. Orchard, Portland, filed an amicus brief on behalf of ten Oregon cities, Yamhill County, seven chambers of commerce, twelve schools and associations, and six private corporations. With him on the brief was Ball, Janik and Novack.

HOLSTUN, Chief Referee; SHERTON, Referee, participated in the decision.

REMANDED 05/05/89

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

1 Opinion by Holstun.

2 NATURE OF THE DECISION

3 Petitioners appeal two ordinances and a resolution which
4 adopt amendments to three elements of the Washington County
5 Comprehensive Plan.¹

6 FACTS

7 On May 28, 1987, the Metropolitan Service District
8 (Metro)² adopted the "Southwest Corridor Study," a study of
9 alternative transportation strategies for the western portion
10 of the Portland Metropolitan Area. Record Exhibit 121. Two
11 alternatives to improve transportation between I-5 and Sunset
12 Highway are identified in the study as the "217/Sunset
13 Alternative" and the "Bypass Alternative." Record Exhibit 121,
14 9-17. The Southwest Corridor Study includes a recommendation
15 that Metro amend its Regional Transportation Plan to include
16 highway improvements described in the study, including the
17 Western Bypass Corridor.³ The Western Bypass Corridor is
18 depicted in the Southwest Corridor Study as a generalized
19 corridor running from I-5 near Tualatin in a
20 north-northwesterly direction through Washington County. The
21 Western Bypass Corridor eventually connects with Sunset Highway
22 in the area where Cornelius Pass Road now intersects Sunset
23 Highway near the city of Hillsboro.

24 In its resolution adopting the Southwest Corridor Study,
25 Metro directed its "staff to prepare an intergovernmental
26 agreement with Washington County specifying the process and

1 timeframe to resolve the land use issues as specified in
2 Attachment 'A',^[4] to be adopted by both parties and
3 appropriate portions to be incorporated into the ordinance
4 update to the Regional Transportation Plan." . Record
5 Exhibit 121.

6 Following adoption of the Southwest Corridor Study, Metro
7 and Washington County signed a Memorandum of Understanding
8 (MOU). Under the terms of the MOU, the county agreed to assume
9 responsibility for what is referred to in the MOU as the "land
10 use process." Record 376. Under the MOU, the county agreed to
11 prepare findings demonstrating consistency of the Western
12 Bypass Corridor with, inter alia, the Statewide Planning Goals
13 (goals). The MOU explicitly identifies Goals 3, 4, 5, 6, 11
14 and 14 and notes that exceptions to Goals 3, 4, 11 and 14 may
15 be required. The MOU provides that Washington County will
16 perform its goal compliance responsibilities as part of the
17 Western Bypass project development and design, draft
18 environmental impact statement and final environmental impact
19 statement phases. Each of these phases will occur sometime in
20 the future and must precede construction of the Western Bypass
21 in order for the bypass to qualify for federal funding.

22 The two county ordinances and the county resolution
23 challenged in this proceeding were adopted on October 25, 1988,
24 after the Southwest Corridor Study was adopted by Metro, but
25 before Metro's Regional Transportation Plan was amended and
26 before the county performed its obligations under the MOU.⁵

1 See n 4, supra.

2 The Washington County Comprehensive Plan (plan) includes a
3 number of separately adopted elements. The plan elements
4 amended by Ordinances 332 and 333 and Resolution 88-178 include
5 the Comprehensive Framework Plan for the Urban Area, the
6 Rural/Natural Resource Plan and the Transportation Plan.
7 Ordinance 332 amends the Comprehensive Framework Plan for the
8 Urban Area and adopts portions of the Transportation Plan
9 Update (TPU) for the urban area. Ordinance 333 amends the
10 Rural/Natural Resource Plan and adopts portions of the TPU for
11 the rural area of the county. Ordinances 332 and 333 both
12 include the following language identifying the portions of the
13 TPU adopted by those ordinances.

14 "Those portions * * * designated 'Policies' and
15 'Implementing Strategies,' and six designated maps
16 (Through Truck Routes, Proposed County-Wide Road
17 System, Existing and Proposed Transit Routes, Bicycle
18 Route System, Functional Classification System, and
19 Recommended Roadway Improvement Projects) are adopted
as the Transportation Plan * * *. The remaining
background information, summary findings and
conclusions, other textual material and remaining maps
* * * are not adopted by this ordinance * * *."
Record 14, 20.

20 Resolution 88-178 provides in pertinent part:

21 "It appearing to the Board that the following portions
22 of the Washington County Transportation Plan have been
adopted by Ordinance 332 and 333;

23 "All Policies and Implementing Strategies

24 "Functional Classification System Map

25 "Through Truck Route Map

26 "Proposed County-Wide Road System Map

1 "Existing and Proposed Transit Routes Maps
2 "Bicycle Route System Map
3 "Recommended Road Improvement Project Map; and
4 "It appearing to the Board that the remaining text,
5 map and graphics of the Washington County
6 Transportation Plan are informational only, it is
7 therefore
8 "RESOLVED AND ORDERED that those portions of the
9 Washington County Transportation Plan not adopted by
10 Ordinance Nos. 332 or 333 are hereby adopted."
11 Record 24-25.

12 The Western Bypass is depicted on a number of the maps
13 included in the TPU, including each of the maps adopted by
14 Ordinances 332 and 333, with the exception of the Existing and
15 Proposed Transit Routes Map.⁶ The Functional Classification
16 System Map depicts as the "Tualatin-Hillsboro Corridor" the
17 same general corridor shown as the Western Bypass in the Metro
18 Southwest Corridor Study.⁷

19 MOTIONS

20 A. Motion to Intervene

21 Metro moves to intervene on the side of respondent in this
22 proceeding. There is no opposition to the motion, and it is
23 allowed.

24 B. Motion to Appear as Amici and Motion to Strike
25 Brief of Amici

26 Ten cities located within Washington County, Yamhill
County, seven chambers of commerce, 12 schools and associations
and six private corporations move to appear as amici in this
proceeding. Under our administrative rules, persons or

1 organizations may appear as amici provided they

2 "state reasons why a review of relevant issues would
3 be significantly aided by participation of the amicus.
4 * * *" OAR 661-10-052(1).

5 Amici include municipal corporations, private corporations
6 and trade associations. Municipal amici contend the proposed
7 bypass will impact their comprehensive plans and transportation
8 planning efforts. The non-public amici claim they represent a
9 "cross section of businesses and economic interests" who also
10 "make private transportation planning decisions" and will be
11 affected by our decision. Amended Motion to Appear as
12 Amici 2. Amici argue that although they support the county's
13 decision, their perspectives differ from that of the county and
14 our review would be aided by their participation.

15 Petitioner opposes the motion to appear as amici and argues
16 amici fail to show our review would be significantly aided by
17 their participation. Petitioner also attacks the brief that
18 was filed with the motion to appear as amici prior to our
19 ruling on the motion. Petitioner moves to strike the brief,
20 arguing it lacks legal argument, fails to include citations to
21 the record, and "is little more than a vehicle for movants
22 endorsement of the freeway." Response to Amended Motion to
23 File a Brief as Amici 2.

24 Although it is not entirely clear why the different
25 perspectives of amici necessarily will aid our review of the
26 county's decision, we believe the potentially significant
27 impact of the land use decision at issue warrants a broad

1 reading of OAR 661-10-052 to allow the motion to appear as
2 amici in this proceeding. Although some portions of the amicus
3 brief are, as petitioner objects, little more than an
4 expression of support for the project, other portions of the
5 brief are more substantive.⁸ Expressions of support for the
6 project and argument not relevant to applicable criteria or
7 evidence in the record cannot and do not affect our decision.
8 However, the inclusion of such extraneous expressions or
9 argument does not, in our view, warrant striking the entire
10 brief or portions of the brief. We simply disregard or reject
11 such expressions or argument. See Hammack v. Washington
12 County, ___ Or LUBA ___ (LUBA No. 87-037, September 11, 1987)
13 slip op 3-4. In considering the amicus brief we also consider
14 petitioner's arguments that portions of that brief are
15 irrelevant or assert facts unsupported by the record.

16 The motion to appear as amici is allowed, and the motion to
17 strike the brief of amici is denied.

18 C. Motion to File Post-Argument Memorandum of
19 Additional Authorities

20 After oral argument in this matter, petitioner moved to
21 file a memorandum of additional authorities. Respondent filed
22 an answer. The motion to file a memorandum of additional
23 authorities is allowed, and we consider the authorities cited
24 in the memorandum as well as those cited in the respondent's
25 answer in our decision below.

26 /////

1 ASSIGNMENT OF ERROR

2 "* * * The County Erred By Amending Its Comprehensive
3 Plan To Provide For The Construction Of A \$150 Million
4 Highway Without Demonstrating This Facility Would
Comply With The Goals Or Without Taking A Reasons
Exception To The Applicable Goals."

5 A. Introduction

6 All parties agree that the county's and Metro's proposal to
7 delay county action addressing the statewide planning goals, as
8 described in the Southwest Corridor Study, would not be an
9 issue had the county not included the Western Bypass in its
10 TPU. The parties further agree that the county was not
11 required to include the Western Bypass in its TPU when the
12 ordinances and resolution challenged in this proceeding were
13 adopted in October, 1988. At that time, the Regional
14 Transportation Plan had not been amended to include the
15 recommendations contained in the Southwest Corridor Study
16 concerning the Western Bypass. Accordingly, ORS 268.390(4),
17 which authorizes Metro to require that local comprehensive
18 plans be amended to conform to Metro's functional plans, did
19 not obligate the county to act as it did.

20 Of course, that the county was not required to take the
21 action it did does not necessarily mean the county could not
22 elect to take action to amend its plan, so that it would
23 conform to the Regional Transportation Plan, before Metro
24 legally required it to do so. However, regardless of the
25 county's motivation in amending its plan, the adopted plan
26 amendment must comply with the applicable standards of

1 ORS chapter 197 for amendments to acknowledged comprehensive
2 plans.

3 ORS 197.175(2)(a) requires, in part, that counties
4 "* * * amend and revise comprehensive plans in compliance with
5 [the] goals * * *." With exceptions not applicable in this
6 appeal proceeding, this Board must remand a comprehensive plan
7 amendment if the amendment does not comply with the goals.
8 ORS 197.835(4); Ludwick v. Yamhill County, 72 Or App 224,
9 230-231, 696 P2d 536 (1985).

10 B. Goal Compliance Must Be Demonstrated at the Time
11 the Plan is Amended

12 In its petition for review and its supplemental memorandum,
13 petitioner cites a number of Court of Appeals decisions
14 concerning LCDC acknowledgement orders where the comprehensive
15 plan acknowledged by LCDC failed to demonstrate compliance with
16 the goals or deferred determinations of goal compliance. 1000
17 Friends v. LCDC (Morrow County), 88 Or App 517, 520, 746 P2d
18 238 (1987) (LCDC may not (1) acknowledge plan provisions that
19 would permit industrial development in conflict with the goals
20 on the assumption the local government would not allow such
21 development to occur, and (2) rely on periodic review to
22 correct the plan if the county did not limit development as
23 expected); 1000 Friends of Oregon v. Washington County, 72 Or
24 App 449, 453, 696 P2d 554 (1985) ("Compliance with [Goal 14]
25 cannot be achieved by allowing land that does not meet the goal
26 criteria to be included in the urban growth boundary (UGB) on

1 the basis of a local agency's promise not to treat that land as
2 really being in the UGB."); Collins v. LCDC, 75 Or App 517,
3 523, 707 P2d 599 (1985) (City may not defer to a committee the
4 responsibility to develop the economic, social, environmental
5 and energy analysis required by OAR 660-16-005(2) to
6 demonstrate compliance with Goal 5).

7 Citing ORS 197.625(1) and (2), which provide that post
8 acknowledgment plan amendments are deemed "acknowledged" when
9 the period to appeal the amendment to LUBA expires or there is
10 a final appellate decision affirming the plan amendment,
11 petitioner argues by analogy that post acknowledgment plan
12 amendments may not properly be deemed acknowledged if they
13 defer resolution of goal compliance issues.⁹

14 As clarified later in this opinion, we agree with the basic
15 principle petitioner asserts, viz a decision to adopt or amend
16 a comprehensive plan requires a prior or contemporaneous
17 determination that goal standards applicable to the decision
18 are satisfied. Respondent and intervenor-respondent
19 (respondents) attempt to avoid this requirement in two ways.

20 First, respondent contends that its action is clearly not a
21 decision to authorize construction of the Western Bypass
22 facility. We understand respondent to argue that because its
23 decision is not the last decision necessary to construct the
24 Western Bypass, it need not address the goal issues that must
25 be addressed prior to a final decision to construct such a
26 facility within the proposed alignment. The nature and legal

1 effect of the county's decision is the critical issue in this
2 case. However, respondents' suggestion that the goals do not
3 apply simply because the decision is not the last decision
4 necessary to authorize construction of a particular facility is
5 incorrect. See Tides Units Owners's Association v. Seaside, 11
6 Or LUBA 84, 90 (1984), Burrell v. City of Salem, 14 Or LUBA
7 540, 541-542 (1986); Hemstreet v. City of Seaside, ___ Or
8 LUBA ___ (LUBA No. 87-094, April 22, 1988), slip op 6-7.

9 The respondents next cite our decision in Turner v.
10 Washington County, 8 Or LUBA 234 (1983), in which we rejected a
11 challenge to the county's approval of a conditional use permit
12 for a planned unit development (PUD), even though the county
13 deferred consideration of Goal 12 (Transportation) and plan
14 related transportation issues associated with the proposed
15 PUD. In our decision in Turner, we relied on the fact a future
16 hearing to consider unresolved transportation issues was to be
17 provided, and the decision that would follow that hearing would
18 be subject to our review.

19 We find our decision in Turner to be of limited assistance
20 in this proceeding. First, the decision in Turner concerned a
21 conditional use permit approval, not a post-acknowledgment plan
22 amendment. At the time the conditional use permit in Turner
23 was approved, the Washington County plan was not acknowledged
24 and the goals, therefore, applied to the county's decision.
25 However, we see a significant difference between a decision to
26 approve a specific development proposal and a plan amendment

1 that will in turn govern subsequent individual land use
2 decisions.¹⁰

3 Even if we were to extract from Turner a principle to apply
4 by analogy to post-acknowledgment plan amendments, we do not
5 believe Turner necessarily undercuts the principle that all
6 goal issues actually raised by a plan amendment must be
7 addressed and resolved at the time the plan amendment is
8 adopted. At most, as intervenor-respondent suggests, Turner
9 would support a conclusion that the goals apply, but goal
10 findings are only required to "the extent of [the] decision
11 actually made * * *." Intervenor-Respondent's Brief at 25. In
12 other words, to the extent the county's decision adopted or
13 rejected particular land use planning courses of action which
14 implicate goal standards, goal findings addressing those goal
15 standards are required. But goal findings are only required to
16 the extent such land use planning courses of action are adopted
17 or rejected. Cf 1000 Friends of Oregon v. Wasco County Court,
18 299 Or 344, 360, 703 P2d 207 (1985) ("A county discharges its
19 planning and zoning responsibilities with regard to whether a
20 proposed incorporation is 'in accordance with the goals' if the
21 county finds that after a successful incorporation election it
22 is reasonably likely that the newly incorporated city can and
23 will comply with the goals once the city assumes primary
24 responsibility for comprehensive planning in the area to be
25 incorporated.").

26 /////

1 C. A Plan Amendment is Only Required to Comply with
2 Applicable Goal Standards

3 Although it is clear that amendments to acknowledged
4 comprehensive plans must comply with the goals, it also is
5 clear that not all goal provisions impose standards affecting
6 all land use decisions. Stated differently, some plan
7 amendments implicate many goal requirements and therefore may
8 require extensive goal findings, while other plan amendments
9 may implicate few if any goal requirements. The obligation to
10 adopt findings demonstrating goal compliance depends on (1) the
11 subject matter of the plan amendment,¹¹ and (2) the nature or
12 legal effect of the plan amendment or the particular portion of
13 the plan amendment at issue.¹²

14 Petitioner argues that a decision to implement the proposed
15 Western Bypass within the corridor identified in the TPU raises
16 several goal issues. Petitioner argues the nature of the
17 facility envisioned, the location of portions of the corridor
18 outside the acknowledged UGB and the inclusion within the
19 corridor of agricultural and forest land and lands subject to
20 protection under Goals 5 and 6 mean Goals 3, 4, 5, 6, 11 and 14
21 are implicated by the county's decision. Petitioner contends
22 the county erred by failing either to demonstrate compliance of
23 the proposed facility with those goals or to take an exception
24 to the goals.

25 There does not appear to be serious dispute among the
26 parties that the goals identified by petitioner as violated by

1 the county's decision, could be implicated by actual approval
2 of a Western Bypass project. The critical question in this
3 appeal is not whether the planning decision or decisions that
4 ultimately will be necessary to implement the Western Bypass
5 concern subject matter relevant to criteria contained in one or
6 more of the statewide planning goals. Rather, the critical
7 question in this appeal is whether the legal effect of the
8 portion of the adopted plan amendment in dispute is such that
9 goal criteria are implicated; and, therefore, findings
10 addressing those goal criteria should have been adopted by the
11 county in support of its decision.

12 Petitioner contended at oral argument, and suggested less
13 explicitly in its petition for review, that the legal effect of
14 the portions of the TPU it challenges is irrelevant.

15 Petitioner contends that the statute does not distinguish
16 between legally enforceable portions of the plan and portions
17 of the plan that may not be legally enforceable. Although
18 petitioner's reading of the statute is correct, we think
19 petitioner either misses or misunderstands the point. Most
20 plan amendments are a more or less complex combination of
21 information and data, reasoning and explanation, and legal or
22 policy choice among available options. Although portions of a
23 plan amendment that neither alter the land use planning status
24 quo nor provide the basis for other portions of the amendment
25 that do alter the land use planning status quo are technically
26 subject to the goals under ORS 197.175(2)(a), they may not

1 implicate any goal criteria. In other words, if the disputed
2 portion of a plan amendment doesn't do anything, it is
3 difficult to understand how that portion of the plan could
4 violate the goals.

5 In some situations, it will be reasonably clear which goal
6 standards apply when an acknowledged comprehensive plan is
7 amended. In other situations, the legal effect of the local
8 government's action may not be obvious and it may be unclear
9 which, if any, statewide planning goal standards apply or how
10 they apply to the plan amendment. See 1000 Friends of Oregon
11 v. Wasco County Court, supra at 360. In this latter situation,
12 we have in several cases decided that the local government must
13 explain in its findings why apparently applicable goal
14 standards need not be addressed and satisfied as part of its
15 decision. Concerned Land Owners v. Klamath County, 3 Or LUBA
16 182, 185 (1981); Jackson-Josephine Forest Farm Assn. v.
17 Josephine County, 12 Or LUBA 40, 43 (1984). We turn to the
18 county's decision and the findings adopted by the county in
19 support of that decision to determine whether the county
20 adequately addressed the statewide planning goals or explained
21 why apparently applicable goal provisions are not implicated by
22 the decision challenged in this proceeding.

23 D. The County's Decision

24 In large part, petitioner's complaint concerning the TPU
25 focuses on the following language adopted as part of the TPU:

26 "Providing a link between I-5 and the Sunset Highway,

1 the Tualatin-Hillsboro Corridor Project would
2 accommodate regional travel demands arising from
3 recent and projected future growth in central
4 Washington County. The only major existing
5 north-south roadway in the County is Oregon 217. Lack
6 of a similar facility farther to the west forces
7 north-south regional travelers to either travel out of
8 their way to get to 217, or use the system of
9 Arterials and Major Collectors serving north-south
10 travel. In either case, regional travelers add to the
11 congestion on the Arterial and Collector system, which
12 affects the system's ability to accommodate county
13 residents' more localized travel demands.

8 "Metro has identified four regional travel corridors
9 in Washington County that need greater capacity to
10 resolve existing congestion problems and to
11 accommodate future growth. These include two major
12 radial corridors, Sunset and I-5, and in two major
13 circumferential corridors, Highway 217 and the
14 Tualatin-Hillsboro Corridor (Western Bypass). There
is no major facility serving the Tualatin-Hillsboro
Corridor -- between I-5 in Tualatin and the Sunset
Highway north of Hillsboro. The Western Bypass is
proposed to accommodate travel between these two major
radial corridors.

14 "Metro's Southwest Corridor Study, which began in 1984
15 and was completed in 1987, concluded that the
16 Tualatin-Hillsboro Corridor Project was the preferred
17 alternative to meet regional circumferential travel
18 needs in the County. In addition to providing
19 capacity, the project would: 1) improve access
20 between job and labor force markets in the Tualatin
21 and Hillsboro areas; 2) improve access between new
22 industrial development in the Sunset Corridor area and
23 I-5; and 3) provide greater traffic relief on arterial
24 and collector streets in South Beaverton and South
25 Tigard neighborhoods and on the T.V. Highway between
26 Murray Boulevard and 219th Avenue.

21 "Local support for this corridor project is
22 widespread. This project is the County's number one
priority for inclusion in the Oregon Department of
Transportation Six-Year Plan scheduled for adoption in
1988. The County and Metro have entered into an
24 agreement to review and analyze the land use
25 implications of this facility and prepare the
26 statewide planning goal findings or exceptions as may
be required. Part of the land use consideration
process and preliminary engineering will have to

1 include a determination of the appropriate agency to
2 have jurisdiction over this facility.

3 "Preliminary engineering and establishing a more
4 precise alignment and making facility design decisions
5 are the next steps in this process. It is anticipated
6 that this project will be analyzed and constructed in
7 segments, beginning with the I-5 to Highway 99W
8 section, continuing with work on the north section
9 between the Sunset and Tualatin Valley Highways, and
10 concluding with construction of the mid-section,
11 between Highway 99W and the Tualatin-Valley Highway.
12 While support for this project is strong, obtaining
13 funding in the Oregon Department of Transportation's
14 Six-Year Plan will be critical to advancing the
15 project. Potential extension of this project north of
16 the Sunset Highway into the State of Washington also
17 remains an outstanding issue, and is under study by a
18 bi-state committee." (Emphasis added). TPU at 62-63.

19 The above quoted language certainly can be read to suggest,
20 as petitioner claims, that the county has already embraced
21 Metro's reasons and explanation for a need for the Western
22 Bypass. It also can be read to imply the county has rejected
23 other alternatives that may not raise the same goal issues
24 petitioner asserts must be answered to approve a highway within
25 the Western Bypass Corridor. The language further suggests
26 that the county views the remaining tasks as limited to
27 selection of a specific alignment within the identified Western
28 Bypass Corridor, without consideration of other possible
29 transportation solutions outside the Western Bypass Corridor.

30 Respondents answer that the county has not adopted the
31 disputed plan language as a legally enforceable part of the
32 plan. According to the respondents, the above-quoted language
33 was adopted by Resolution 88-178 and is informational only. We
34 understand respondents to argue that although the above-quoted

1 language is included in the TPU document, it should be read
2 only to describe what the county might do in the future, not
3 what it has decided to do as part of the TPU. Respondent argues

4 "Petitioner complains that Respondent adopted Metro's
5 analysis of traffic volumes as the 'need' or 'reason'
6 which would justify a freeway. Apparently this
7 conclusion was drawn from the statement that Metro
8 concluded that the Tualatin-Hillsboro Corridor Project
9 was the preferred alternative. Respondent has not
10 reached that conclusion, it is Metro's finding, and
11 through the process set forth in the Memorandum of
12 Understanding is subject to further review.

13 "Petitioner states that the county has chosen this
14 facility over the other alternatives outlined in the
15 Southwest Corridor Study. The plan does not so
16 provide. * * *" Respondent's Brief 17.

17 Intervenor-respondent Metro further explains:

18 "The MOU clearly indicates decision points at
19 different points in the coordination of federally
20 mandated planning and statewide goal analysis. The
21 first decision point, indicated by an asterisk, is the
22 Goal 14 and Goal 11 findings prior to or simultaneous
23 with the [Draft Environmental Impact Statement] DEIS
24 analysis. Possible conflict with these less site
25 specific goals must be resolved as part of the DEIS
26 process. If the Western Bypass Corridor cannot comply
27 with Goals 11 and 14, there is no need to go further
28 in the DEIS process. Data developed in the DEIS
29 process if Goals 11 and 14 compliance is demonstrated
30 is used by the county to make Goal 3, 4, 5, 6 findings.

31 "The result of both these goal findings and the DEIS
32 analysis yield the true 'preferred alternative' and
33 'build/no build' decision point. At this time both
34 the federal process and the county process have tested
35 the preliminary system's level analysis from the
36 Southwest Corridor Study 'on the ground' to determine
37 the preferred alternative to compete for construction
38 funding. If statewide goal compliance is not
39 demonstrated at this stage, that yields a 'no build'
40 decision. * * *" Intervenor-Respondent's Brief 13-14.

41 Our problem with accepting respondents' argument at face
42 value is that the cited TPU language does suggest the county

1 has adopted the position petitioner argues the county adopted.
2 The goal findings adopted by the county clearly do not even
3 attempt to address all the goal issues that would have to be
4 addressed to approve a freeway within the Western Bypass
5 Corridor, and respondents concede the findings adopted are not
6 adequate for that purpose.¹³ The critical issue in this
7 appeal is whether there are bases for concluding that the
8 county has not adopted the position the language in the TPU,
9 cited supra, would suggest it has adopted.

10 As noted earlier in this opinion, portions of the TPU were
11 adopted by ordinance. The language petitioner disputes is not
12 contained in the part of the TPU adopted by ordinance. Rather,
13 it is adopted as the part of the plan document adopted by
14 Resolution 88-178 which, according to language in the
15 resolution, is "informational only." Record 24.

16 While the legal consequences of adopting parts of the plan
17 by ordinance and other parts by resolution may be obvious to
18 respondents, it is not obvious to us. Specifically, we are
19 cited to nothing in the ordinances, Resolution 88-178 or
20 elsewhere in the record to suggest that the county could not
21 have adopted as effective planning decisions the decisions
22 petitioner fears the county has adopted in the quoted language
23 in the TPU, simply because they were adopted by resolution.
24 See Multnomah County v. City of Fairview, ___ Or LUBA ___ (LUBA
25 Nos. 88-035/88-076, December 23, 1988) slip op 15-17, aff'd 96
26 Or App 14 (1989). It is true that Resolution 88-178 refers to

1 the portion of the TPU it adopts as "informational only," but
2 that does not clearly answer the question.¹⁴

3 The TPU generally follows the format of presenting
4 introductory discussion for each separate part or element of
5 the TPU. As far as we can tell, this discussion was adopted by
6 Resolution 88-178. This introductory discussion is followed by
7 policies and implementing strategies which were adopted by
8 Ordinances 332 and 333. The TPU also includes a total of 23
9 figures, many of which are maps. Some of the maps were adopted
10 by Ordinance 332 and 333, and some were adopted by Resolution
11 88-178.

12 The Western Bypass is depicted on a number of maps,
13 including some of the maps adopted by Ordinances 332 and 333.
14 However, there is nothing in the legend of the maps or the
15 associated text to explain the legal effect, if any, of
16 depicting the corridor on the maps.¹⁵

17 The section of the TPU containing the language petitioner
18 challenges is entitled "Major and Outstanding Issues." TPU
19 62. As respondents argue, this entire section of the plan was
20 adopted by Resolution 88-178. The first three paragraphs in
21 the "Major and Outstanding Issues" section explain:

22 "Planning is an on-going process and at any point in
23 time there are bound to be activities that are in
24 progress or under study. Such is the case with the
25 Transportation Plan. Some decisions that will affect
26 the Plan are awaiting the conclusion of separate study
processes. There are other issues that are beyond the
scope of work for this Plan, but which could be
addressed under separate work programs.

1 "This Plan section identifies two major projects and
2 several outstanding plan-related issues that will
3 continue to occupy the Department in the future;

3 * * * * *

4 * * * Two major projects proposed in the Plan deserve
5 additional attention, however, because of their size,
6 costs and influence on transportation system
7 performance during the next twenty years. These are
8 the proposed Westside Lightrail Project and the
9 Tualatin-Hillsboro Corridor Project (Western
10 Bypass)." (Emphasis added). TPU 62.

11 As we noted earlier in this opinion, we require land use
12 decision makers to adopt findings "sufficient to enable this
13 Board on review to determine that potentially applicable goals
14 were in fact not applicable after all." Concerned Property
15 Owners of Rocky Point v. Klamath County, 3 Or LUBA 182, 185
16 (1981). Here, the county's findings are sufficient to make it
17 clear that the county is deferring consideration of goal issues
18 concerning the Western Bypass. However, those findings do not
19 explain why the goals do not apply to the decision the county
20 adopted at this time. Without such findings, we are unable,
21 based on the language in the TPU, to agree with the county that
22 it did not take a position on the Western Bypass which requires
23 findings concerning the goals petitioner identifies. All
24 planning decisions are tentative, in the sense they may be
25 changed at a later time. The TPU language we are cited simply
26 suggests the county's current decision to embrace the Western
Bypass is subject to ongoing study and could change in the
future.

If the county wishes to include language in its TPU that

1 suggests it currently takes a position in favor of a particular
2 transportation proposal (i.e., a highway on an undetermined
3 alignment within the Western Bypass Corridor), it must either
4 (1) make it clearer than it did in the appealed decision that
5 such language is without legal effect, or (2) address goal
6 issues that may be implicated by selecting that particular
7 transportation proposal rather than other alternatives.

8 The county amended its comprehensive plan and, therefore,
9 has a duty to adopt findings demonstrating the amendment
10 complies with the goals. We reject petitioner's argument that
11 the goals impose the same requirements on all plan amendments,
12 regardless of the nature or legal effect of the plan
13 amendment. However, the county's decision and the findings it
14 adopted are not sufficient to explain what the nature and the
15 legal effect of the county's plan amendments concerning the
16 Western Bypass are, and why those amendments comply with
17 applicable goal criteria.

18 We do not believe that simply designating an area for
19 future study would, by itself, necessarily implicate goal
20 standards or require goal exceptions. On the other hand,
21 neither would designating an area for future study, by itself,
22 later excuse a local government from applying goal criteria or
23 taking any required exceptions needed to implement planning
24 decisions that result from that future study. If, as
25 respondents argue, the county intended the disputed language
26 and other portions of the TPU adopted by Resolution 88-178 to

1 be without legal effect, in the sense those portions of the TPU
2 express no statement of land use planning policy or choice, the
3 county may revise the TPU language to express that intent and
4 adopt findings to explain that position.

5 The county's decision is remanded.

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FOOTNOTES

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4 The nature of the county's decision is a critical issue in
5 this proceeding, and we discuss the nature of the county's
6 decision in more detail below.

7 2
8 Metro's enabling legislation appears at ORS Chapter 268.
9 ORS 268.390 provides in part:

- 10 "[Metro] shall:
11
12 "(1) Define and apply a planning procedure which identifies
13 and designates areas and activities having significant
14 impact upon the orderly and responsible development of
15 the Metropolitan Area, including, but not limited to,
16 impact on:
17
18 "(a) Air quality;
19 "(b) Water quality; and
20 "(c) Transportation.
21
22 "(2) Prepare and adopt functional plans for those
23 areas designated under subsection (1) of this
24 section to control metropolitan area impact on
25 air and water quality, transportation and other
26 aspects of metropolitan area development the
council may identify.

" * * * * "

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20 Intervenor-respondent Metro explains:
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22 " * * * Metro is the Metropolitan Planning Organization
23 (MPO) responsible for regional highway planning in
24 the Portland area. 23 CFR 450.140(3) states that the
25 MPO is 'the forum for cooperative transportation
26 decisionmaking' and the designation of the MPO is by
agreement of local governments and the Governor.
23 CFR 450.106(a).

"As the MPO, Metro receives federal transportation
planning funds based on a Unified Planning Work Plan
(UPWP) it is required to develop. The Southwest
Corridor Study was a multi-year planning study by

1 Metro, supported by federal funds that could be
2 obtained only because the Study was part of the UPWP.
3 The Southwest Corridor Study identifies the Western
4 Bypass as the 'preferred alternative' facility to
5 address the identified need from a systems level
6 analysis.

7 "A federal urban transportation plan (the [Regional
8 Transportation Plan] RTP) and a transportation
9 improvement program (TIP) are mandatory products of
10 federal transportation planning for urban areas. 23
11 CFR 450.110. The RTP describes transportation
12 policies, strategies and facilities and it must
13 include an analysis of system management strategies to
14 make more efficient use of existing transportation
15 systems. The TIP is a multi-year program of projects
16 consistent with the RTP. Projects must be included in
17 the TIP to obtain federal planning or construction
18 funding. 23 CFR 450.204(c). The Western Bypass is
19 included in the 1989 RTP. It is not included in the
20 five-year TIP." Intervenor-Respondent's Brief 6-7.

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The study includes the following discussion by Metro concerning the order in which adoption of the Southwest Corridor Study, adoption of amendments to the Regional Transportation Plan and consideration of the Statewide Planning Goals (goals) should proceed:

"After the public hearing, meetings were held with the Department of Land Conservation and Development to ensure that land use requirements will be met to their satisfaction. As a result, it has been agreed that the following process will be followed, the first step of which is adoption of this resolution.

"1) Metro adopt proposed resolution to:

"Adopt the Southwest Corridor Study
Conclusions and Recommendations.

"Direct staff to incorporate appropriate
portions into the next ordinance to update
the Regional Transportation Plan.

"Direct staff to prepare an
intergovernmental agreement with Washington
County for the purpose of resolving land use
issues and incorporate appropriate portions
into the next ordinance to update the

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Regional Transportation Plan.

"This action concludes the Southwest Corridor Study and directs that the recommended improvements be incorporated into the next ordinance to update the RTP. The Western Bypass corridor would be identified in the RTP with the condition that satisfying land use requirements must occur on the segment between Highway 99W and T.V. Highway.

"2) Metro adopt ordinance to update the RTP, to include:

"The recommended improvements from the Southwest Corridor Study, including the Western Bypass corridor.

"A process and timeframe for satisfying the land use conditions on the Western Bypass, to include necessary land use actions by Washington County and/or Metro; this would ensure a timely process to address the land use issues with the clear recognition that if at the conclusion of this process the Bypass cannot comply with land use requirements, an RTP amendment will not be needed to remove the Bypass. A process will begin to address the problem in another manner.

"3) Land use process, to be conducted immediately following the RTP amendment:

"This process will ensure that land use requirements are met for the segment of the Bypass from Highway 99W to T.V. Highway, especially whether or not the facility will be located outside the Urban Growth Boundary and whether or not this also requires the use of 'farm' or 'forest' lands. The process will conclude with any amendments and/or exceptions that are required by Metro and/or Washington County (although a more detailed analysis of the impact on 'farm' or 'forest' land may be needed as part of the Draft EIS, resulting in adoption of an exception to Goals 3 and/or 4 by Washington County on the issues of which 'farm' or 'forest' land will be impacted).

"4) Highway engineering and environmental studies:

1 "Upon adoption of the RTP amendment, preliminary
2 engineering and preparation of a Draft EIS for
3 the segment of the Bypass from I-5 to Highway 99W
4 could proceed immediately. ODOT will consider
5 whether or not to proceed as part of their next
6 Six-Year Highway Program update.

7 "Additional highway reconnaissance engineering
8 and environmental analysis will be initiated for
9 the segment from Highway 99W to T.V. Highway to
10 provide information needed for the land use
11 process. Initially, this will be undertaken by
12 Washington County but could be supplemented with
13 ODOT funding. ODOT will decide whether or not to
14 commit to supplemental funding as part of the next
15 Six-Year Highway Program update. The full
16 preliminary engineering/Draft EIS work will not
17 be initiated until after the land use process has
18 been concluded, at least for the Urban Growth
19 Boundary compliance issue.

20 "Proposed Action: Add language to the Resolution and
21 Recommendations to clearly indicate that the above
22 adoption process is followed to ensure compliance with
23 land use requirements." Record Exhibit 121,
24 Appendix C, 5-7.

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The parties advised the Board at oral argument on March 13, 1989 that Metro adopted amendments to the RTP on March 9, 1989, in accordance with recommendations in the Southwest Corridor Study. On March 30, 1989 the Board received a notice of intent to appeal in Sensible Transportation Options for People v. Metropolitan Service District, (LUBA No. 89-030). According to the notice of intent to appeal in that case, the challenge concerns Metro Ordinance 89-282 which "involves the 1989 update of the Metropolitan Service District Regional Transportation Plan."

6

The parties in this appeal direct their arguments at the TPU rather than the Comprehensive Framework Plan for the Urban Area or the Rural/Natural Resource Plan. As part of the record in this proceeding the county submitted the published version of its Transportation Plan, which incorporates the amendments adopted by Ordinances 332 and 333 and Resolution 88-178. In this opinion we shall refer to that document as the TPU.

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3 The terminology used to refer to the Western Bypass
4 Corridor in the TPU varies somewhat. As far as we can tell,
5 all references in the TPU are to the same corridor shown as the
6 Western Bypass in the Southwest Corridor Study, and we shall
7 generally refer to the proposal as the Western Bypass in this
8 opinion.

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11 In particular, amici's citation of our decision in Turner
12 v. Washington County, 8 Or LUBA 234 (1983) and the discussion
13 of that case on page 14 of the amicus brief is relevant to one
14 of the legal issues raised in this proceeding. We discuss our
15 decision in Turner below.

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18 Petitioner also cites a number of cases decided by this
19 Board where post acknowledgment plan amendments have been
20 reversed or remanded because of a failure to comply with the
21 goals. DLCD v. Klamath County, ___ Or LUBA ___ (LUBA No.
22 87-019, August 28, 1987); Hammack and Associates v. Washington
23 County, ___ Or LUBA ___ (LUBA No. 87-037, September 11, 1987);
24 Loos v. Columbia County, ___ Or LUBA ___ (LUBA No. 87-103,
25 April 1, 1987); Schaeffer v. Jackson County, ___ Or LUBA ___
(LUBA No. 88-029, August 11, 1988).

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28 We also noted in our decision in Turner, that no one
29 questioned in that case whether a decision on a conditional use
30 permit that explicitly defers determination of goal and plan
31 related transportation issues was a final decision. See
32 Turner, supra, at 242 n 6.

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34 11
35 For example, an amendment of the plan map and the plan
36 policies affecting property located within the Willamette
37 Greenway would almost certainly require findings to address
38 applicable criteria in Goal 15 (Willamette River Greenway) and
39 could implicate other goals (e.g., Goal 3 (Agricultural Lands),
40 Goal 4 (Forest Lands), Goal 5 (Open Spaces, Scenic and Historic
41 Areas, and Natural Resources), etc.). However, such a decision
42 likely would not implicate Goal 16 (Estuarine Resources), Goal
43 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes) or Goal 19
44 (Ocean Resources).

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For example, a decision to amend a comprehensive plan to adopt larger scale maps or present factual data in a different manner might raise no goal compliance issues and, therefore, require no goal findings, beyond any findings required to explain why no goals issues are raised by the decision. On the other hand, a decision to change a plan map designation for a large area from high density residential to industrial would likely implicate Goal 9 (Economy of the State), Goal 10 (Housing), Goal 11 (Public Facilities and Services) and could raise issues under a number of other goals.

13

Although the parties all agree construction of a facility within the Western Bypass Corridor will at least require the county to address goal requirements that have not yet been addressed, the parties do not appear to agree on all particulars about how the goals will ultimately apply to the Western Bypass facility.

14

We also note that the published TPU incorporating the changes adopted by Ordinance 332 and 333 and Resolution 88-178 notes in the preface on page iii that parts of the TPU were adopted by ordinance and parts were adopted by resolution. The preface does not however explain that the parts adopted by Resolution 88-178 are "informational only" or explain the legal effect of the portion of the plan adopted by resolution. Therefore, a reader of the TPU would have no basis for concluding that portions of the TPU adopted by Resolution 88-178 which appear to express planning policy or choice do not actually do so.

15

At oral argument, respondent advised the Board that depicting the corridor on the maps in the TPU had no legal effect on ongoing land use decisions subject to the TPU.