

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

3
4 GPA1, LLC,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF CORVALLIS,
10 *Respondent,*

11 and

12
13
14 NORTHWEST ALLIANCE CORVALLIS,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2016-078

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from City of Corvallis.

23
24 Bill Kloos, Eugene, filed the petition for review and argued on behalf of
25 petitioner. With him on the brief was the Law Office of Bill Kloos PC.

26
27 David E. Coulombe, Corvallis, filed the response brief and argued on
28 behalf of respondent. With him on the brief was Fewel, Brewer & Coulombe.

29
30 Daniel J. Stotter, Corvallis, filed a response brief on behalf of intervenor-
31 respondent. With him on the brief was Stotter & Associates LLC.

32
33 RYAN, Board Member; HOLSTUN, Board Chair; BASSHAM, Board
34 Member, participated in the decision.

35
36 REMANDED 11/28/2016

37
38 You are entitled to judicial review of this Order. Judicial review is

1 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a decision by the city council denying its application for detailed development plan approval to construct an extension of an existing arterial road through its property.

MOTION TO INTERVENE

Northwest Alliance Corvallis moves to intervene on the side of the city. The motion is granted.

REPLY BRIEF

Petitioner moves for permission to file a reply brief to respond to new matters raised in the city’s response brief. In its response brief, the city takes the position that petitioner is precluded by the holding in *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), from raising the issues it raises in its assignments of error. We agree with petitioner that that is a new matter warranting a reply brief. The reply brief is allowed.

FACTS

The challenged decision is the city’s decision on remand that, for the second time, denies petitioner’s application for detailed development plan (DDP) approval to site a road on petitioner’s property. We explained the facts in detail in *GPAI, LLC v. City of Corvallis*, 73 Or LUBA 339 (2016) (GPA I). We repeat the facts that are important to our resolution of petitioner’s appeal here.

1 **A. The Property**

2 Petitioner owns property that we sometimes refer to as the Timberhill
3 Planned Development (Timberhill PD), located on the northern boundary of the
4 city. Existing N.W. Kings Boulevard (Kings Boulevard), a north/south arterial
5 street, currently runs through a small portion of the southern part of the
6 property and terminates a short distance north of the southern boundary of the
7 property just north of its intersection with N.W. Walnut Boulevard. The
8 property contains areas that are designated in the Corvallis Comprehensive
9 Plan (CCP) and the Corvallis Land Development Code (LDC) as Highly
10 Protected Riparian Corridor, Highly Protected Significant Vegetation, Partially
11 Protected Significant Vegetation, and Locally Protected Significant Wetlands.
12 The property also includes areas that contain steep slopes.

13 **B. The City’s Prior Decisions**

14 The Corvallis Transportation Plan was adopted by the city in 1996 (1996
15 CTP) and includes a figure that shows Kings Boulevard running through
16 petitioner’s property, and identifies it as an arterial roadway. CTP Appendix A,
17 Figure A-2. The North Corvallis Area Plan (2002 NCAP), the refinement plan
18 that was adopted in 2002 for the area of the city that includes the Timberhill
19 PD, includes a figure that identifies Kings Boulevard running through the site.

1 Original Record 736.¹ Both the 1996 CTP and the 2002 NCAP are incorporated
2 into the city’s comprehensive plan. In 2000, the city council approved a
3 Conceptual Development Plan (2000 CDP) for the Timberhill PD. Original
4 Record 699. The 2000 CDP approved a Kings Boulevard extension through the
5 Timberhill PD in the location shown in petitioner’s detailed development plan
6 (DDP) application. Original Record 542-43.

7 **C. The 2014 Dedication**

8 In 2013, petitioner prepared and submitted to the city engineer a study of
9 three different alignments for the Kings Boulevard extension through the
10 Timberhill PD. Original Record 788-818. Each proposed alignment included a
11 modified option that increased the street slope from 6% to 8%, for a total of six
12 potential alignments for the Kings Boulevard extension through the property.²

13 The alternative alignments study evaluated each alignment’s impacts to
14 the protected areas described above, and concluded that building the road at the

¹ The record in this appeal includes the record in GPA I, which we refer to as “Original Record xxx.” We refer to the record in 2016-078 as “Remand Record xxx.”

² LDC 4.0.60(k)(3) requires a maximum six percent grade on arterial streets, but “where topographical conditions present special circumstances,” allows the city engineer to grant an exception to the slope standard “provided that the safety and capacity of the street network is not adversely affected.” The city engineer determined that topographical conditions on the property presented special circumstances and that the proposed 8% slopes for all three options would not “adversely affect the safety and capacity of the street network.” Original Record 431.

1 city's maximum 6% slope for an arterial street would have a greater impact on
2 some protected natural features. The study concluded that for each alignment,
3 building the road at an 8% slope would decrease the amount of cut and fill and
4 result in fewer impacts to natural features. The study also concluded that
5 "Option 1A" would require less overall volume of cut and fill and would
6 impact the smallest area of Partially Protected Significant Vegetation.³ Original
7 Record 433, 788. Options 2 and 3 with the 8% slope variation would avoid
8 impacts to riparian corridors and wetlands, highly protected and partially
9 protected significant vegetation, but would require significantly more hillside
10 development and cut and fill than Option 1.⁴ In March 2014, petitioner
11 dedicated to the city and the city manager accepted a right of way through its

³ The staff report to the planning commission and city council explained:

"All of the alternatives evaluated exceed the LDC Section 4.14.70.04 cut and fill standards. As demonstrated by "Table 1-A" (Figure 2, above), they also each present trade-offs in terms of impacts to natural features. Of the design alternatives presented, the Applicant's proposed design ("Option 1A") requires the greatest encroachment on Riparian Corridors and Locally Protected Significant Wetlands. However, in comparison to the other options, Option A1 requires considerably less overall volume of cut and fill materials, and impacts by far the smallest area of Partially Protected Significant Vegetation." Original Record 433.

⁴ It also appears that while Option 1 is located in the location of the alignment approved in the 2000 CDP, Options 2 and 3 vary from the alignments shown in that previous decision. Original Record 801-812.

1 property in the location of Option 1, approximately 84 feet wide and 4,945 feet
2 long, totaling 9.32 acres (2014 Dedication). Original Record 133-140. The cost
3 to construct the road is estimated to be just under \$6,000,000. Original Record
4 115.

5 **D. The Withdrawn Subdivision Application**

6 In January 2015, petitioner applied for subdivision approval to create ten
7 lots within the Timberhill PD, and for detailed development plan approval to
8 develop one of those lots with student housing. Petitioner's tentative
9 subdivision plat and detailed development plan showed the Kings Boulevard
10 right of way that had been dedicated a year earlier. Petitioner took the position
11 that the right of way dedication had the effect of fixing the exact location of
12 Kings Boulevard through the property, and that no further city review of Kings
13 Boulevard was required. The city took the position that the 2014 Dedication
14 did not have the effect of fixing the exact location of the road, and that because
15 the road had not yet been reviewed for compliance with applicable provisions
16 of the LDC, review of the road using the planned development review process
17 was required. Petitioner then withdrew the subdivision and student housing
18 detailed development plan applications.

19 **E. The DDP Application**

20 Thereafter, in May 2015 petitioner applied, under protest, for detailed
21 development plan (DDP) approval for the Kings Boulevard extension in the

1 location of the dedicated right of way.⁵ Original Record 490. During those
2 proceedings, the city engineer testified that the road that is shown in the 1996
3 CTP and the 2002 NCAP cannot be built to comply with city cut and fill
4 standards without a variance to current LDC 4.14.70 requirements regarding
5 cut and fill. Original Record 1745.

6 LDC Chapter 4.12 contains provisions regarding protection of
7 significant vegetation. LDC Chapter 4.13 contains provisions regarding
8 riparian corridors and wetlands. LDC 4.12.70 and LDC 4.13.50.b.2 allow the
9 City Engineer, guided by adopted City plans, to deem encroachments into
10 natural features necessary to maintain a functional system based on the
11 proposed roadway alignment. The city engineer also determined that any
12 alignment of the road will encroach into protected significant vegetation,
13 riparian corridors and wetlands.⁶ Original Record 19.

⁵ LDC 2.5.10.a.2 describes the differences between a conceptual development plan and a detailed development plan:

“A Conceptual Development Plan provides general concepts for development on a site. A Detailed Development Plan provides the specifics for development on a site and is required following or simultaneously with approval of a Conceptual Development Plan.”

⁶ The staff report explains:

“The proposed activity encroaches on approximately 76,493 SF of Highly Protected Significant Vegetation (HPSV) and Partially Protected Significant Vegetation-1 (PPSV-1) area. This represents slightly less impact to these Significant Natural Features than a facility built to City standards (with 6% maximum slopes and

within the cut and fill parameters of LDC Section 4.14.70.04), and far less than the other alternatives evaluated (see Figure 2 earlier in this report). LDC Section 4.12.70, above, permits encroachments into Highly Protected Riparian Corridors and Riparian related areas when the City Engineer deems it necessary to maintain a functional system. This determination must be guided by the LDC, City Transportation and Utility Master Plans, and other adopted City plans. In this case, the City Engineer acknowledges that the extension of NW Kings Boulevard is consistent with the City's Transportation Plan and the North Corvallis Area Plan and has concluded that, on balance, the proposed alignment requires the least impact to Natural Features areas while meeting other roadway design requirements. The City Engineer therefore deems the proposed encroachment into the HPSV and PPSV-1 areas necessary to allow the construction of this important component of the City's transportation system.

“ * * * * *

“The proposed activity encroaches on approximately 307,619 SF of Highly Protected Riparian Corridors and Locally Protected Wetlands. This represents less impact to these Significant Natural Features than a facility built to City standards (with 6% maximum slopes and within the cut and fill parameters of LDC Section 4.14.70.04), but more than the other alternatives evaluated (see Figure 2 earlier in this report). LDC Sections 4.13.50.b.2 and 4.13.80.01.c.2, above, permit encroachments into Highly Protected Riparian Corridors, Riparian-Related Areas, and Locally Protected Wetlands when the City Engineer deems it necessary to maintain a functional system. This determination must be guided by the LDC, City Transportation and Utility Master Plans, and other adopted City plans. In this case, the City Engineer acknowledges that the extension of NW Kings Boulevard is consistent with the City's Transportation Plan and the North Corvallis Area Plan and has concluded that, on balance, the proposed alignment requires the least impact to Natural Features areas. The City Engineer therefore deems the proposed encroachment into the Highly Protected Riparian Corridors and Locally Protected Wetlands necessary to

1 The city denied petitioner’s DDP application, and petitioner appealed the
2 decision to LUBA.

3 **F. LUBA’s Decision in GPA I**

4 We sustained petitioner’s third assignment of error. 73 Or LUBA at 353-
5 54. Our decision in GPA I was not appealed by any party, and it is final.
6 Because the reasons we sustained the third assignment of error in GPA I play a
7 key role in resolving petitioner’s assignments of error in the present appeal, we
8 set out and quote the parts of that decision that are important to our resolution
9 here:

10 “We have reviewed all of the city’s findings, and we do not agree
11 with the city that the findings are adequate to inform petitioner
12 what is required to obtain approval of the road that has already
13 been given conceptual approval in the CTP, the NACP, and the
14 2000 CDP. First, a previous land use decision, the 2000 CDP,
15 approved an arterial road in the location shown in the 2000 CDP.
16 Second, the CTP and the NCAP show an arterial road running
17 through the property. Third, the city engineer’s testimony makes
18 clear that in order for the road to be built in the location shown in
19 the CTP, the NCAP and the 2000 CDP, variances to LDC cut and
20 fill standards will be required. Record 1745 (‘Engineer Reese said
21 that there possibly were some unintended consequences with this
22 piece of code language; this arterial roadway - which shows up in
23 all of the City’s master plans and other documents – simply could
24 not be built to City standards and meet the code requirements.’)
25 Stated differently, precise siting of the road anywhere in the
26 location already approved in the CTP, the NACP, and the 2000
27 CDP will require variances to cut and fill standards or maximum
28 roadway slope standards.

allow the construction of this important component of the City’s
transportation system.” Original Record 446-47.

1 “The 2000 CDP is a final land use decision that is binding on the
2 city. Given that prior decision, the city is obligated to give
3 petitioner a better idea of how the city council would go about
4 approving a road in the location shown in the 2000 CDP, either by
5 choosing the road location from one of the alternatives proposed
6 to the city engineer prior to the 2014 Dedication, by advising
7 petitioner which protected natural features the city believes are
8 most important and should be avoided, or by some other method.
9 *The city council may not simply conclude that petitioner’s*
10 *proposed alignment does not satisfy the applicable approval*
11 *criteria, without providing better guidance to petitioner about an*
12 *alignment that is both consistent with the 2000 CDP, and that*
13 *would satisfy the applicable detailed development plan approval*
14 *criteria. Whatever method it chooses, a decision by the city not to*
15 *approve any road that is located in the conceptual location shown*
16 *in the CTP and the NACP (and approved by the 2000 CDP) would*
17 *likely not be a land use decision that is ‘in compliance with the*
18 *acknowledged plan and land use regulations.’ ORS*
19 *197.175(2)(d).” Id. (emphasis added).*

20 We then quoted ORS 197.835(10)(a)(A), which requires LUBA to reverse a
21 local government decision and order the local government to grant approval of
22 an application for development denied by the local government if the board
23 finds:

24 “Based on the evidence in the record, that the local government
25 decision is outside the range of discretion allowed the local
26 government under its comprehensive plan and implementing
27 ordinances[.]”

28 We noted that it was a “reasonably close call” whether to remand the decision
29 to the city, or to reverse the decision as outside the range of the city’s
30 discretion allowed the city under the CCP or the city’s land use regulations. We
31 remanded the decision. *Id.* at 355.

1 **G. The City’s Decision on Remand**

2 On June 20, 2016, petitioner sent a letter to the city that requested the
3 city commence proceedings on remand. On August 1, 2016 the city council
4 held a hearing on the remand. No additional evidence or testimony, including
5 evidence or testimony from petitioner, was accepted at the hearing. At the close
6 of that hearing, the city council voted again to deny the application and adopted
7 additional findings in support of its decision. Remand Record 6-7.

8 The additional findings in essence do three things. First, the findings
9 suggest that petitioner should submit a natural features inventory of the entire
10 property “along with an evaluation of the preferred alignment compared to the
11 alternative (or other] alignments, with an evaluation of the negative impacts on
12 natural features in light of the LDC 4.11.50.04 priority of encroachments into
13 protected natural features[.]” Remand Record 11. Second, the findings suggest
14 that petitioner should, pursuant to LDC 2.5.40.04.a.2, Basic Site Design,
15 submit a schematic showing how petitioner plans to develop the entire
16 Timberhill PD, including the location of all utilities, other streets, and potential
17 grading, to address what the city terms “ripple effects,” in order to assist the
18 city in understanding the impacts to natural features from the development of
19 Kings Boulevard. Remand Record 12-14. Third, the findings suggest that
20 petitioner should assess impacts to natural features according to the priority
21 scheme for impacts to natural features from development set out in LDC
22 4.11.50.04, which we discuss in more detail below.

1 This appeal followed.

2 **ASSIGNMENTS OF ERROR**

3 ORS 197.175(2)(d) requires the city to make land use decisions “in
4 compliance with the acknowledged plan and land use regulations[.]” ORS
5 197.835(9)(a)(D) requires LUBA to reverse or remand a land use decision
6 where the local government has “improperly construed the applicable law.”
7 The 1996 CTP, 2002 NACP and 2000 CDP described above are the “applicable
8 law” that applies to petitioner’s DDP application, within the meaning of ORS
9 197.835(9)(a)(D).

10 Petitioner’s three assignments of error are all essentially variations of
11 arguments that the city improperly construed the applicable law, described
12 above, in denying the DDP application. Petitioner also challenges the city’s
13 additional findings.

14 The city responds, initially, that petitioner is precluded by *Beck v. City of*
15 *Tillamook*, 313 Or 148, 831 P2d 678 (1992), from raising the issues raised in
16 its assignments of error because we resolved the issues in GPA I. We disagree.
17 Petitioner challenges the city’s decision adopted on remand. That decision
18 relies on and construes provisions of the CCP and the LDC and our decision in
19 GPA I, and petitioner is not precluded from arguing that the city improperly
20 relied on and construed the applicable law and our decision in GPA I in that
21 new decision, or from raising the issues that it raises in this appeal.

1 For the reasons that follow, we agree with petitioner that the city
2 improperly construed the applicable law in denying the DDP application.

3 The comprehensive plan occupies the pre-eminent position in the
4 hierarchy of Oregon land planning regulations. *Baker v. City of Milwaukie*, 271
5 Or 500, 514, 533 P2d 772 (1975). The Kings Boulevard extension is a road that
6 the city has, dating back twenty years to the 1996 CTP, planned to be an
7 integral part of the city's overall transportation network, and to function as an
8 arterial road. After adopting the 1996 CTP showing the Kings Boulevard
9 extension as an arterial road, the city continued and affirmed that trajectory
10 when it approved the road in the 2000 CDP, and it further cemented the future
11 existence of the road when it adopted the NCAP in 2002 as a part of the city's
12 comprehensive plan. When it is built, at an approximate cost to petitioner of
13 \$6,000,000 with the possibility of future reimbursement, the road will be a
14 significant piece of the city's overall transportation network and, as we
15 understand it, will be dedicated to and owned and controlled by the city.
16 Because of those prior land use decisions, and these unusual circumstances, the
17 city's discretion in applying the subjective criteria in its land use regulations
18 has been narrowed. Stated differently, each of the prior decisions by the city
19 had the effect of significantly constraining, if not eliminating, the city's
20 discretion to *deny* an application to site the road in that planned and approved
21 location by relying on noncompliance with LDC provisions, such as the city
22 cut and fill standards, which cannot be satisfied by *any* alignment at that

1 planned and approved location, which in turn will make variances/exceptions
2 necessary. As we explained in GPA I, and we reiterate here, a decision by the
3 city that it will not approve any road that is located in the conceptual location
4 approved by the 2000 CDP and shown in the 1996 CTP and the 2002 NACP
5 would not be a land use decision that is “in compliance with the acknowledged
6 plan and land use regulations.” ORS 197.175(2)(d). 73 Or LUBA at 354.

7 Under these unusual circumstances, we believe the city has a heightened
8 obligation under *Commonwealth Properties v. Washington County*, 35 Or App
9 387, 400, 582 P2d 1384 (1978) to either (1) approve petitioner’s proposed
10 alignment that is consistent with the planned and approved location, or (2)
11 make it very clear to petitioner which alternative alignment the city will accept.
12 As explained below, the findings that the city adopted on remand construe our
13 decision in GPA I very narrowly, and fall far short of satisfying that heightened
14 obligation. The findings that the city adopted on remand purport to give
15 petitioner “better guidance” that we explained was required from the city on
16 remand. But as we explain below, the findings do not really provide petitioner
17 with “better” guidance, because the findings do not inform petitioner what is
18 needed to obtain approval of the road in more than a very abstract way.

19 In *Commonwealth Properties*, the board of county commissioners denied
20 an application for tentative subdivision plat approval on property that
21 contained steep slopes and natural features. The primary basis for the county’s
22 denial was the proposal’s failure to preserve some important natural features

1 described in detail for the first time in the decision. The Court of Appeals
2 reversed the county's decision to deny the subdivision. The court first
3 explained that it assumed that the county would informally and prior to the
4 hearing on a tentative subdivision approval inform the subdivision developer in
5 detail about how the applicable policies from the county's comprehensive plan
6 that require protection of natural features will specifically apply to the project.
7 The court held that, even absent that preliminary and informal detail to the
8 subdivision developer, the county was obligated to inform the subdivision
9 developer in detail about how the policies would apply to its proposal, rather
10 than simply deny the proposal for failure to satisfy the applicable policies.

11 The circumstances presented here are analogous. The city approved the
12 conceptual location of the road in the 2000 CDP and in the city's
13 comprehensive plan provisions. Having done so, the city is obligated to tell
14 petitioner which natural features the city deems most important to protect in a
15 much more detailed and specific way than the abstract, general directions to
16 petitioner that it has provided thus far. Those abstract, general directions are
17 not consistent with the court's holding in *Commonwealth Properties* or our
18 holding in GPA I.

19 First, the findings suggest that petitioner provide a natural features
20 inventory of the property in order to assist the city in determining the impacts
21 to natural features from the road. Those findings ignore without explanation
22 extensive evidence in the record that describes and depicts the location of

1 natural features, and that evaluates the impacts from the six proposed
2 alignments on those natural features. Original Record 647-70, 681-82, 788-818
3 (alternatives study with explanation of impacts to natural features; 819-843
4 (geotechnical site assessment); 1041-1045 (arborist’s tree reports); 1046-1082
5 (existing vegetation inventory and assessment); 1083-1366 (wetlands
6 delineation); 1367-1605 (natural features data sheets).

7 Second, the findings rely on LDC 2.5.40.04.a.2 - Basic Site Design. LDC
8 2.5.40.04.a.2 requires the DDP application to demonstrate “compatibility” of
9 the “basic site design (the organization of Uses on a site and the Uses’
10 relationships to neighboring properties).” The findings fault petitioner for
11 failing to submit a plan that shows how the entire Timberhill PD might
12 develop, with the location of all utilities and streets, but concede that the LDC
13 does not require petitioner to submit that type of plan in connection with an
14 application to develop Kings Boulevard. Remand Record 10. In spite of that
15 conclusion, the findings go on to suggest to petitioner that such a plan for the
16 entire property would allow the city to determine whether the arterial road -
17 Kings Boulevard - meets the compatibility requirements of LDC 2.5.40.04.a.2.
18 Guidance that suggests that petitioner submit a plan for development of the
19 entire property that is not required by any provision of the LDC and that the
20 city cannot require is not guidance at all.

21 Similarly, the findings suggest that petitioner look to the provisions of
22 LDC 4.11.50.04 for “guidance.” LDC 4.11.50.04 includes methodologies for

1 calculating the Minimum Assured Development Area (MADA) for a site,
2 defined as the “minimum area on a development site that is permitted to be
3 disturbed for development, regardless of Natural Resources or Natural Hazards
4 Overlay designations on a site.” LDC 1.6. LDC 4.11.50.04 establishes priorities
5 of encroachments into natural features. However, the city acknowledges that
6 the MADA provisions do not apply to the DDP application to site the road.
7 Original Record 109. Therefore, “guidance” that suggests that petitioner rely on
8 LDC provisions that the city concedes do not apply is not really guidance at all.

9 Perhaps most significantly, the findings also do not acknowledge or
10 address the evidence in the record that describes the location of natural features
11 and the impacts to natural features from each of the six alignments studied by
12 the city engineer and petitioner prior to the 2014 Dedication. Original Record
13 648-51, 657-70, 681-82, 788-818. As we noted in GPA I, the record before the
14 city at that time included six potential alignments of the road. Original Record
15 788-818. When we held that the city should provide “better guidance” to
16 petitioner about an alignment that would be consistent with the 2000 CDP and
17 the city’s TSP and NCAP, we did not envision that the city would, without
18 allowing any participation by petitioner, completely fail to address the evidence
19 in the record that describes in detail the location of various natural resources
20 and the impacts to those resources for each of the alignments that are described
21 in detail in the record. The findings do not acknowledge the existence of or
22 attempt to address the six potential alignments that are already detailed in the

1 record, the impacts of which are detailed in the record, and that petitioner asked
2 the city to consider during the proceedings that led to the initial denial
3 decision.

4 Petitioner again seeks reversal of the city’s decision as being “outside the
5 range of [the city’s] discretion” under its comprehensive plan and the LDC.
6 ORS 197.835(10)(a)(A). While we noted in GPA I that it was a “reasonably
7 close call” whether petitioner was correct, we decided to remand the decision
8 to the city. We continue to believe the city retains an interest in deciding which
9 of the natural features on the property should be impacted and the extent of
10 those impacts, in approving the exact location and construction details of the
11 road. That interest is heightened by the fact that the city will eventually own,
12 operate and maintain the road. Accordingly, we continue to believe that remand
13 rather than reversal is the appropriate disposition.

14 However, we emphasize that, given the history and circumstances of this
15 case, the city’s range of discretion on remand is very narrow. On remand, the
16 city must examine the six potential alignments that were previously studied and
17 determine whether any or all of those alignments satisfy the applicable
18 provisions of the LDC, including consideration of any variances that are
19 required to allow construction of the road. As explained, each of those six
20 studied alignments represent some trade-offs in terms of impacts on slopes and
21 different types of natural features. If the city prefers one of the six alignments
22 over others, due to a preferred tradeoff, the city must clearly identify which

1 alignment it prefers. If there is a different alignment, not already studied, that
2 the city prefers, the city must identify the location of that alignment with
3 sufficient specificity, such that petitioner knows with reasonable certainty what
4 plans and information must be submitted so that the city may approve that city-
5 preferred alternative.⁷ The proceedings on remand should allow for the
6 participation of petitioner. The proceedings on remand must also take into
7 consideration that the 1996 TSP, the 2002 NACP and the 2000 CDP provide
8 important context by which the city must interpret and apply the applicable
9 provisions of the LDC.

10 To reiterate, the limited discretion that the city has on remand is to
11 determine which of the six alternatives is the city's preferred location of the
12 road that the city will eventually own and operate, consistent with the 1996
13 CTP, the 2002 NCAP and the 2000 CDP decision. Alternatively, if the city
14 now believes none of those six alternatives is approvable, it must give the
15 applicant very clear and precise direction on what changes need to be made to
16 one or more of those alternatives to make it approvable. Sending petitioner on
17 another unguided or poorly guided errand to make yet another proposal or to
18 collect additional information is not an option at this point in the process.

19 For the reasons set forth above, the city's decision is remanded.

⁷ The provisions of LDC 4.11.50.04 that establish the priority of encroachments into protected natural areas appear to provide the city with a guide for approving one of the six alignments that are included in the record.