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BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF CEDAR MILL,	)	
	)	
Petitioner,	)	
	)	LUBA No. 94-142
vs.	)	
	)	FINAL OPINION
WASHINGTON COUNTY,	)	AND ORDER
	)	
Respondent.	)	

Appeal from Washington County.

Peggy Hennessy and J. Kristen Pecknold, Portland, filed the petition for review. With them on the brief was Reeves, Kahn & Eder. Peggy Hennessy argued on behalf of petitioner.

David C. Noren, Assistant County Counsel, filed the response brief and argued on behalf of respondent.

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

AFFIRMED 01/04/95

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 Petitioner appeals an ordinance amending the  
4 acknowledged county comprehensive plan.

5 **FACTS**

6 The acknowledged county comprehensive plan shows a  
7 proposed 5-lane minor arterial along NW 112th Avenue  
8 connecting NW Cornell Road and Sunset Highway. The  
9 challenged ordinance amends the acknowledged comprehensive  
10 plan to show the proposed arterial as a 3-lane minor  
11 arterial and to relocate approximately the northern two-  
12 thirds of the proposed 3-lane minor arterial west to  
13 unimproved NW 113th Avenue. The relevant facts are set  
14 forth in respondent's brief:

15 "Since at least 1966, Washington County  
16 Transportation Plans have identified a need for,  
17 and shown, a north-south connection along N.W.  
18 112th Avenue between the Sunset Highway and N.W.  
19 Cornell Road. Throughout this time, N.W. 112th  
20 has been an unimproved county road right-of-way.  
21 In 1982, Metro adopted the Regional Transportation  
22 Plan (RTP) including this proposed roadway as a  
23 minor arterial of 'regional significance.'

24 "In 1983, Washington County adopted the Cedar  
25 Hills/Cedar Mill Community Plan which included  
26 this roadway. In 1988, the Washington County  
27 Transportation Plan was adopted. This set forth  
28 the Functional Classification System Map showing  
29 this facility as a five-lane minor arterial. In  
30 addition, the roadway was included on the adopted  
31 Roadway Improvements Projects Map. Each of these  
32 plans has been acknowledged by the Land  
33 Conservation and Development Commission.

1 "In 1990, the proposed facility was included in  
2 Ordinance No. 382, which amended the comprehensive  
3 plan to adopt a Public Facilities Plan in  
4 accordance with the Public Facilities Planning  
5 Rule.

6 "Also in 1990, the board of commissioners directed  
7 staff to begin an alignment study for a  
8 north/south connection. A study area  
9 approximately 450 feet wide was selected  
10 encompassing the existing N.W. 112th right-of-way.  
11 A ten-member Citizens Advisory Committee ('CAC')  
12 was established to study roadway alternatives.  
13 This group met formally 10 times. In addition  
14 numerous neighborhood meetings and open houses  
15 were conducted to solicit review and input on  
16 alternatives. Three newsletters were mailed  
17 (3500) total. The CAC had access to county staff  
18 resources as well as a team of engineering and  
19 other consultants.

20 "On October 24, 1991, the CAC adopted a  
21 recommendation proposing that the alignment of the  
22 roadway be shifted somewhat from the existing  
23 unimproved right-of-way. The CAC also recommended  
24 a three-lane facility with bicycle and pedestrian  
25 facilities and called for provision of additional  
26 open space. The CAC requested and received input  
27 from these resources regarding a 'no build  
28 alternative' and regarding alternative routes to  
29 the west (proposed 119th) and the east.

30 "On May 9, 1994, after extensive further analysis,  
31 Ordinance No. 450 was introduced. Over 1100  
32 public hearing notices describing the ordinance  
33 were mailed to interested parties. Display  
34 advertisements were published in area newspapers.

35 "Public hearings were held by the planning  
36 commission on June 1, and June 15 and by the board  
37 of commissioners on June 28 and July 12, 1994, at  
38 which time Ordinance No. 450 was adopted. The  
39 board of commissioners continued the June 28  
40 hearing in part at the request of petitioner's  
41 attorney. \* \* \* (Record citations omitted.)  
42 Respondent's Brief 6-8.

1 **FIRST ASSIGNMENT OF ERROR**

2 The county followed procedures governing legislative  
3 comprehensive plan amendments. Petitioner contends the  
4 challenged ordinance is a quasi-judicial land use decision,  
5 and that the county committed procedural error by failing to  
6 follow its Type III, quasi-judicial land use decision making  
7 procedures. ORS 197.835(7)(a)(B).<sup>1</sup>

8 The appropriate inquiry for determining whether a  
9 decision is quasi-judicial or legislative is set out in  
10 Strawberry Hill 4-Wheelers v. Benton Co. Bd. of Comm., 287  
11 Or 591, 602-03, 601 P2d 769 (1979). In that case, the  
12 Oregon Supreme Court identified three factors to be  
13 considered in determining whether a local government  
14 decision is quasi-judicial:

- 15 1. Is "the process bound to result in a  
16 decision?"
- 17 2. Is "the decision bound to apply preexisting  
18 criteria to concrete facts?"
- 19 3. Is the action "directed at a closely  
20 circumscribed factual situation or a  
21 relatively small number of persons?"

22 As far as we can tell, the county was not bound to make  
23 a decision in this matter (factor 1). The county could at

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<sup>1</sup>Under ORS 197.835(7)(a)(B), this Board is required to reverse or remand a decision where the decision maker:

"Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner[.]"

1 any time have stopped the proceedings that led to adoption  
2 of Ordinance No. 450.

3 As is the case with all comprehensive plan amendments,  
4 whether the amendment is legislative or quasi-judicial, the  
5 decision was bound to apply the statewide planning goals  
6 (factor 2). In addition, as explained below, a number of  
7 county comprehensive plan provisions also apply. However,  
8 as respondent correctly notes, although relocating the  
9 proposed minor arterial and revising its existing minor  
10 arterial designation is subject to the statewide planning  
11 goals and comprehensive plan standards, a significant amount  
12 of policy-making discretion is also involved. Because land  
13 use decision making in the future likely will be affected by  
14 the minor arterial location and designation challenged in  
15 this appeal, the challenged decision effectively establishes  
16 or affects criteria that will guide land use decisions in  
17 the future.

18 The proposed minor arterial extends more than 2,400  
19 feet and affects more than forty properties. Certainly, the  
20 decision affects a relatively small area and a relatively  
21 small number of people as compared to the entire county.  
22 However, as the challenged decision points out, the minor  
23 arterial at issue will accommodate approximately 17,000 to  
24 18,000 trips per day and is identified on Metro's Regional  
25 Transportation Plan as a Minor Arterial of Regional  
26 Significance. While the question is a close one, we

1 conclude the challenged decision does not involve "a closely  
2 circumscribed factual situation or a relatively small number  
3 of persons" (factor 3). See Leonard v. Union County, 24 Or  
4 LUBA 362, 367-68 (1982) (comprehensive plan and text  
5 amendments and amended plan and land use designations for  
6 six separate properties are legislative).

7 Applying the Strawberry Hill factors as a whole, as  
8 required by Estate of Paul Gold v. City of Portland, 87 Or  
9 App 45, 740 P2d 812, rev den 304 Or 405 (1987), we conclude  
10 the county correctly treated the challenged decision as a  
11 legislative decision. In our view, the relatively large  
12 area and number of people affected, and the role the  
13 challenged decision will play in other land use decisions  
14 affected by the public facility that is the subject of the  
15 challenged decision, are sufficient to justify viewing the  
16 challenged decision as legislative in nature.

17 Finally, even if the challenged decision were properly  
18 viewed as quasi-judicial in nature, the only prejudice to  
19 its substantial rights petitioner alleges as a result of the  
20 county's following legislative rather than quasi-judicial  
21 procedures is inadequate time in which to prepare its case.  
22 We agree with respondent that the procedures actually  
23 followed by the county in this matter provided petitioner

1 ample time in which to review materials and submit  
2 testimony.<sup>2</sup>

3 The first assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR**

5 Statewide Planning Goal 1 (Citizen Involvement) is:

6 "To develop a citizen involvement program that  
7 insures the opportunity for citizens to be  
8 involved in all phases of the planning process."

9 Washington County Comprehensive Framework Plan (CFP)  
10 Policy 2 (Citizen Involvement) and Washington County  
11 Transportation Plan (TP) Policy 17.0 (Transportation  
12 Planning Coordination Policy) require opportunities for  
13 citizen involvement in the county's transportation  
14 planning.<sup>3</sup>

15 The ordinance challenged in this appeal was initiated  
16 on May 9, 1994. The planning staff report was issued May

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<sup>2</sup>At the June 28, 1994 hearing before the board of county commissioners, petitioner requested a continuance to respond to new information. The public hearing was continued until July 12, 1994. Petitioner does not explain why this continuance was inadequate to allow it to prepare and present its case in this matter.

<sup>3</sup>CFP Policy 2 provides:

"[E]ncourage citizen participation in all phases of the planning process and \* \* \* provide opportunities for continuing involvement and effective communication between citizens and their County government."

TP Policy 17.0 provides:

"[C]oordinate [county] transportation planning with local, regional, state, and federal agencies and \* \* \* provide opportunities for citizens to participate in the planning process."

1 26, 1994 and following public hearings before the planning  
2 commission and board of commissioners, the challenged  
3 ordinance was adopted on July 12, 1994. In view of the  
4 lengthy planning history of this north-south connector,  
5 petitioner contends the county's limitation of its  
6 consideration of alternatives to a 450-foot study area and  
7 proceeding to a decision six weeks after the staff report  
8 was first made available violates the spirit of Goal 1 and  
9 the above noted plan policies.

10 The county adopted findings which explain the planning  
11 process it followed in this matter. Record 29-32.  
12 Petitioner does not challenge those findings. We cannot say  
13 adopting a decision six weeks after the planning staff  
14 report was first made available, in and of itself, violates  
15 Goal 1 or the cited plan policies. As the findings explain,  
16 a great deal of citizen involvement and participation  
17 preceded the issuance of the planning staff report on May  
18 26, 1994.

19 With regard to petitioner's contention that the county  
20 improperly limited its consideration of alternatives, the  
21 NW 112th Avenue Alignment Study dated January 1993 does  
22 identify a 450-foot wide corridor study area centered on NW  
23 112th Avenue. However, that study explains that a "no build  
24 option" was included in the analysis. In addition, a  
25 November 21, 1991 staff report explains alternatives outside



1 the 450-foot corridor, including NW 119th to the west, were  
2 considered.

3 We fail to see how the county's planning effort in this  
4 matter violates Goal 1, CFP Policy 2 or TP Policy 17.0.

5 The second assignment of error is denied.

6 **THIRD ASSIGNMENT OF ERROR**

7 Petitioner contends the challenged decision fails to  
8 demonstrate a public need for the plan amendment and  
9 violates Statewide Planning Goal 2 (Land Use Planning), CFP  
10 Policy 3 and TP Policy 17.0.<sup>4</sup>

11 **A. Public Need**

12 Citing Fasano v. Washington Co. Comm., 264 Or 574, 581,  
13 507 P2d 23 (1973), petitioner contends the record in this  
14 matter fails to establish "a public need for the amendment  
15 [or] a showing that need will be best served by the  
16 amendment." Id. at 583-84. The Fasano public need  
17 requirement applied to quasi-judicial zoning map amendments;

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<sup>4</sup>Goal 2, Part I, states the following planning goal:

"To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

CFP Policy 3 and TP Policy 17.0 both require that the county coordinate its land use planning efforts. TP Policy 17.0 is quoted supra at n 3. CFP Policy 3 provides:

"[E]ffectively coordinate [county] planning and development efforts with federal, state, and other local governments and special districts to ensure that the various programs and activities undertaken by these bodies are consistent with the County Comprehensive Plan."

1 the challenged decision is a legislative comprehensive plan  
2 text and map amendment. In any event, the Fasano "public  
3 need" requirement no longer applies, unless local  
4 governments include a requirement for such a showing in  
5 their comprehensive plan or land use regulations. Neuberger  
6 v. City of Portland, 288 Or 155, 170, 603 P2d 771 (1979),  
7 rehearing den 288 Or 585 (1980); Neste Resins Corp. v. City  
8 of Eugene, 23 Or LUBA 55 (1992); Von Lubken v. Hood River  
9 County, 19 Or LUBA 404, rev'd on other grounds 104 Or App  
10 683 (1990), adhered to 106 Or App 226 (1991). Petitioner  
11 cites no plan or code requirement that the county establish  
12 a public need for the changed alignment, and we do not  
13 consider petitioner's "public need" arguments further.

14 This subassignment of error is denied.

15 **B. Adequate Factual Base**

16 The county's decision is based, in part, on "a  
17 Transportation Analysis dated January 1993 (Record 516), a  
18 Wetland and Wildlife Habitat Inventory and Assessment  
19 (Record 267), Preliminary Hydrogeologic and Geotechnical  
20 Report (Record 249) and Hydrology Hydraulics and Water  
21 Quality Report (Record 242)." Petition for Review 11.  
22 Petitioner contends these reports are insufficient to  
23 satisfy the Goal 2, Part I requirement for an adequate  
24 factual base. See n 4, supra.

25 Petitioner contends the Transportation Analysis is  
26 inadequate because it does not consider a broad enough array

1 of alternatives. Petitioner criticizes the county's  
2 reliance on the Preliminary Hydrogeologic and Geotechnical  
3 Report, because it is preliminary and more than three years  
4 old. Petitioner challenges the Hydrology, Hydraulics and  
5 Water Quality Report because it is short, calls for more  
6 study, and fails to address a large wetland pond adjoining  
7 the project area to the south. Petitioner also criticizes  
8 the Hydrology, Hydraulics and Water Quality Report because  
9 it makes no conclusions.

10 As noted earlier, in a prior analysis, the county did  
11 consider alternatives beyond the 450-foot corridor study  
12 area established in the January 1993 Transportation  
13 Analysis. The factual base for the challenged decision is  
14 not confined to the four studies identified by petitioner,  
15 and petitioner's criticisms of the four reports do not  
16 establish the challenged decision lacks the "adequate  
17 factual base" required by Goal 2, Part I.

18 This subassignment of error is denied.

19 **C. Coordination**

20 In Waugh v. Coos County, 26 Or LUBA 300, 314-15 (1993),  
21 LUBA held that the county was obligated to respond in its  
22 findings to concerns expressed by the Oregon Parks and  
23 Recreation Department concerning the plan map amendment at  
24 issue in that case. Citing Waugh, petitioner contends the  
25 county similarly failed to respond to concerns expressed by  
26 state, federal and regional agencies in this case and, for

1 that reason, failed to satisfy its obligations under Goal 2,  
2 CFP Policy 3 and TP Policy 17.0 to coordinate with those  
3 agencies.

4 There is an important difference between the state  
5 agency comments in Waugh, which triggered a coordination  
6 requirement that the concerns expressed by the agency be  
7 addressed in the county's findings, and the agency comments  
8 relied upon by petitioner in this case. Petitioner relies  
9 on (1) a letter from a U.S Fish and Wildlife Service field  
10 supervisor to petitioner, (2) a letter from an unidentified  
11 Oregon Department of Fish and Wildlife staff person to  
12 petitioner, and (3) certain concerns raised by an individual  
13 Metro councilor. The first two of these documents are  
14 directed to petitioner, not to the county. These letters  
15 may provide a basis for raising substantive issues  
16 concerning the decision. However, because the letters are  
17 not directed to the county, they do not trigger a  
18 coordination obligation under Goal 2 or the cited plan  
19 policies. The concerns expressed by the individual Metro  
20 councilor do not purport to be expressed by Metro itself  
21 and, similarly, do not trigger a coordination obligation on  
22 the part of the county.

23 This subassignment of error is denied.

24 The third assignment of error is denied.

1 **FOURTH ASSIGNMENT OF ERROR**

2 Petitioner challenges the county's findings concerning  
3 Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural  
4 Resources) and various plan provisions adopted by the county  
5 to implement Goal 5.

6 **A. Goal 5**

7 Goal 5 requires that the county "conserve open space  
8 and protect natural and scenic resources." The Goal 5  
9 administrative rule (OAR Chapter 660 Division 16) sets out a  
10 process whereby local governments are to inventory Goal 5  
11 resources, identify conflicting uses and assess the impacts  
12 of those conflicting uses, and develop programs to prohibit,  
13 limit or allow those conflicting uses in a manner that  
14 achieves the goal of conserving and protecting the  
15 inventoried resources. See DLCD v. Yamhill County, 17 Or  
16 LUBA 1273, 1279-80, aff'd 99 Or App 441 (1989).

17 As previously noted, the county's comprehensive plan  
18 has been acknowledged and, therefore, is in compliance with  
19 Goal 5 as a matter of law. Nevertheless, Goal 5 applies  
20 directly to the challenged decision because it amends the  
21 acknowledged plan. ORS 197.175(2)(a); 197.835(4); Von  
22 Lubken v. Hood River County, 22 Or LUBA 307, 313 (1991).  
23 However, in adopting postacknowledgment plan amendments  
24 (other than amendments to the Goal 5 inventory itself), the  
25 county is entitled to rely on its acknowledged Goal 5  
26 inventory. Urquhart v. Lane Council of Governments, 80 Or

1 App 176, 721 P2d 870 (1986); Waugh v. Coos County, 26 Or  
2 LUBA 300, 310 (1993); Davenport v. City of Tigard, 22 Or  
3 LUBA 577, 586 (1992). To the extent a proposed  
4 postacknowledgment plan amendment affects an inventoried  
5 Goal 5 resource; Goal 5 applies, and its requirements must  
6 be addressed and satisfied. Welch v. City of Portland, \_\_\_  
7 Or LUBA \_\_\_ (LUBA No. 94-133, December 21, 1994). On the  
8 other hand, if the proposed postacknowledgment plan  
9 amendment does not affect inventoried Goal 5 resources, Goal  
10 5 does not apply and need not be addressed.

11 The challenged decision addresses Goal 5 as follows:

12 "The only Significant Natural Resource that this  
13 plan amendment encounters is a tributary of  
14 Johnson Creek near NW Copeland. This area is  
15 designated as Water Areas, Wetlands and Fish and  
16 Wildlife Habitat. The CFP and Cedar Hills/Cedar  
17 Mill Community Plan contain policies, implementing  
18 strategies, and design elements relating to Goal 5  
19 resources. As indicated in General Design Element  
20 No. 1 of the Cedar Hills/Cedar Mill Community Plan  
21 and the Barnes Peterkort Sub-area Design Element,  
22 these policy statements are implemented by the  
23 provisions of the Community Development Code which  
24 provides [sic] for road crossings over such  
25 resource sites." Record 24.

26 Petitioner does not directly challenge the above quoted  
27 findings. Instead, petitioner contends the "statement in  
28 the Findings that 'the only significant Natural Resource  
29 that this plan amendment encounters is a tributary of  
30 Johnson Creek near NW Copeland' \* \* \* ignores the evidence  
31 submitted by petitioner and even the reports relied on by

1 Respondent."<sup>5</sup> Petition for Review 17-18. Petitioner's  
2 entire Goal 5 argument appears to be based on the county's  
3 failure to consider impacts of the challenged roadway on  
4 resource sites that are not included on the county's Goal 5  
5 resource site inventory.

6 The above quoted findings state the county identified  
7 only one inventoried Goal 5 resource site as impacted by the  
8 challenged decision. Petitioner does not challenge the  
9 adequacy of the county's Goal 5 findings concerning that  
10 inventoried resource site, and we do not understand  
11 petitioner to contend there are other inventoried Goal 5  
12 resources impacted by the challenged decision.<sup>6</sup>  
13 Petitioner's argument focuses on resource sites it believes  
14 should be included on the county's acknowledged Goal 5  
15 inventory and, therefore, should be considered in this  
16 proceeding. Those arguments may be appropriate in periodic  
17 review, but they are not properly presented in this  
18 postacknowledgment plan amendment proceeding. Urquhart v.  
19 Lane Council of Governments, supra.

20 As the county's findings point out, the Cedar  
21 Hills/Cedar Mill Community Plan and the Barnes Peterkort

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<sup>5</sup>There is evidence in the record that the proposed roadway may cross or affect wetland and upland wildlife habitats that apparently are not included on the county's acknowledged Goal 5 resource inventory.

<sup>6</sup>To the extent petitioner does make such a contention, it is not sufficiently developed to warrant review.

1 Sub-area Design Elements state they are to be implemented  
2 "consistent with the provisions of the Community Development  
3 Code" which specifically allow road crossings over certain  
4 Goal 5 resource sites.<sup>7</sup> In view of our disposition of  
5 petitioner's Goal 5 arguments, we do not consider the  
6 county's position that because the acknowledged CDC  
7 provisions concerning Significant Natural Areas allow road  
8 crossings in riparian zones and significant water and  
9 wetland areas, no further Goal 5 inquiry is required  
10 concerning potential impacts the new roadway alignment may  
11 have on such inventoried areas when amending the  
12 acknowledged plan. See Bicycle Transportation Alliance v.  
13 Washington Cty, 127 Or App 312, \_\_\_ P2d \_\_\_ (1994)  
14 (addressing community plan language similar to that  
15 identified in the above findings but leaving this question  
16 open).

17 This subassignment of error is denied.

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<sup>7</sup>Cedar Hills/Cedar Mill Community Plan, General Design Element No. 1(b) is set out in full, infra, under subassignment of error D.

As relevant, CDC 422-3.3(A) provides:

"No new or expanded alteration of the vegetation or terrain of the Riparian Zone \* \* \* or a significant water area or wetland \* \* \* shall be allowed except for the following:

"(1) Crossings for streets, roads or other public transportation facilities.

"(2) Construction or reconstruction of streets, roads or other public transportation facilities.

"\* \* \* \* \*"



1           **B.    CFP Policies 6 and 10**

2           Petitioner argues the challenged decision violates CFP  
3 Policies 6 and 10, which require that water quality be  
4 preserved and improved and that significant natural areas be  
5 protected and enhanced.<sup>8</sup>

6           The county adopted findings addressing these plan  
7 policies. Those findings first explain that the policies  
8 are implemented through plan implementing strategies. The  
9 implementing strategies themselves and the findings  
10 interpreting and applying the policies make it clear the  
11 county does not interpret the above policies to impose the  
12 absolute "preserve and improve" and "protect and enhance"  
13 requirements petitioner apparently believes these policies  
14 require.<sup>9</sup>

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<sup>8</sup>CFP Policies 6 and 10 provide:

"[P]reserve and improve the quality of water resources." CFP  
Policy 6.

"[P]rotect and enhance significant natural areas." CFP  
Policy 10.

<sup>9</sup>For example, CFP Policy 6, Implementing Strategy a provides "[l]imit  
the removal of natural vegetation along river and stream banks,  
particularly in locations identified as Significant Natural Areas in  
Community Plans." CFP Policy 10, Implementing Strategy a states the county  
will:

"[i]dentify Significant Natural Resource Areas and directions  
for their protection or development in Community Plans. Those  
directions shall assure that the unique values of Significant  
Natural Resources can be examined and that all reasonable  
methods for their preservation can be pursued prior to  
development." (Emphasis added.)

1 We conclude the county acted within its interpretive  
2 authority in concluding the measures identified in the  
3 findings are sufficient to reduce or mitigate the impacts of  
4 the disputed roadway realignment on water quality and  
5 significant natural areas such that CFP policies 6 and 10  
6 are satisfied. Gage v City of Portland, 318 Or 478, \_\_\_ P2d  
7 \_\_\_ (1994); Clark v. Jackson County, 313 Or 508, 836 P2d 710  
8 (1992).

9 This subassignment of error is denied.

10 **C. CFP Policies 33, 34 and 35**

11 CFP Policies 33, 34, and 35 concern the provision and  
12 location of parks, open space and recreation facilities, and  
13 express a policy in favor of working with the Tualatin Hills  
14 Parks and Recreation District, cities and schools districts  
15 in planning for such facilities and services.<sup>10</sup>

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<sup>10</sup>CFP Policies 33, 34, and 35 provide:

"[E]nsure that residents of its urban unincorporated areas are provided with adequate open space and park facilities and services." CFP Policy 33.

"[E]ncourage the location of parks, open space and recreation facilities so as to define and implement the County-wide development concept, County policies and community plans." CFP Policy 34.

"[W]ork with [Tualatin Hills Parks and Recreation District] and the cities and school districts in comprehensive planning for open space and recreation facilities and services for the County." CFP Policy 35.

1           The county adopted findings explaining how it  
2 interprets and applies these policies and applying the  
3 disputed policies to the subject plan amendment. Among  
4 other things, those findings explain the proposed facility  
5 will provide both pedestrian and bicycle transportation and  
6 access to natural areas and transit facilities. The  
7 findings point out the proposed linear open space,  
8 pedestrian and bicycle facility will be subject to  
9 additional review with opportunities for public  
10 participation in the future and is conceptual at this plan  
11 amendment stage.

12           Petitioner complains the open space, pedestrian and  
13 bicycle aspects of the amendment are too nebulous, do not  
14 identify with certainty who will be responsible for  
15 operating the facility, and could be deleted in the future  
16 in favor of additional traffic lanes.

17           The first two criticisms are insufficiently developed  
18 and do not show the challenged amendment fails to comply  
19 with these generally worded plan policies. Petitioner's  
20 final argument (i.e. that the proposed facility may be  
21 changed in the future to include additional travel lanes in  
22 place of the linear open space, pedestrian and bicycle  
23 facility) provides no basis for reversing or remanding the  
24 decision challenged in this appeal. Such changes to the  
25 proposed facility would require a plan amendment and a

1 demonstration that the altered facility complies with the  
2 cited plan policies.

3 This subassignment of error is denied.

4 **D. Cedar Hills/Cedar Mill Community Plan, General**  
5 **Design Element 1(b)**

6 As relevant, Cedar Hills/Cedar Mill Community Plan,  
7 General Design Element No. 1 provides:

8 "In the design of new development, flood-plains,  
9 drainage hazard areas, streams and their  
10 tributaries, riparian and wooded areas, steep  
11 slopes, scenic features, and powerline easements  
12 and rights-of-way shall be

13 "\* \* \* \* \*

14 "b) Preserved and protected consistent with  
15 provisions of the Community Development Code  
16 to enhance the economic, social, wildlife,  
17 open space, scenic and recreation qualities  
18 of the community[.]"

19 The county's findings state this Design Element must be  
20 interpreted and applied in context with other applicable  
21 plan policies. The findings explain that the above Design  
22 Element requirement for "protection and preservation" of the  
23 cited resources must be balanced with the existing plan's  
24 provisions calling for construction of a connecting roadway  
25 between NW Cornell and NW Barnes Roads along NW 112th and  
26 across these resources. The findings explain these policies  
27 are balanced through application of the relevant CDC  
28 provisions.

29 The findings addressing this Design Element go on to  
30 explain that the challenged realignment "reflects a balance

1 of providing sufficient capacity for increasing  
2 transportation needs and the preservation of open space and  
3 natural features." Record 66. The findings also point out  
4 that refinements were required to address issues raised  
5 during the local proceedings "and to limit impacts to  
6 natural features." Record 66.

7 Petitioner simply contends "limiting impacts is not  
8 preserving, protecting and enhancing." Petitioner's  
9 arguments under this subassignment of error neither directly  
10 address nor sufficiently challenge the county's findings.  
11 We conclude the county acted within its interpretive  
12 discretion in interpreting and applying Cedar Hills/Cedar  
13 Mill Community Plan, General Design Element No. 1(b).

14 This subassignment of error is denied.

15 The fourth assignment of error is denied.

16 **FIFTH ASSIGNMENT OF ERROR**

17 Petitioner contends the challenged decision violates  
18 Statewide Planning Goal 6 (Air, Water and Land Resources  
19 Quality) and CFP Policies 4 and 6.<sup>11</sup>

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<sup>11</sup>Goal 6 is "[t]o maintain and improve the quality of air, water and land resources of the state. CFP Policy 6 is quoted, supra, at n 8. CFP Policy 4 provides:

"[S]upport efforts to control emissions of air pollutants in the county and region, and attempt to limit the adverse impacts of air pollution resulting from development."

1           **A.    Goal 6**

2           Petitioner's entire argument regarding Goal 6 is as  
3 follows:

4           "Petitioner raised issues as to the quality of the  
5 air, water and land resources. Goal 6 requires  
6 that these resources be maintained and improved.  
7 The Findings inadequately refer to the  
8 Respondent's Acknowledged Plan and make a very  
9 cursory reference to biofilter swales and noise  
10 barriers." Petition for Review 21.

11          The county's references to biofilter swales and noise  
12 barriers in its findings under Goal 6 are cursory. However,  
13 other parts of the decision discuss the biofilter swale and  
14 noise barrier requirements in more detail. In addition, the  
15 county's Goal 6 findings incorporate other findings  
16 addressing plan policies that were adopted to protect the  
17 same resources protected by Goal 6. Petitioner makes no  
18 attempt in its arguments concerning Goal 6 to challenge the  
19 adequacy or evidentiary support for those findings. For  
20 that reason, we reject this subassignment of error.

21           **B.    CFP Policy 4**

22          Petitioner's entire argument under this subassignment  
23 of error is as follows:

24          "Petitioner submitted testimony that the NW  
25 112th/113th alignment will encourage additional  
26 vehicle trips and increase air pollution."  
27 Petition for Review 21.

28          The findings adopted by the county explain the disputed  
29 alignment will reduce traffic delay and congestion and  
30 thereby minimize air quality impacts. The findings also

1 state that by providing a more direct connection through the  
2 Cedar Mill area, out-of-direction travel in year 2010 will  
3 be reduced by approximately 1,500 miles per day, which will  
4 improve air quality regionally. The findings go on to point  
5 out the proposed facility is included in Metro's Regional  
6 Transportation Plan, which is adopted to comply with the  
7 federal Clean Air Act air quality standards and that  
8 additional review of this facility for air quality impacts  
9 will be conducted during subsequent review required under  
10 the CDC. Finally, the findings incorporate findings adopted  
11 to address other CFP policies.

12 Petitioner makes no attempt to challenge the above  
13 findings or explain why those findings are inadequate to  
14 demonstrate compliance with CFP Policy 4. For that reason,  
15 this subassignment of error is denied.

16 **C. CFP Policy 6**

17 As petitioner notes, the county's findings under CFP  
18 Policy 6 point out biofilter swales and wetponds, which are  
19 required under the challenged decision, "have been  
20 demonstrated to be effective in the removal of some forms of  
21 stormwater pollutants." Record 36. Petitioner contends  
22 that in view of the significant natural area and unique  
23 wildlife habitat present, this finding is inadequate to  
24 demonstrate compliance with Goal 6, and CFP Policies 4 and  
25 6.

1           The findings adopted by the county addressing CFP  
2 Policy 6 discuss the kinds of pollutants that can be  
3 effectively removed by bioswales. The findings conclude  
4 "biofilter swales are considered the most appropriate water  
5 quality mitigation measures because they minimize the  
6 spatial requirements for stormwater treatments." Record 37.  
7 The county also found that additional review of water  
8 resources impacts would occur during subsequent review of  
9 the proposed road development under the CDC. Finally, the  
10 county incorporated findings addressing five other CDC  
11 policies in support of its conclusion that CFP Policy 6 is  
12 satisfied by the disputed plan amendment. Petitioner does  
13 not specifically challenge the findings described above and,  
14 in the absence of such a challenge, we conclude the county's  
15 findings concerning CFP Policy 6 are adequate.

16           This subassignment of error is denied.

17           The fifth assignment of error is denied.

18       **SIXTH ASSIGNMENT OF ERROR**

19           Petitioner contends the findings adopted by the county  
20 addressing Goals 11 (Public Facilities and Services) and 12  
21 (Transportation), CFP Policies 4, 32 and 39, and TP Policies  
22 9.0, 12.0 and 14.0 are inadequate to demonstrate the  
23 challenged proposal is consistent with those goals and  
24 policies.



1           **A.    CFP Policy 4**

2           Petitioner does not specifically attack the findings  
3 adopted by the county to address CFP Policy 4.<sup>12</sup> Petitioner  
4 criticizes the county's reliance on what petitioner refers  
5 to as "outdated studies" and cites testimony presented by  
6 petitioner that the challenged decision will encourage  
7 vehicular traffic and discourage alternative transportation.

8           The county findings specifically addressing CFP Policy  
9 4 explain the county believes the proposal will reduce  
10 "out-of-direction travel in year 2010," improve traffic flow  
11 and improve air quality. Record 33-34. As noted earlier,  
12 in addressing CFP Policy 4, the county also adopted other  
13 findings by reference. Without a more focused attack on the  
14 county's findings, petitioner fails to demonstrate the  
15 challenged decision violates CFP Policy 4. See Deschutes  
16 Development v. Deschutes Cty, 5 Or LUBA 218, 220 (1982).  
17 Petitioner's claim that the studies the county relied upon  
18 are outdated is similarly undeveloped.

19           This subassignment of error is denied.

20           **B.    CFP Policy 32 and TP Policy 9.0**

21           The county found the proposed roadway is properly  
22 classified as a minor arterial. Petitioner argues the  
23 challenged realignment violates CFP Policy 32 and TP Policy

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<sup>12</sup>CFP Policy 4 is quoted and discussed under subassignment of error B of the previous assignment of error. As we noted, the county adopted findings specifically addressing this policy and by reference adopted findings addressing related comprehensive plan policies.

1 9.0 because the roadway will in fact operate as a major  
2 arterial.<sup>13</sup> In addition, petitioner contests the county's  
3 characterization of the challenged action as a "realignment"  
4 of an existing planned minor arterial. Petitioner contends  
5 the challenged decision changes the functional  
6 classification of the affected portion of NW 113th Avenue,  
7 which is presently an unimproved local street.

8 Petitioner also makes both of the above arguments under  
9 the seventh assignment of error, and we reject those  
10 arguments infra. Petitioner does not specifically explain  
11 how either of these arguments demonstrates a violation of  
12 CFP Policy 32 or TP Policy 9.0. Neither does petitioner  
13 specifically challenge the findings adopted by the county  
14 explaining why it believes the challenged action complies  
15 with CFP Policy 32 and TP Policy 9.0. We therefore deny  
16 this subassignment of error.

17 **C. CFP Policy 39 and TP Policy 12.0**

18 CFP Policy 39 states the county is "to establish a  
19 balanced and an efficient transportation system which  
20 implements the land use plan and is designed to minimize

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<sup>13</sup>As relevant, CFP Policy 32 and TP Policy 9.0 provide:

"[R]egulate the existing transportation system and \* \* \*  
provide for the future transportation needs of the County  
through the development of a Transportation Plan as an element  
of the Comprehensive Plan." CFP Policy 32.

"[E]nsure the roadway system is designed and operated  
efficiently through use of a roadway functional classification  
system." TP Policy 9.0.

1 energy impacts." One of the findings adopted by the county  
2 addressing CFP Policy 39 is that the proposed facility will  
3 reduce travel distance from the NW 112th Avenue/Cornell Road  
4 intersection to the Sunset Light Rail Station from 2.5 miles  
5 to 1.3 miles. Petitioner does not dispute the county's  
6 finding but contend the proposed facility will also shorten  
7 the distance required for vehicular traffic to travel from  
8 that intersection to Sunset Highway, which will encourage  
9 single-occupancy automobile travel.

10 Even if petitioner's point is correct, it does not  
11 establish the challenged decision violates CFP Policy 39 and  
12 TP Policy 12.0. Petitioner does not dispute the approved  
13 road facility will improve access to transit facilities.  
14 Neither of the policies prohibits roadways which both  
15 facilitate single-occupancy automobile travel and use of  
16 transit. In addition, other unchallenged findings explain  
17 why the county concluded the proposed facility is consistent  
18 with CFP Policy 39 and TP Policy 12.0.<sup>14</sup>

19 **D. TP Policy 14.0**

20 TP Policy 14.0 requires the county "to provide  
21 opportunities for the safe and efficient use of pedestrian

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<sup>14</sup>For example, the findings explain the proposed facility supports CFP Policy 39 because it includes facilities for bicycle and pedestrian use. Record 49. The findings explain that TP Policy 12.0 is supported because the proposed facility will "establish additional transit routing and access opportunities within the Cedar Mill area, thereby improving new transit service opportunities." Record 60.

1 and bicycle facilities as an alternative to motorized travel  
2 and for recreation purposes."

3 The county findings addressing TP Policy 14.0 explain  
4 the minor arterial connection between NW Cornell and Barnes  
5 Roads is identified as a bicycle route in the TP. The  
6 findings explain bicycle lanes are proposed for both NW  
7 Cornell and Barnes Roads in this area in the future, and the  
8 bicycle and pedestrian facilities included in the disputed  
9 alignment will "help achieve an interconnected system."  
10 Record 61. The findings also explain the disputed facility  
11 will provide bicycle and pedestrian "connections to  
12 adjoining neighborhoods, the residential areas north of  
13 Cornell Road, and to the natural areas within the project  
14 area, thereby helping to further off-street bicycle pathway  
15 system development." Record 61-62.

16 Petitioner argues NW Cornell Road currently lacks  
17 bicycle lanes and contends the scale of the intersection of  
18 the proposed facility with NW Cornell Road "will not promote  
19 safe and efficient use of pedestrian and bicycle  
20 facilities." Petition for Review 26.

21 We fail to see how the current lack of bicycle lanes on  
22 NW Cornell Road renders including bicycle and pedestrian  
23 paths in the proposed facility unsafe or in some other way  
24 inconsistent with TP Policy 14.0. Petitioner's unexplained  
25 concern associated with the "scale" of the intersection of  
26 the proposed facility with NW Cornell Road is not

1 sufficiently developed to explain why this situation  
2 violates TP Policy 14.0. We conclude the county's findings  
3 are adequate to explain why completing the pedestrian and  
4 bicycle facilities associated with the disputed facility is  
5 consistent with TP Policy 14.0.

6 This subassignment of error is denied.

7 **E. Goals 11 and 12**

8 Goal 11 requires that the county "plan and develop a  
9 timely, orderly and efficient arrangement of public  
10 facilities and services to serve as a framework for urban  
11 and rural development." Goal 12 requires the county "[t]o  
12 provide and encourage a safe, convenient and economic  
13 transportation system."<sup>15</sup>

14 The county adopted findings addressing Goals 11 and 12.  
15 Those findings incorporate by reference findings adopted to  
16 address other comprehensive plan policies, including the

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<sup>15</sup>As petitioner points out, Goal 12 identifies a variety of considerations that must be addressed in a transportation plan:

"A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility."

1 policies discussed under the preceding subassignments of  
2 this assignment of error.

3 Petitioner's challenges to the county findings  
4 addressing transportation related comprehensive plan  
5 policies are addressed and rejected supra. Petitioner does  
6 not specifically challenge the county findings adopted to  
7 address Goals 11 and 12, except to state "[t]he ordinance  
8 violates these goals, or alternatively the Findings are  
9 inadequate to determine compliance." Petition for Review  
10 23. Petitioner's arguments concerning Goals 11 and 12 are  
11 not sufficiently developed to merit separate review.

12 This subassignment of error is denied.

13 The sixth assignment of error is denied.

14 **SEVENTH ASSIGNMENT OF ERROR**

15 Under the Land Conservation and Development  
16 Commission's Transportation Planning Rule:

17 "Amendments to functional plans, acknowledged  
18 comprehensive plans, and land use regulations  
19 which significantly affect a transportation  
20 facility shall assure that allowed land uses are  
21 consistent with the identified function, capacity,  
22 and level of service of the facility. \* \* \*

23 " \* \* \* \* "16 (Emphasis added.) OAR 660-12-  
24 060(1).

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<sup>16</sup>The omitted portion of OAR 660-12-060(1) specifies three ways a local plan may comply with the requirement that allowed land uses be "consistent with the identified function, capacity, and level of service of the facility."

1 Petitioner contends the challenged decision erroneously  
2 finds it does not significantly affect a transportation  
3 facility and, therefore, erroneously fails to demonstrate  
4 compliance with the requirements of OAR 660-12-060(1).

5 Petitioner first argues the challenged decision  
6 "significantly affect[s] a transportation facility" because  
7 it changes the functional classification of an existing  
8 transportation facility.<sup>17</sup> As noted earlier in this  
9 opinion, the portion of NW 113th Avenue designated a minor  
10 collector to accommodate the disputed realignment was not  
11 previously designated in the acknowledged comprehensive plan  
12 as a minor collector.<sup>18</sup> Petitioner contends this  
13 reclassification of NW 113th makes the challenged decision  
14 one that "significantly affects a transportation facility,"  
15 within the meaning of OAR 660-12-060(2). See n 17, supra.

16 The "existing or planned transportation facility"  
17 referred to in the rule is the minor arterial connection  
18 between NW Cornell Road and Barnes Road. We agree with the

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<sup>17</sup>In relevant part, OAR 660-12-060(2) provides:

"A plan or land use regulation amendment significantly affects  
a transportation facility if it:

"(a) Changes the functional classification of an existing or  
planned transportation facility[.]

"\* \* \* \* \*"

<sup>18</sup>This portion of NW 113th Avenue was not identified on the TP  
Functional Classification Map, which means it was considered a local road.

1 county that the realignment of that minor arterial  
2 connection, as shown in the existing acknowledged  
3 comprehensive plan, to a location one street west, neither  
4 changes the functional classification of that facility nor  
5 "significantly affects a transportation facility" within the  
6 meaning of OAR 660-12-060. As the county correctly notes,  
7 OAR 660-12-060 does not specifically include roadway  
8 "realignments," as does OAR 660-12-065, which regulates  
9 transportation improvements on rural lands. While we leave  
10 open the possibility that a more significant realignment  
11 might "significantly affect a transportation facility,"  
12 within the meaning of OAR 660-12-060, petitioner does not  
13 demonstrate that such is the case here.

14 Petitioner also contends that while the acknowledged  
15 comprehensive plan identifies the planned connection between  
16 NW Cornell Road and Barnes Road as a minor arterial and the  
17 realigned connection remains designated a minor arterial,  
18 the challenged realigned connection will in fact operate as  
19 a major arterial.

20 In addressing TP Policy 9.0, the county adopted  
21 findings explaining in some detail why the county believes  
22 the existing and proposed connection between NW Cornell and  
23 Barnes Roads in this area is properly designated as a minor  
24 arterial. Record 56-58. Petitioner does not challenge the  
25 adequacy of those findings to demonstrate the challenged  
26 decision does not result in a de facto change functional



1 classification of the disputed connection, which would  
2 trigger a requirement that the county address and  
3 demonstrate compliance with OAR 660-12-060. Petitioner  
4 simply disagrees with the county's ultimate conclusion that  
5 the proposed facility is properly classified as a minor  
6 arterial. Absent a more focused and developed argument from  
7 petitioner, we conclude the county's findings concerning the  
8 functional classification of the realigned connection as a  
9 minor arterial are adequate.

10 Because we conclude petitioner fails to demonstrate the  
11 challenged decision "significantly affect[s] a  
12 transportation facility," within the meaning of OAR 660-12-  
13 060, we agree with respondent that it was not required to  
14 address the requirements of OAR 660-12-060(1).

15 The seventh assignment of error is denied.

16 **EIGHTH ASSIGNMENT OF ERROR**

17 Petitioner contends the county's findings are  
18 conclusory and unsupported by substantial evidence.  
19 However, the arguments presented under this assignment of  
20 error are simply an incomplete summary of the arguments  
21 presented by petitioner under the first seven assignments of  
22 error. We have already rejected those arguments, and no  
23 additional discussion of those arguments under this  
24 assignment of error is warranted.<sup>19</sup>

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<sup>19</sup>In addition to referring to CFP Policies 33 and 34, which concern parks, open space and recreation facilities and are addressed, supra, under

- 1 The eighth assignment of error is denied.
- 2 The county's decision is affirmed.

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subassignment C of the fourth assignment of error, petitioner cites Statewide Planning Goal 8 (Recreational Needs). However, petitioner presents no argument under this assignment of error in support of its contention that Goal 8 is violated, other than those presented in support its contention that CFP Policies 33, 34 and 35 are violated. Petitioner's argument concerning Goal 8 is not sufficiently developed to warrant separate review.