

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 MARGE DAVENPORT,)
5)
6 Petitioner,)
7)
8 vs.)
9)
10 CITY OF TIGARD,)
11)
12 Respondent,)
13)
14 and)
15)
16 TRIAD TIGARD LIMITED PARTNERSHIP,)
17 and ROSS WOODS,)
18)
19 Intervenors-Respondent.)
20
21

LUBA No. 92-078
FINAL OPINION
AND ORDER

22 Appeal from City of Tigard.

23
24 Richard M. Whitman, Portland, filed the petition for
25 review and argued on behalf of petitioner. With him on the
26 brief was Ball, Janik & Novack.

27
28 Timothy V. Ramis and Michael C. Robinson, Portland,
29 filed the response brief. With them on the brief was
30 O'Donnell, Ramis, Crew & Corrigan. Michael C. Robinson
31 argued on behalf of respondent.

32
33 Stephen L. Pfeiffer, Portland, represented intervenors-
34 respondent.

35
36 HOLSTUN, Chief Referee; SHERTON, Referee; KELLINGTON,
37 Referee, participated in the decision.

38
39 AFFIRMED 8/11/92
40

41 You are entitled to judicial review of this Order.
42 Judicial review is governed by the provisions of ORS
43 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioners appeal an amendment to the Tigard
4 Comprehensive Plan (TCP) Transportation Map.

5 **MOTION TO INTERVENE**

6 Triad Tigard Limited Partnership and Ross Woods move to
7 intervene on the side of respondent. There is no opposition
8 to the motion, and it is allowed.

9 **FACTS**

10 The challenged decision adopts legislative amendments
11 to the TCP Transportation Map. The decision provides as
12 follows:

13 "The City Council hereby amends the [TCP]
14 Transportation Map by 1) designating Naeve Street
15 a local street, 2) establishing a new extension
16 for 109th Avenue from its current terminus south
17 of Murdock Street to Pacific Highway; the
18 extension would curve across the south slope of
19 Little Bull Mountain, crossing Naeve Street west
20 of The Fountains condominiums and meeting Pacific
21 Highway opposite the existing intersection of
22 Royalty Parkway, 3) designating 109th Avenue as a
23 minor collector between Canterbury Lane and
24 Pacific Highway, * * * 4) establishing a local * *
25 * street [the Sattler Street Extension], to
26 connect between 100th and 109th Avenues at a
27 location north of Hoodview Drive, and 5) add
28 Comprehensive Plan Transportation Map Notes #9 and
29 #10, as shown in Exhibit ['C']." (Emphases in
30 original omitted.) Record 11.

31 We reviewed and remanded similar amendments in
32 Davenport v. City of Tigard, ___ Or LUBA ___ (LUBA Nos. 91-
33 133 and 91-137, January 28, 1992) (Davenport I). Following
34 our remand, the city revised the amendments in several

1 respects, conducted an additional public hearing, and
2 adopted the disputed amendments, and supporting findings.¹

3 **FIRST ASSIGNMENT OF ERROR**

4 In Davenport I, we remanded the city's decision for
5 failure to adopt findings establishing that the challenged
6 decision would not affect Goal 5 (Open Spaces, Scenic and
7 Historic Areas, and Natural Resources) resource sites
8 included on the TCP inventory of Goal 5 sites. We explained
9 that if the proposal will conflict with inventoried Goal 5
10 sites, the city must demonstrate such conflicts will be
11 resolved in accordance with the requirements of that Goal
12 and OAR 660, Division 16.² On remand, the city adopted
13 findings that the TCP Transportation Map amendments will not
14 conflict with inventoried Goal 5 sites.

15 Under her first assignment of error, petitioner
16 contends the city ignored two inventoried Goal 5 sites and
17 effectively revised its Goal 5 resource site inventory to
18 avoid addressing the impacts on two other sites.

¹The present amendments differ from the prior amendments in two ways. First, in the city's prior decision the Sattler Street Extension (item number 4 in the text) was designated as a minor collector street rather than as a local street. Second, the contents of TCP Transportation Map Notes #9 and #10 have been changed. The provisions of prior TCP Transportation Map Note #10 were one of the bases for our remand.

²OAR 660, Division 16 establishes a process whereby Goal 5 resource sites must be inventoried, conflicting uses and their consequences identified, and a program adopted to resolve those conflicts.

1 **A. The City's Goal 5 Inventory**

2 An underlying problem in assessing the city's
3 explanation for why it believes no Goal 5 resource sites
4 will be affected by the adopted TCP Transportation Map
5 amendments is that the written descriptions of the
6 inventoried Goal 5 resource sites are not precise. Neither
7 are the relevant maps, which are at a scale of 1 inch equals
8 1,200 feet. Therefore, the precise location and extent of
9 inventoried Goal 5 sites is ambiguous.

10 The above sources of ambiguity are compounded by the
11 TCP's lack of clarity in identifying precisely what portion
12 of the TCP the city intends to constitute the inventory of
13 Goal 5 resource sites. Volume 1 of the TCP is identified as
14 the TCP Resource Document. The Natural Features and Open
15 Space section of that document is included at pages I-17
16 through I-114. Pages I-17 through I-52 include both maps
17 and textual discussion of natural hazards and resources.³
18 Pages I-53 through I-114 are designated as an appendix. The
19 first eight sections of the appendix provide information on

³TCP I-33 is a topographical map showing the approximate location of the Little Bull Mountain Summit. TCP I-39 is a map showing vegetation. That map shows the area ultimately identified by the city as the Little Bull Mountain Natural Forest as including mostly coniferous forest, but also including a smaller deciduous and mixed deciduous and coniferous forest. The map also shows additional areas of coniferous forest south and east of the area the city identified as the Little Bull Mountain Natural Forest. Little Bull Mountain is described as a wildlife area. TCP I-40 The Little Bull Mountain Summit is described as a particularly valuable scenic and wildlife area suitable for preservation, through fee purchase if necessary. TCP I-42, I-43. We discuss the Little Bull Mountain Natural Forest and Summit in more detail below.

1 hydrology, floodplains and wetlands, geology, groundwater,
2 soils, existing vegetation, wildlife and parks. TCP I-53 to
3 I-93. The portion of the appendix beginning on I-94 is
4 entitled "ESEE."⁴ Appendix I-94 to I-96 appears to be a
5 very general inventory, conflict identification, ESEE
6 analysis and program decision followed by a section entitled
7 "Identified Resources" which identifies a total of 20 sites
8 and describes the nature of those sites and how they will be
9 preserved or protected. TCP I-96 through I-108. TCP I-109
10 is a gross scale map showing the approximate location of the
11 20 sites, and TCP I-110 to I-114 is a bibliography.

12 Although the information and discussion of Goal 5
13 resource sites provided at TCP I-17 through I-93 certainly
14 may be relevant in clarifying precisely what areas the city
15 included on its inventory of Goal 5 resource sites, we agree
16 with respondent that the proper focus is on the 20 sites
17 identified on pages I-96 through 1-108. Those pages of the
18 TCP constitute the city's inventory of Goal 5 resource
19 sites. TCP pages I-17 through I-93 includes text and maps
20 that can be read to suggest that the inventory should have
21 included additional or perhaps larger sites. However, we do
22 not believe such textual or graphic material provides a
23 basis for expanding the city's Goal 5 inventory on TCP I-96

⁴Under OAR 660-16-005 local governments are required to identify conflicts with inventoried Goal 5 resource sites and analyze the economic, social, environmental and energy (ESEE) consequences of those conflicts. See Knapp v. City of Jacksonville, 20 Or LUBA 189, 197 (1990).

1 through I-108 or including sites not identified on the map
2 at TCP I-109. Again, TCP I-17 through I-93 can be used to
3 assist in determining the precise location of sites the city
4 included on the Goal 5 inventory set out on TCP I-96 through
5 I-108, but those pages may not be the basis for including
6 sites that were not included or expanding the sites that
7 were included.⁵

8 Before turning to the specific Goal 5 sites with which
9 petitioner contends the challenged decision conflicts, we
10 reject petitioner's suggestion that the city in this
11 proceeding amended its Goal 5 inventory maps. As discussed
12 above, the precise location and extent of the city's
13 inventoried Goal 5 resource sites is ambiguous. We
14 understand the map prepared on remand by city staff simply
15 to be an attempt to perform its obligation to resolve the
16 present TCP ambiguity in the area affected by this TCP
17 amendment. See Larson v. Wallowa County, ___ Or LUBA ___
18 (LUBA Nos. 92-008, 92-009, 92-011 and 92-013, July 21,
19 1992), slip op 10-12. In other words, the map prepared by
20 city staff is not a part of the TCP but rather a graphic
21 attempt to resolve the current TCP ambiguity, much in the
22 way written interpretive findings may resolve ambiguous

⁵We do not mean to suggest the city cannot in an appropriate proceeding amend its inventory of Goal 5 resource sites to add sites or modify the location of presently designated sites. However, that is not what occurred in this case.

1 local legislation.⁶

2 **B. Little Bull Mountain Natural Forest**

3 The city found that the Little Bull Mountain Natural
4 Forest is an inventoried Goal 5 resource site in the
5 vicinity of the proposed alignment for 109th Avenue.
6 However, the city determined that the Little Bull Mountain
7 Natural Forest lies west of 109th Avenue and at a higher
8 elevation than the approved 109th Avenue alignment. The
9 city also found that the Little Bull Mountain Natural Forest
10 was not inventoried as a significant wildlife area, but
11 rather for its scenic value. Because the proposed alignment
12 of 109th Avenue will pass to the east and south of the
13 Little Bull Mountain Natural Forest, the city concluded
14 there would be no conflict with this Goal 5 resource site.
15 In reaching these conclusions and more precisely identifying
16 the location of the Little Bull Mountain Natural Forest, the
17 city relied largely on the following language in the TCP
18 Goal 5 inventory:

19 "The Little Bull Mountain natural forest area
20 located on the west side of Little Bull Mountain
21 was determined to be a significant Goal #5
22 resource as an outstanding scenic site. The size

⁶The map prepared by staff and accepted by the city as accurately delineating inventoried Goal 5 resource sites in the area is actually an aerial photograph. Two equally illegible copies of the map prepared by staff are included at Record 30 and 70. The original of that map was provided at oral argument. The map shows the Little Bull Mountain Forest near the top of the map and the Kallstrom Fir Grove adjacent to the area designated for the local street connection between 100th Avenue and 109th Avenue.

1 of the treed area includes approximately 24.9
2 acres. The wildlife within the site is limited to
3 small birds and animals. The major significance
4 of this area is its visual impact viewed from many
5 vantage points within Tigard. This area is the
6 largest stand of * * * coniferous trees within the
7 Tigard active urban planning area, and, therefore,
8 serves as a City visual landmark." (Emphases
9 added.) TCP I-96.

10 Petitioner argues the city's determination that 109th
11 Avenue will not pass through the Little Bull Mountain
12 Natural Forest is inconsistent with the text and maps
13 included in the plan.

14 The area the city determined to be included in the
15 Little Bull Mountain Natural Forest appears to include the
16 summit, but otherwise appears to fall entirely on the west
17 side of Little Bull Mountain. Record 30; TCP I-33, I-39.
18 The area identified by the city therefore is generally
19 consistent with the above quoted statement in the inventory
20 that it is on the west side of the mountain. However, the
21 inventory also states the Little Bull Mountain Natural
22 Forest includes approximately 24.9 acres. It is impossible
23 to accurately compute the size of the area of the Little
24 Bull Mountain Natural Forest shown on the map prepared by
25 the city staff, but it appears to contain less than 24.9
26 acres.⁷ However, there clearly are not 24.9 acres of

⁷The map prepared on remand does not include a scale. If our calculations are correct, an area of 24.9 acres would cover nearly a square inch on the maps included at TCP I-33 and I-39. If the area shown as the Little Bull Mountain Natural Forest on the map prepared by staff is

1 coniferous forest on the west side of Little Bull Mountain.
2 The only way to include 24.9 acres within the Little Bull
3 Mountain Natural Forest would be to include a large area of
4 coniferous forest on the east and southeast sides of the
5 mountain.

6 Based on the above, we conclude precise identification
7 of the Little Bull Mountain Natural Forest necessarily
8 requires the city to resolve a conflict in the TCP inventory
9 language. The city's determination that the Little Bull
10 Mountain Natural Forest includes only the forested area
11 generally on the west side of the mountain is at least as
12 consistent with the TCP inventory language as including
13 sufficient forested areas on the eastern and southern sides
14 of the mountain to attain 24.9 acres. McCoy v. Linn County,
15 90 Or App 271, 752 P2d 323 (1988).

16 We therefore agree with the city that it was not
17 required to proceed through the Goal 5 conflict resolution
18 process with regard to the Little Bull Mountain Natural
19 Forest.⁸

approximated on those maps, it appears to be somewhat smaller than 24.9 acres.

⁸Our determination that the city's delineation of the location of the Little Bull Mountain Natural Forest is correct produces some arguable discrepancies with other non-inventory portions of the plan. For example, if the Little Bull Mountain Natural Forest includes the summit, the inventory does not acknowledge the valuable wildlife habitat values noted at TCP I-42. Additionally, while the area ultimately identified as the Little Bull Mountain Natural Forest apparently includes a small area of deciduous and mixed deciduous and coniferous forest, the inventory refers only to coniferous forest. We acknowledge the apparent discrepancies, but for the reasons described earlier in the text it does not alter our

1 **C. Little Bull Mountain Summit**

2 Petitioner identifies language in the non-inventory
3 portion of the TCP discussing the Little Bull Mountain
4 Summit as a valuable wildlife and visual resource. See n 3,
5 supra. However, the city did not list the Little Bull
6 Mountain Summit as a separate resource site on its Goal 5
7 inventory.

8 As far as we can tell, the Little Bull Mountain Summit
9 is included within the area ultimately identified by the
10 city as the Little Bull Mountain Natural Forest. The
11 proposed 109th Avenue alignment will therefore pass east of
12 the Little Bull Mountain Summit rather than crossing it, as
13 petitioner argues. In addition to explaining that the
14 Little Bull Mountain Summit is not a separately inventoried
15 Goal 5 resource site, the city explains in its decision that
16 the summit's primary value is for the views of the summit
17 from the surrounding city. Because the 109th Avenue
18 alignment will pass east of the summit and at a lower
19 elevation, the city determined the summit would not be
20 adversely impacted.

21 We agree with the city that it was not required to
22 proceed through the Goal 5 conflict resolution process with
23 regard to the Little Bull Mountain Summit.

conclusion that the city's explanation for its determination concerning the location of the Little Bull Mountain Natural Forest is adequate.

1 **D. Kallstrom Fir Grove**

2 The TCP Goal 5 inventory describes the Kallstrom Fir
3 Grove as follows:

4 "It has been determined by the City that the
5 Kallstrom Fir Grove is a significant Visual and
6 Natural resource. Located on the east property
7 line of the Kallstrom property, the trees
8 represent the only major stand of Douglas Firs on
9 the south side of the Little Bull Mountain area.
10 Planted by the original owners of the property,
11 the unique row of trees represent[s] a visual
12 landmark for the residents in the area. There is
13 a small plaque along SW 100th denoting the fir
14 grove." TCP I-106.

15 The map prepared by the city staff shows the Kallstrom Fir
16 Grove as a narrow row of trees adjoining the proposed east-
17 west connection between 100th Avenue and 109th Avenue on the
18 north. The city adopted the following findings explaining
19 its determination that the proposed action will not conflict
20 with the Kallstrom Fir Grove:

21 "g. The Kallstrom Fir Grove is a row of mature
22 Douglas fir trees located adjacent to 100th
23 Avenue in an existing residential
24 neighborhood. * * * The only potential
25 conflict that the Plan identifies with
26 surrounding land uses is the possibility that
27 the trees might be cut down to make way for
28 future development.

29 "h. The proposed comprehensive plan amendment
30 could only have an adverse effect on the
31 scenic and natural values of the Kallstrom
32 Fir Grove if the proposed east-west
33 connection between 109th Avenue and 100th
34 Avenue required the trees to be cut down or
35 otherwise damaged the trees. * * * Although
36 the proposed plan amendment does not specify
37 the precise location of the future

1 connection, Exhibits A and C, as well as
2 testimony at the hearing, demonstrate that
3 the future connection will lie within an area
4 entirely outside the grove and that the
5 future connection can be located so as not to
6 require cutting or damaging the Grove. There
7 is ample room to place the proposed
8 connection up to several hundred feet from
9 the grove and at a sufficient distance to
10 prevent damage to the trees or interference
11 with their scenic value. * * *." Record 6.

12 Petitioner does not challenge the city's explanation
13 that the Kallstrom Fir Grove as shown on the map prepared
14 will not be affected by the streets authorized by the
15 challenged decision. Rather, petitioner argues the
16 Kallstrom Fir Grove is much larger than the row of trees
17 identified on the map prepared by staff.

18 Petitioner's arguments concerning the Kallstrom Fir
19 Grove presents less of a question than those concerning the
20 Little Bull Mountain Natural Forest. Here there is no
21 textual conflict to resolve. The above quoted TCP inventory
22 language explicitly refers to a "row of trees." We simply
23 have no basis upon which to question the above findings
24 concerning the location of the Kallstrom Fir Grove or the
25 map prepared by staff. Petitioner's speculation that the
26 fir grove must include more than a row of trees if it was
27 intended to be a natural resource in addition to a visual
28 resource provides an insufficient basis for this Board to
29 reject the city's interpretation. The city's interpretation
30 is consistent with the enacted language of the TCP; and, as
31 far as we can tell, it is consistent with the apparent

1 purpose and policy of the TCP. We therefore may not impose
2 on the city the broader interpretation of the area included
3 in the Kallstrom Fir Grove that petitioner suggests was
4 intended when the city adopted the TCP. Clark v. Jackson
5 County, 313 Or 508, 515, ___ P2d ___ (1992).

6 **E. Upshaw House/Gables House**

7 The Upshaw House is designated on the TCP Goal 5
8 resource site inventory as a significant historic resource.
9 TCP I-105. Petitioner contends the very gross scale map
10 showing inventoried Goal 5 resource sites shows the Upshaw
11 House as being located in an area where it might be affected
12 by the proposed connection between 109th Avenue and 100th
13 Avenue.

14 The city adopted no findings concerning the location of
15 or possible impacts on the Upshaw House. The reason for
16 this, according to respondent, is that the Upshaw House is
17 located east of 100th Avenue, not west of 100th Avenue in
18 the area where the connecting street will be constructed.
19 Based on the testimony and map included at Record 80 and 90,
20 respondent appears to be correct, and we therefore do not
21 fault the city for failing to adopt findings addressing
22 possible impacts of the challenged decision on the Upshaw
23 House.

24 The first assignment of error is denied.

25 **SECOND ASSIGNMENT OF ERROR**

26 TCP Policy 8.1.2 provides that:

1 "The city shall provide for efficient management
2 of the transportation planning process within the
3 city and the metropolitan area through cooperation
4 with other federal, state, regional and local
5 jurisdictions."

6 As we explained in our prior decision, the above TCP
7 Policy 8.1.2 implements statutory and Statewide Planning
8 Goal 2 (Land Use Planning) coordination obligations. In
9 Rajneesh v. Wasco County, 13 Or LUBA 202, 210 (1985) we
10 described "the two procedural hallmarks of a comprehensive
11 plan that is coordinated with other governmental units" as
12 follows:

13 "1. The makers of the plan engaged in an exchange
14 of information between the planning
15 jurisdiction and affected governmental units,
16 or at least invited such an exchange.

17 "2. The jurisdiction used the information to
18 balance the needs of all governmental units
19 as well as the needs of citizens in the plan
20 formulation or revision."

21 In Davenport I, one of our reasons for remanding the
22 city's prior decision in this matter was that while the
23 Oregon Department of Transportation (ODOT) participated in
24 the proceedings leading up to adoption of the challenged
25 decision, see Tektronix, Inc. v. City of Beaverton, 18 Or
26 LUBA 473, 485 (1989), neither the decision nor the record
27 established that the city coordinated its prior decision
28 with Washington County and the Metropolitan Service District
29 (Metro).

30 Petitioner argues that the only evidence in the record

1 that the city has performed its coordination obligations
2 under the above policy is a memorandum from the law firm
3 representing the applicant indicating contact with the ODOT,
4 Washington County and Metro shortly before the hearing on
5 remand. According to petitioner, it is the city that must
6 coordinate and, in any event, the attempts to coordinate by
7 the applicant's attorney came too late.

8 The record includes a February 10, 1992 memorandum from
9 the city associate planner to "Interested Parties"
10 explaining the content and history of the city's prior
11 decision and the proposed revisions. Record 121. The
12 memorandum explains the proposal would be considered by the
13 city council at a February 25, 1992 hearing. Id. Record
14 122 indicates the memorandum was sent to "Affected
15 Jurisdictions," including Washington County, the ODOT
16 Highway Division and Metro.

17 The challenged decision explains Washington County and
18 ODOT have known about the proposal since June 1991 and have
19 not submitted comments. The record indicates King City
20 supports the proposal. Record 51. On February 24 and 25,
21 1992, Washington County, the Metropolitan Service District
22 and ODOT were contacted by telephone by the applicant's
23 attorneys and indicated they had no comments.

24 There is nothing in the record to dispute the above
25 efforts to coordinate with the affected jurisdictions. That
26 some of the above coordination efforts were made by the

1 applicant rather than by the city is not important in this
2 case. What is important is that the nature of the proposed
3 action be clearly explained, the comments of affected
4 jurisdictions on that proposed action be solicited and, if
5 such comments are provided, that the city consider and
6 accommodate the interests of those jurisdictions as much as
7 possible. See ORS 197.010; 197.015(5); Statewide Planning
8 Goal 2; Rajneesh v. Wasco County, supra. As far as we can
9 tell, that occurred in this case. We agree with respondent
10 that the city is not required to "drag an answer out of the
11 affected governments." Respondent's Brief 16. The city
12 made sufficient efforts to coordinate under TCP Policy
13 8.1.2.

14 The second assignment of error is denied.

15 **THIRD ASSIGNMENT OF ERROR**

16 TCP Policy 8.1.1 provides as follows:

17 "The city shall plan for a safe and efficient
18 street and roadway system that meets current needs
19 and anticipated future growth and development."

20 In Davenport I, slip op at 13, petitioner argued that
21 "if the extension of 109th Avenue is not completed at the
22 same time the other improvements envisioned by the city's
23 decision, Naeve Street will provide the only outlet onto
24 Highway 99W and * * * that unsignalized intersection is
25 inadequate to perform that function safely." In its prior
26 decision, the city's finding addressing TCP Policy 8.1.1 was
27 simply a conclusion that the policy was satisfied. We

1 remanded, explaining as follows:

2 "Although TCP Policy 8.1.1 is very general, and
3 intervenors cite a number of places in the record
4 where safety, timing, and funding of improvements
5 is discussed, we agree with petitioners that the
6 city must explain why it believes the policy is
7 satisfied by the challenged decision." Davenport
8 I, slip op at 13-14.

9 Petitioner contends the city's findings on remand still
10 fail to adequately address the potential safety problems
11 that may occur if the Sattler extension is completed before
12 the new intersection with 99W such that S.W. Naeve, rather
13 than S.W. 109th provides the entry to 99W for the new east-
14 west roadway.

15 On remand the city adopted extensive findings
16 explaining why it believes the challenged plan amendments
17 are needed to accommodate anticipated growth and provide a
18 safe and efficient transportation system for the area. Most
19 of those findings are not challenged by petitioner. The
20 findings bearing on the issue raised by petitioner in this
21 appeal of the city's decision on remand are as follows:

22 "d. The plan eliminates the need for left turns
23 at the existing intersection of Naeve Street
24 and Highway 99W, thereby reducing the safety
25 concerns associated with the existing
26 unsignalized intersection. The plan also
27 eliminates the future need for a traffic
28 signal on 99W at Naeve Street. Reduction in
29 the need for signalized intersections on 99W
30 is consistent with ODOT's standards for
31 improving and protecting the efficient
32 movement of traffic on 99W as an Access
33 Oregon Highway.

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"* * * * *
"i. The Transportation Map does not address the schedule for construction of the various improvements indicated on the map. Implementation will depend on where and when land development occurs and on the availability of public funding for capital improvements. Off-site roadway improvements are considered as part of the development review process for land development projects and appropriate conditions of development are ordered for each project. * * * Moreover, the Council finds from the evidence presented that the timing concerns are unwarranted. The proposed plan amendment does not generate or introduce any new traffic within the area; it simply reroutes traffic within the area."
Record 8-9.

19 Petitioner's apparent premise under this assignment of
20 error is that the city is obligated under Policy 8.1.1 to
21 demonstrate in its findings supporting the challenged
22 legislative plan amendment that the future construction of
23 roadways made possible by the plan amendment will be timed
24 and accomplished in a way that avoids the possibility of
25 temporary safety problems. The city rejected that premise,
26 and so do we.

27 The above findings include a statement that, based on
28 the evidence submitted, "timing concerns are unwarranted."
29 Petitioner cites no evidence in the record establishing the
30 nature of the alleged current or potential unsafe condition
31 of the Naeve Street/99W intersection. This problem aside,
32 one of the purposes of the proposal is to alleviate safety
33 problems at that intersection. The findings explain that

1 off-site roadway improvements could be required in the
2 context of specific future development proposals in the
3 area, and could include, we assume, improvements to
4 eliminate or mitigate any safety problems at the Naeve
5 Street/99W intersection caused by the timing of the
6 construction of the roadways authorized by the challenged
7 plan amendments.⁹

8 The above findings go on to state that the TCP
9 Transportation Map amendment challenged in this proceeding
10 really has nothing to do with when the disputed roadway, or
11 in what order particular segments of that roadway are
12 built.¹⁰ In Davenport I, we explained that TCP Policy 8.1.1
13 is very general. In view of the general nature of the
14 policy, and the legislative nature of the challenged
15 decision, the above findings are adequate to explain why TCP
16 Policy 8.1.1 is satisfied by the challenged TCP
17 amendments.¹¹

⁹The findings explain that once the 109th Avenue connection with 99W is complete, the 99W median at the Naeve Street/99W intersection will be closed to prevent southbound turns onto 99W from Naeve Street, improving safety at that intersection. Record 51.

¹⁰As respondent correctly notes, as far as the record shows, petitioner's fear that the Sattler Street Extension will precede completion of the 109th Avenue intersection with 99W is purely speculative at this point.

¹¹Although the findings quoted in the text would be adequate in any event, the level of detail required to support legislative land use decisions is not as high as is required for quasi-judicial land use decisions. See Von Lubken v. Hood River County, ___ Or LUBA ___ (LUBA Nos.

1 We agree with the city that its findings need not
2 negate every potential safety problem that might result from
3 future implementation the improvements authorized by the
4 challenged plan amendments. Although it may be that the
5 potential for safety problems during construction of
6 improvements authorized by a legislative plan amendment such
7 as the one challenged in this proceeding could be shown to
8 violate a plan policy such as TCP Policy 8.1.1, petitioner
9 has not shown that such is the case here.

10 The third assignment of error is denied.

11 **FOURTH ASSIGNMENT OF ERROR**

12 Tigard Community Development Code (TCDC) 18.164.030(G)
13 requires, in part, that "[a]s far as practical, streets
14 shall be dedicated and constructed in alignment with
15 existing streets by continuing the centerline thereof."
16 Petitioner argues the Sattler Street Extension between 100th
17 Avenue and 109th Avenue violates this requirement.

18 In rejecting petitioner's arguments that provisions of
19 TCDC chapter 18.164 were violated by the city's prior
20 decision, we determined that the standards of TCDC chapter
21 18.164 are applicable at the time of street construction and
22 do not apply to comprehensive plan amendments. Davenport I,
23 supra, slip op at 10. Our decision in Davenport I was not
24 appealed, and petitioner therefore may not argue in this

91-103 and 91-103, November 8, 1991), slip op 9 n 7 (and cases cited therein).

1 appeal that provisions of TCDC chapter 18.164 are violated
2 by the city's decision on remand. Beck v. City of
3 Tillamook, 313 Or 148, 156, ___ P2d ___ (1992).

4 The fourth assignment of error is denied.

5 **FIFTH ASSIGNMENT OF ERROR**

6 TCP I-224 identifies the "primary function" of minor
7 collector and local streets. The stated primary function of
8 a minor collector "is to collect and transport traffic from
9 local neighborhoods and abutting property out of the
10 neighborhoods to major collectors and arterials." The
11 primary function of a local street "is to provide direct
12 access to abutting property and to allow traffic movement
13 within a neighborhood." Petitioner contends the primary
14 function the Sattler Street Extension will serve more
15 closely fits the TCP description of a minor collector.
16 Petitioner also questions the city engineer's testimony that
17 the expected traffic volumes on the Sattler Street Extension
18 will be approximately 700 vehicles per day.¹² For these
19 reasons, petitioner contends the city's designation of the
20 Sattler Street Extension as a local street was in error, and
21 will result in an inadequate street in violation of TCP
22 Policy 8.1.1, quoted and discussed above under the third
23 assignment of error.

¹²The TCP standard for traffic volume on minor collector streets is 500 to 3000 vehicles per day. The standard for local streets is 0 to 1,500 vehicles per day.

1 The Community Development Director and City Engineer
2 testified that they estimate the Sattler Street Extension
3 will carry approximately 700 trips per day. The conflicting
4 evidence that the Sattler Street Extension might actually
5 carry more trips per day does not so undermine the testimony
6 of city staff that the city could not reasonably rely on
7 that staff testimony.

8 The Sattler Street Extension will, in at least some
9 respects, perform the function of a minor collector.
10 However, it also appears from the record that the Sattler
11 Street Extension will provide access to abutting properties
12 and permit traffic movement within the neighborhood.
13 Whether the Sattler Street Extension's primary function more
14 closely approximates what the TCP describes for a minor
15 collector street or for a local street is debatable, and
16 certainly the choice between these two designations is
17 within the city's discretion. We see nothing in the TCP or
18 record that would require or permit this Board to substitute
19 its judgment of the proper classification of the Sattler
20 Street Extension for the one selected by the city. Clark v.
21 Jackson County, supra.

22 Finally, petitioner's arguments that the designation of
23 the Sattler Street Extension as a local street violates TCP
24 Policy 8.1.1 are all predicated on speculation that a
25 roadway built to the slightly lower standards applicable to
26 local streets may be inadequate and unsafe in the future.

1 We find petitioner's nonspecific speculations in this regard
2 insufficient to question the city's findings that the
3 proposed plan amendments will result in a safer and more
4 efficient roadway system, consistent with TCP Policy
5 8.1.1.¹³

6 **SIXTH ASSIGNMENT OF ERROR**

7 The provisions of TCDC 18.30.130(A) governing
8 legislative plan amendments require that the city planning
9 commission "formulate a recommendation to the Council to
10 approve, to approve with modifications or to deny the
11 proposed change, or to adopt an alternative * * *." The
12 planning commission made such a recommendation during the
13 local proceedings leading to the decision at issue in
14 Davenport I. However, as noted earlier in this opinion,
15 following our remand in Davenport I, the city revised the
16 proposed legislative plan amendments. Those revisions were
17 at least in part to respond to our remand. The city council
18 adopted the revised plan amendments without referring them
19 to the planning commission first. Petitioner contends the
20 city council's failure to do so violates both
21 TCDC 18.30.130(A) and ORS 227.100.¹⁴

¹³Petitioner simply argues that a wider right of way and pavement width may be needed in the future. A local street requires a 50 foot right of way and 34 foot wide pavement; a minor collector street requires a 60 foot right of way and 40 foot wide pavement.

¹⁴ORS 227.100 provides, in part, as follows:

1 We have rejected similar arguments in the context of a
2 permit decision that was substantially amended following
3 remand by this Board and adopted by the local governing body
4 without first referring the amended permit to the planning
5 commission for review.

6 "The [city code] does not require that the city,
7 in considering a decision remanded by LUBA, repeat
8 all the procedures followed in rendering the
9 initial decision. We have previously determined
10 that, absent code provisions to the contrary,
11 local procedural requirements that apply in
12 reaching the initial decision need not be followed
13 in local proceedings following remand unless the
14 remand specifically requires those procedures be
15 followed. See Lane County School Dist. 71 v. Lane
16 County, 15 Or LUBA 150, 153-54 (1986); Morrison v.
17 Cannon Beach, 8 Or LUBA 206, 209 (1983). In such
18 circumstances, so long as all parties are given an
19 adequate opportunity to comment upon the modified
20 application prior to a final decision on that
21 application, the local government's failure to
22 repeat all of the procedures it followed in
23 reaching the first decision provides no basis for
24 reversal or remand." Wentland v. City of
25 Portland, ___ Or LUBA ___ (LUBA No. 92-015, June
26 3, 1992), slip op 8-9.

27 TCDC 18.30.130(A) does not explicitly apply in
28 legislative plan amendment proceedings following remand.
29 Even if it does, it does not require that the city council
30 refer to the planning commission any modifications that may
31 be proposed after the planning commission recommendation

"All * * * plans * * * for * * * laying out * * * and locating
streets * * * shall first be submitted to the [city planning]
commission * * * and a report thereon from the [city planning]
commission secured in writing before approval is given by the
proper municipal official."

1 required by TCDC 18.30.130(A) is provided, but before the
2 city council's final decision on the proposed plan
3 amendment. Therefore, TCDC 18.30.130(A) was not violated by
4 the city council's decision on remand.

5 We have some question whether ORS 227.100 applies to
6 legislative comprehensive plan amendments of the nature
7 challenged in this proceeding. But see ORS 227.090. Even
8 if it does, for the same reasons TCDC 18.30.130(A) does not
9 require a repeat of the planning commission's initial
10 involvement in this matter following a remand from this
11 Board, ORS 227.100 does not do so.

12 The sixth assignment of error is denied.

13 The city's decision is affirmed.

14