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

P. MICHAEL FOGARTY,)
)
 Petitioner,)
)
 vs.)
)
 CITY OF GRESHAM,)
)
 Respondent.)

LUBA No. 97-087

FINAL OPINION
AND ORDER

Appeal from City of Gresham.

Gary P. Shepherd, Portland, filed the petition for review and argued on behalf of petitioner.

Richard D. Faus, Senior Assistant City Attorney, Gresham, filed the response brief and argued on behalf of respondent.

GUSTAFSON, Board Chair; HANNA, Board Member, participated in the decision.

REMANDED 04/01/98

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

1 Opinion by Gustafson.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's approval of a legislative
4 revision to the city's future street plan, amending the city's
5 comprehensive plan text and map.¹

6 **MOTION TO DISMISS**

7 The city moves to dismiss the appeal, or, alternatively,
8 to require petitioner to pay a additional filing fee and
9 deposit, on the basis that petitioner's notice of intent to
10 appeal challenges two distinct land use decisions: amendment
11 of the Gresham Community Development Plan (GCDP) and adoption
12 of a new future street plan (FSP).

13 We disagree that petitioner challenges two land use
14 decisions. Both actions are an integrated part of the same
15 land use application, processed under the same number, and
16 implemented in the same order. The city's motion is denied.

17 **FACTS**

18 The city's existing future street plan (old FSP), adopted
19 in 1990, calls for connecting the eastern and western termini
20 of 19th street across the area south of Gresham Butte, and
21 connecting Blaine street on the top of Gresham Butte with 19th
22 street to the south, in order to serve the residential uses

¹The city's comprehensive plan and land use regulations are a single document entitled Gresham Community Development Plan (GCDP), divided into four volumes: I. Findings, II. Policy, III. Code, and IV. Standards. The challenged decision amends a map in Volume I, and deletes text in Volume IV. The parties treat both actions as comprehensive plan amendments, and we accept that characterization. We refer to all four volumes collectively as the GCDP.

1 once contemplated for that area. However, the city recently
2 acquired 260 acres of vacant land on and around Gresham Butte,
3 including the southern area affected by pertinent portions of
4 the old FSP. The city parks division plans to develop the new
5 acquisitions as an open space and natural park. Accordingly,
6 the city applied to its planning department to amend the GCDP
7 and to adopt a new FSP consistent with the parks division
8 plan.

9 The proposed FSP abandons the planned connection between
10 the two ends of 19th street, and between Blaine street and
11 19th street, and instead proposes to connect Wallula street on
12 the west with Walters street on the top of Gresham Butte
13 (alternative A). Wallula street is classified as a local
14 street; both 19th street and Walters street are classified as
15 neighborhood collectors. The proposed street alignment would
16 serve an area of privately owned parcels on the western slopes
17 currently planned for residential development as well as
18 residential areas already built on the top of Gresham Butte.

19 The city treated the application as a "Type IV"
20 legislative matter in which the city planning commission
21 (commission) conducts a public hearing and makes a
22 recommendation to the city council (council). The commission
23 held a hearing and recommended denial of the application,
24 without issuing any findings of fact or conclusions. The
25 council held a hearing on April 1, 1997, during which the city
26 staff presented a modified proposal that adds to alternative A

1 a connection between the western terminus of 19th street and
2 the Wallula/Walters alignment (alternative B). The council
3 continued the hearing until April 15, 1997, to allow citizens
4 to study the modified proposal, and, on that date, approved
5 alternative B (new FSP), adopting the standards, findings and
6 conclusions of the city staff report.

7 This appeal followed.

8 **FIRST AND THIRD ASSIGNMENTS OF ERROR**

9 In the first assignment of error, petitioner challenges
10 the adequacy and evidentiary support for the city's finding of
11 compliance with GCDP Policy 10.321, Trafficways.² In the
12 third assignment of error, petitioner contends that the city
13 failed to address the applicability of or find compliance with
14 four relevant GCDP standards.³ Both assignments of error rest
15 on petitioner's position that the city's application to amend
16 the FSP constitutes a proposal for "development," and thus the
17 city must evaluate the application under an array of
18 development standards.

19 With respect to the Trafficways policy, petitioner cites

²GCDP Policy 10.321, Trafficways, states in relevant part that "[i]t is the policy of the City to provide a safe and efficient trafficway system that meets current needs and anticipated future population growth and development."

³The four standards at issue in the third assignment of error are (1) GCDP 6.0431.1, which assigns certain vehicle capacities to collector streets, neighborhood collectors, and local streets; (2) GCDP 6.0454.3, which prescribes a maximum grade for collectors, neighborhood collectors, and local streets; (3) GCDP 10.210, which limits development on slopes of more than 15% or on property subject to landslides; and (4) GCDP 10.211-13, which limit or prohibit development where there exists hazardous geologic, soil, or topographic constraints.

1 Liles v. City of Gresham, 10 Or LUBA 125 (1984), for the
2 proposition that the Trafficways policy requires findings that
3 the new FSP provides "safe" roads. In Liles, we affirmed the
4 city's interpretation that safety language in the Trafficways
5 policy is an applicable approval standard in the context of a
6 residential subdivision proposal. 10 Or LUBA at 132. In the
7 present case, the challenged decision cites an implementation
8 strategy for the Trafficways policy as an applicable
9 criterion, and addresses that strategy, but does not address
10 the Trafficways policy itself or the safety of the proposed
11 street alignments.

12 With respect to the standards at issue in the third
13 assignment of error, petitioner argues that any streets built
14 as a result of the challenged decision will violate these
15 standards, by increasing traffic on Wallula and Walters
16 streets beyond their functional capabilities, and by building
17 streets on steep and geologically unstable soil.

18 The city responds to both contentions that the pertinent
19 standards do not apply to the legislative adoption of an FSP,
20 but only to quasi-judicial development proposals, such as that
21 at issue in Liles. The city argues that, as defined in the
22 GCDP, an FSP is not an application for development, but rather
23 a conceptual plan that does not establish a precise road
24 alignment.⁴ According to the city, the issues of safety,

⁴GCDP 1.0500 defines "development" as

1 capacity, grade, and geologic and other hazards will be
2 addressed under the appropriate standards when a precise
3 street alignment is proposed as part of a development
4 application.

5 The parties' dispute turns on whether the plan amendments
6 approved in the decision constitute "development."
7 Petitioner's position appears to be that the plan amendments
8 "set the stage" for and commit the city to subsequent
9 residential development, and therefore the plan amendments
10 should be evaluated under relevant development standards. We
11 disagree. The plan amendments do not propose development as
12 that term is defined in GCDP 1.0500, nor do they commit the
13 city to build the planned street extensions. Any street
14 extensions ever built will be part of a specific development
15 proposal reflecting a particular road alignment and grade, and
16 that proposal will have to comply with all applicable
17 development standards. We agree with the city that the cited
18 GCDP sections are not relevant standards applicable to the
19 challenged decision.

20 The first and third assignments of error are denied.

"Any man-made change to improved or unimproved real estate, including but not limited to construction, installation, or alteration of buildings or other structures; condominium conversion; land division; establishment or termination of a right of access; storage on real property; tree cutting, clearing; mining, dredging, filling, grading, paving, excavation or drilling operations."

GCDP 11.44.050(2) states that

"A future street plan is a conceptual plan in that its adoption does not establish a precise alignment."

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioner challenges the evidentiary support for the
3 city's finding of compliance with GCDP 11.44.080,⁵ on the
4 basis that the findings do not address the 19th Street
5 connection to Wallula that was added as alternative B. The
6 written staff findings, which were prepared prior to the
7 adoption of alternative B, addressed only alternative A, which
8 does not contain the 19th Street connection.

9 The city responds that legislative land use decisions
10 technically do not require findings, although the city
11 acknowledges that in order for us to exercise our review

⁵GCDP 11.44.080 provides:

"In approving a tentative land division plan or adopting a future street plan, the approving authority shall find compliance with the relevant portions of the Community Development Plan and the following:

- "(1) Development of any remainder of property under the same ownership can be accomplished in accordance with this code.
- "(2) Adjoining land can be developed or is provided access that will allow its development in accordance with this code.
- "(3) The future street plan shall adequately serve traffic with an origin in, and destination to, the area of the plan.
- "(4) The future street plan shall provide for the logical extension, continuation, and interconnection of streets, to serve circulation and access needs within a district, sub-area, or neighborhood.
- "(5) The future street plan shall provide multi-directional access and circulation to the street system and shall avoid maze-like and discontinuous street patterns.
- "(6) The future street plan shall balance traffic distribution within an area, rather than concentrating traffic on a few streets."

1 function and satisfy the Goal 2 requirement that land use
2 decisions have an "adequate factual base," the city is
3 required either to make findings demonstrating compliance with
4 applicable standards or to provide argument in its brief and
5 citations to the record adequate to demonstrate that the
6 legislative decision complies with those standards.
7 Redland/Viola/Fischer's Mill CPO v. Clackamas County, 27 Or
8 LUBA 560, 564 (1994). The city acknowledges that the decision
9 does not make findings regarding the 19th Street connection,
10 but in its brief provides numerous citations to the record to
11 demonstrate that alternative B complies with GCDP 11.40.080.

12 The sum of the city's citations and argument is that
13 because the record supports the staff report finding that
14 alternative A meets all the applicable criteria, and because
15 alternative B is essentially alternative A with one additional
16 connection to the streets already planned in alternative A, it
17 follows that the record supports a finding that alternative B
18 also meets the criteria at GCDP 11.44.080. According to the
19 city, the criteria at GCDP 11.44.080 are directed at ensuring
20 access, capacity, circulation, interconnection, and balanced
21 traffic distribution, and that, because alternative B provides
22 more of these qualities to the area, the staff report
23 conclusion regarding alternative A and the evidence supporting
24 it applies a fortiori to alternative B.

25 Petitioner does not explain why the evidence supporting
26 alternative A does not clearly support alternative B, or

1 exactly what criteria alternative B does not satisfy. The
2 only evidence petitioner cites is a concern by the engineer
3 who designed alternative A to the effect that the steepness of
4 19th street as represented in alternative B would require a
5 loop into adjacent city-owned property. The engineer
6 recommended that the hearing on April 1, 1997, should be
7 continued to discuss that concern and other options.
8 Petitioner asserts that this evidence demonstrates that
9 alternative B does not satisfy GCDP 11.44.080. We fail to
10 see how the engineer's concern about extending 19th street
11 into city property bears on the criteria at GCDP 11.44.080,
12 much less on whether the record adequately supports a finding
13 that alternative B satisfies those criteria. We agree with
14 the city that its argument and citations to the record
15 adequately demonstrate that the record contains evidence that
16 supports the decision with respect to alternative B's
17 compliance with GCDP 11.44.080.

18 The second assignment of error is denied.

19 **FOURTH THROUGH EIGHTH ASSIGNMENTS OF ERROR**

20 In the fourth through eighth assignments of error,
21 petitioner argues that the decision's findings of compliance
22 with GCDP 11.44.080(2), (3), (4), (5), and (6) are not
23 supported by substantial evidence in the record. GCDP
24 11.44.080 provides criteria for adopting an FSP, and requires
25 findings that the FSP ensure access, adequate capacity,
26 interconnection, circulation and traffic balance with regard

1 to any proposed future streets.

2 **A. GCDP 11.44.080(2) (Access)**

3 GCDP 11.44.080(2) requires a finding that "[a]djoining
4 land can be developed or is provided access that will allow
5 its development in accordance with this code." Petitioner
6 interprets GCDP 11.44.080(2) to require the city to find that
7 the future streets depicted in the FSP will be built according
8 to the policies and standards regarding grades, functional
9 classification and other requirements petitioner set forth in
10 the first and third assignments of error.

11 The city responds, and we agree, that GCDP 11.44.080(2)
12 does not require such a finding. The focus of GCDP
13 11.44.080(2) is on lands adjoining future streets,
14 specifically whether future streets permit the development of,
15 or provide the access necessary to develop, adjoining lands
16 according to the code. GCDP 11.44.080(2) does not require
17 that the city find that either the future street or
18 development on adjoining lands can be built in accordance with
19 any particular development standards.

20 **B. GCDP 11.44.080(3) (Adequate Capacity)**

21 GCDP 11.44.080(3) provides that the FSP "shall adequately
22 serve traffic with an origin in, and destination to, the area
23 of the plan." Petitioner argues that the city's finding of
24 compliance with GCDP 11.44.080(3) is belied by evidence that
25 residential development permitted by roads built pursuant to
26 the new FSP will increase traffic on Gresham Butte, ultimately

1 forcing Wallula and Walters streets to exceed their functional
2 classifications.

3 The city responds that the evidence petitioner cites to
4 are anecdotal comments, providing no evidence of increased
5 traffic, much less traffic that would cause the streets
6 affected to exceed functional classifications. The city
7 argues that the decision adequately states the factual basis
8 for finding compliance with GCDP 11.44.080(3).

9 The decision states in this regard:

10 "Traffic originating in or destined for the Gresham
11 Butte area will continue to be served by local
12 streets that connect to the arterial and collector
13 system. * * * SW Walters Drive remains a
14 neighborhood collector street that, while not built
15 to standards, will be capable of serving the
16 anticipated traffic from Gresham Butte.

17 "* * * * *

18 "Secondary access from the developed area on top of
19 Gresham Butte to the west is provided in the
20 proposed future street plan with the extension of SW
21 Wallula. There is no evidence of significant demand
22 for travel between the top of Gresham Butte and the
23 residential neighborhood to the east.

24 "* * * The City's purchase of 260 of the open area
25 acres reduces the number of potential residential
26 units in this area by at least 520 and the number of
27 potential daily vehicle trips generated by at least
28 5,200. This reduction of trips eliminates the need
29 for a collector level street to serve the area."
30 Record 9-10.

31 We agree with the city that the decision's finding of
32 compliance with GCDP 11.44.080(3) is supported by an adequate
33 factual base.

34 **C. GCDP 11.44.080(4) (Interconnection)**

35 GCDP 11.44.080(4) requires that the FSP "shall provide

1 for the logical extension, continuation, and interconnection
2 of streets, to serve circulation and access needs within a
3 district, sub-area, or neighborhood." Petitioner argues that
4 the old FSP provides a more logical or favorable continuation
5 and interconnection of streets than the new FSP, and therefore
6 that the new FSP fails to comply with GCDP 11.44.080(4).

7 The decision acknowledges that aspects of the old FSP
8 "would better provide for" the interconnection of developments
9 on the eastern and western sides of Gresham Butte than the new
10 FSP, but finds that interconnection and circulation are
11 adequate under the new FSP, particularly because the demand
12 for through trips across Gresham Butte is minimal, and the
13 need for connecting 19th street across to the south of Gresham
14 Butte is reduced since much of land in the area is now owned
15 by the city and planned for open spaces rather than
16 residences.

17 The city argues, and we agree, that GCDP 11.44.080(4)
18 does not require the city to choose the most favorable or most
19 logical FSP, as long as the FSP it approves meets the criteria
20 of logical extension, interconnection, etc. Petitioner has
21 not established that the decision's finding to that effect
22 lacks an adequate factual base.

23 **D. GCDP 11.44.080(5) (Multidirectional Circulation)**

24 GCDP 11.44.080(5) requires that an FSP "shall provide
25 multi-directional access and circulation to the street system
26 and shall avoid maze-like and discontinuous street patterns."

1 The decision states with respect to this criterion:

2 "The existing future street plan would provide
3 better multi-directional access and circulation than
4 the proposed future street plan. However, the
5 extension of 19th & Blaine would bisect the City
6 open space (significantly reducing its recreational
7 value), provide little improvement to neighborhood
8 circulation and be prohibitively expensive to
9 construct. The proposed future street plan best
10 serves the access and circulation needs of
11 privately-owned properties, preserves open space
12 areas for their intended function and provides
13 adequate vehicular and pedestrian access to planned
14 trailheads. Discontinuous street patterns are
15 connected wherever possible without impacts to open
16 space areas." Record 11.

17 Petitioner argues that the old FSP connects six
18 neighborhoods along an east-west and a north-south axis, while
19 the new FSP connects only three neighborhoods in the north and
20 west of the Powell Butte area.

21 We agree with the city that a recognition that the old
22 FSP provides better multi-directional access and circulation
23 than the new FSP does not preclude finding that the new FSP
24 also complies with GCDP 11.44.080(5). We also agree that the
25 city's acquisition and conversion to open space of 260 acres
26 of land formerly planned for residential development is a
27 factor the city can consider in determining whether the new
28 FSP adequately provides multi-directional access and
29 circulation. The decision finds that the new FSP best serves
30 the existing and proposed residential areas on the west and
31 top of Gresham Butte. Given the city's finding of a reduced
32 need for circulation into and through the newly-acquired open
33 spaces to the south, we conclude the decision's finding of

1 compliance with GCDP 11.44.080(5) has an adequate factual
2 base.

3 **E. GCDP 11.44.080(6) (Traffic Balance)**

4 GCDP 11.44.080(6) requires that the FSP "shall balance
5 traffic distribution within an area, rather than concentrating
6 traffic on a few streets." Petitioner appears to argue that
7 the new FSP improperly concentrates traffic on Walters street,
8 instead of, apparently, balancing it between Wallula and
9 Walters.

10 The city responds that the new FSP properly balances
11 traffic between Walters and 19th streets, both neighborhood
12 collectors, and minimizes traffic on Wallula, a local street.
13 We agree with the city that the decision's finding of
14 compliance with GCDP 11.44.080(6) has an adequate factual
15 base.

16 The fourth, fifth, sixth, seventh and eighth assignments
17 of error are denied.

18 **NINTH ASSIGNMENT OF ERROR**

19 Petitioner alleges that the city failed to follow
20 applicable procedures in three respects in a manner that
21 prejudiced petitioner's substantial rights.

22 **A. Approving Alternative B**

23 Petitioner argues that, under GCDP 11.12.050, any
24 legislative proposal must first go through hearings before the
25 commission, and, because the proposal before the commission
26 (alternative A) was different than the proposal the council

1 approved (alternative B), the city's approval violated GCDP
2 11.12.050. Petitioner contends that the city was required to
3 send alternative B to the planning commission for review.
4 This procedural error, according to petitioner, prejudiced his
5 substantial right to prepare and present opposition, because
6 alternative B was not proposed until April 1, 1997, the date
7 of the initial council hearing, and petitioner had only until
8 the date of continued hearing on April 15, 1997, to prepare
9 his challenge.

10 The city responds that the council was not required to
11 send the modified proposal to the commission. The city notes
12 that GCDP 11.12.050(5) permits the city in a legislative
13 matter to "delete, add, or modify any of the provisions of the
14 proposal * * *." We agree with the city that nothing prevents
15 the council from modifying legislative proposals or compels it
16 to send a modified proposal to the planning commission.

17 **B. Failure to give adequate notice**

18 Petitioner argues that the city represented that it would
19 make the staff report available seven days prior to the
20 hearing on April 1, 1997, but that the staff report made
21 available described only Alternative A, and no documents
22 describing alternative B was available until the date of the
23 April 1, 1997 hearing.

24 The city responds that the requirement to supply a staff
25 report does not exist with respect to legislative matters, but
26 to the extent that the city so bound itself, it made the only

1 staff report on the application available seven days before
2 the April 1, 1997, hearing. The city further argues that
3 petitioner suffered no substantial prejudice from the absence
4 of any specific report on alternative B, because the council
5 continued the hearing until April 15, 1997, to allow
6 consideration and comment on Alternative B.

7 We agree with the city that, in light of the continuation
8 of the hearing to consider alternative B, petitioner has not
9 established that the city's failure, if any, to provide
10 specifics regarding alternative B seven days before the April
11 1, 1997, hearing caused substantial prejudice to petitioner.

12 **C. Lack of commission findings**

13 Petitioner argues that the commission failed to prepare
14 findings of fact and reasons for denying the application, as
15 required by GCDP 11.16.180, and that petitioner was prejudiced
16 by that failure because such findings would have helped
17 petitioner argue against the application before the council.

18 The city responds that GCDP 11.16.180 requires written
19 findings of fact and conclusions of law only from the final
20 decision maker, in this case, the council. Thus, the city
21 reasons that the commission properly did not issue findings
22 after it recommended denial of the proposal and sent its
23 recommendation to the council.

24 The city may be correct with respect to appeals of
25 development applications, but the present case involves not an
26 appeal but a mandated review of a legislative matter by both

1 the commission and the council. GCDP 11.12.050 dictates the
2 appropriate procedure for Type IV legislative actions. GCDP
3 11.12.050(3) requires the commission to make findings
4 regarding any applicable criteria. GCDP 11.12.050(4) provides
5 that at the subsequent council hearing the staff "shall review
6 the report" of the commission. In addition, GCDP 11.12.050(2)
7 requires that the hearing before the planning commission be
8 held in accordance with certain procedures for hearings,
9 including GCDP 11.16.180, which requires written findings and
10 conclusions by the hearing body. Accordingly, we conclude
11 that petitioner is correct that the commission was required to
12 make findings and issue a report to the council, and that the
13 council committed procedural error in failing to ensure that
14 this proceeding was conducted according to the requirements of
15 GCDP 11.12.050.

16 However, petitioner has not established that he was
17 prejudiced by the commission's failure to follow that
18 procedure. Petitioner argues that the commission's findings
19 would have "bolstered" his arguments to the council that the
20 proposed amendments did not satisfy relevant criteria.
21 Petitioner does not specify any arguments he was prevented
22 from making as a result of the commission's failure. We are
23 not persuaded that petitioner was prejudiced by inability to
24 "bolster" his arguments with the commission's findings, and
25 thus the city's procedural error provides no basis for
26 reversal or remand. ORS 197.835(9)(a)(B).

1 The ninth assignment of error is denied.

2 **TENTH AND ELEVENTH ASSIGNMENTS OF ERROR**

3 In the tenth assignment of error, petitioner argues that
4 the decision fails to address the application's compliance
5 with Goal 7 (Areas Subject to Natural Disaster and Hazard)⁶
6 and Goal 12 (Transportation).⁷ In the eleventh assignment of
7 error, petitioner argues that the city's decision violates
8 Goal 12 by creating a transportation system that is not safe
9 and adequate. Petitioner contends that all post-
10 acknowledgment plan amendments must comply with the goals,
11 that goals 7 and 12 are both implicated by the proposed
12 amendments, and thus the decision errs in failing to address
13 or find compliance with those goals.⁸

⁶Goal 7 is to:

"To protect life and property from natural disasters and hazards.

"Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

"Areas of Natural Disasters and Hazards -- are areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas."

⁷Goal 12 is to:

"To provide and encourage a safe, convenient and economic transportation system."

⁸ORS 197.835(6) provides:

1 The city argues first that goals 7 and 12 are not
2 implicated by the plan amendment because the decision involves
3 no specific development proposal. We understand the city to
4 argue that a legislative plan amendment need not establish
5 compliance with relevant goals or rules; that only quasi-
6 judicial plan amendments need do so. However, we held in Opus
7 Development Corp. v. City of Eugene, 28 Or LUBA 670, 680
8 (1995), that a legislative amendment of a city's
9 transportation policies must comply with Goal 12. The city
10 offers no principled basis to distinguish Opus from the
11 present case, or any explanation why only specific development
12 proposals implicate relevant goals and rules, but nonspecific
13 legislative plan amendments do not.

14 The city argues next that specific provisions of the GCDP
15 directly implement the hazard protections of goals 7 and 12,
16 and therefore the city establishes the FSP's compliance with
17 those goals by requiring that any development proposal comply
18 with the pertinent GCDP approval provisions.

19 We disagree. The Court of Appeals rejected a similar
20 argument in Bicycle Transportation Alliance v. Washington
21 County, 127 Or App 312, 873 P2d 452 (1994). In Bicycle
22 Transportation Alliance, the county adopted an ordinance that
23 amended its comprehensive plan to allow certain types of road

"The board shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals."

1 alignments to be made without plan amendments and a
2 demonstration of goal compliance. The amendment was
3 challenged for lack of findings of compliance with applicable
4 goals. The county argued, as the city does here, that
5 subsequent land use decisions regarding specific road
6 alignment would be made under criteria that had been
7 acknowledged, and thus there is no need to ensure that the
8 general road alignments adopted in the ordinance comply with
9 the goals. The Court of Appeals disagreed, stating that the
10 county

11 "has not provided an adequate showing that the
12 planning mechanism that the ordinance establishes
13 complies with the goals itself or lends any
14 assurance that later specific alignment decisions
15 will do so." Id. at 317.

16 Bicycle Transportation Alliance stands for the
17 proposition that a local government cannot insulate a plan
18 amendment from goal review by relying on the fact that
19 subsequent land use applications pursuant to the amendment
20 will be reviewed under acknowledged criteria. Accordingly, we
21 reject the city's similar argument in this case, which would
22 effectively diminish, if not eliminate, the requirement at ORS
23 197.835(6) that plan amendments demonstrate compliance with
24 relevant goals.

25 Finally, the city responds that it need not demonstrate
26 that the plan amendment complies with goals 7 or 12, because
27 the amendment was made pursuant to acknowledged provisions for
28 amending an FSP, and hence it falls within the general rule

1 that plan amendments made under acknowledged plans and land
2 use regulations need not demonstrate compliance with the
3 goals. See, e.g., Foland v. Jackson County, 311 Or 167, 181,
4 807 P2d 801 (1991); League of Women Voters v. Metro Service
5 Dist., 99 Or App 333, 338, 781 P2d 1256 (1989), rev den 310 Or
6 79 (1990).

7 The rule articulated in Foland and League of Women
8 Voters, depends upon an assessment of the legal effect of the
9 amendment vis-a-vis what has already been acknowledged. If
10 the challenge to the legal effect of the amendment is a de
11 facto challenge to or would effectively invalidate what has
12 already been acknowledged, then the local government need not
13 establish that the amendment complies with the goals. 311 Or
14 at 180; 99 Or App at 337-38.

15 However, that the criteria under which the city processed
16 the amendment are acknowledged as complying with the goals
17 does not obviate the requirement that the amendment itself
18 comply with the goals. See DLCD v. Curry County (LUBA No. 97-
19 014, December 15, 1997), slip op 9. When amendments can be
20 evaluated for consistency with the goals without necessarily
21 challenging the acknowledged process itself, then the rule
22 articulated in Foland and League of Women Voters does not
23 apply.

24 Here, the challenged decision adopts a new FSP and makes
25 corresponding plan text and map amendments. The legal effect
26 of those amendments is to delete some planned streets to the

1 south of Gresham Butte, and to provide a conceptual street
2 alignment for any streets built to serve land designated and
3 zoned for residential development on the west and top of
4 Gresham Butte. We see nothing in the decision that is a de
5 facto challenge to the acknowledged process for amending FSPs.
6 The fact that the amendments were made pursuant to an
7 acknowledged process for amending FSPs does not insulate the
8 amendments themselves from evaluation for compliance with the
9 Statewide Planning Goals.

10 The tenth and eleventh assignments of error are
11 sustained.

12 **TWELFTH ASSIGNMENT OF ERROR**

13 In the twelfth assignment of error, petitioner contends
14 that the decision fails to find compliance with and violates
15 the Transportation Planning Rule at OAR 660-12-060 (TPR).

16 The TPR is applicable, by its terms, to any plan
17 amendment that "significantly affects a transportation
18 facility." OAR 660-12-060(1). As defined by OAR 660-12-
19 060(2), a plan amendment significantly affects a
20 transportation facility if it

21 "(a) Changes the functional classification of an
22 existing or planned transportation facility;

23 "(b) Changes standards implementing a functional
24 classification system;

25 "(c) Allows types or levels of land uses which would
26 result in levels of travel or access which are
27 inconsistent with the functional classification
28 of a transportation facility; or

29 "(d) Would reduce the level of service of the

1 facility below the minimum acceptable level
2 identified in the TSP."

3 The city made no determination whether its plan
4 amendments "significantly affect a transportation facility"
5 within the meaning of OAR 660-12-060(1) and (2), and hence
6 whether OAR 660-12-060 applies. If OAR 660-12-060 does apply,
7 then the city is required to take certain steps to reduce the
8 impact on the affected transportation facility.

9 Notwithstanding the city's failure to address the TPR, it
10 responds that there is sufficient evidence in the record to
11 demonstrate that the plan amendment does not "significantly
12 affect a transportation facility" and thus OAR 660-12-060 does
13 not apply. The city argues that the decision does not change
14 a functional classification, does not change any standards
15 relating to functional classifications, and does not address
16 land uses at all. The only plausibly applicable criterion is
17 OAR 660-12-060(2)(d), that the amendment "would reduce the
18 level of service of the facility below the minimum acceptable
19 level" i.e. that the amendment increases traffic on the
20 affected streets beyond their capacity and level of service.
21 However, the city cites to its findings that the new FSP would
22 not increase traffic on the affected streets, addressed above
23 with respect to GCDP 11.44.080(3) and the fifth assignment of
24 error. We agree with the city that there is an adequate
25 factual base in the record for a finding that the new FSP does
26 not significantly affect a transportation facility and hence
27 that the TPR does not apply.

- 1 The twelfth assignment of error is denied.
- 2 The city's decision is remanded.