

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

3
4 CARSON PROPERTY LUBA APPEAL, INC.,
5 and REBECCA BRENTON,
6 *Petitioners,*

7
8 vs.

9
10 CITY OF CORVALLIS,
11 *Respondent,*

12
13 and

14
15 JEFF REAMS and CHRIS KIILSGAARD,
16 *Intervenors-Respondents.*

17
18 LUBA No. 2019-082

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from City of Corvallis.

24
25 Wallace W. Lien, Salem, filed the petition for review and argued on behalf
26 of petitioners. With him on the brief was Wallace W. Lien, P.C.

27
28 No appearance by City of Corvallis.

29
30 Micheal M. Reeder, Eugene, filed the response brief and argued on behalf
31 of intervenors-respondents. With him on the brief was the Law Office of Mike
32 Reeder.

33
34 RUDD, Board Chair; RYAN, Board Member; participated in the decision.

35
36 ZAMUDIO, Board Member, did not participate in the decision.

37
38 AFFIRMED

02/25/2020

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

NATURE OF THE DECISION

The appealed decision is a city council approval of a comprehensive plan and zoning map amendment changing the comprehensive plan map and zoning map designation of six acres of land from low density to high density residential.

FACTS

The subject property is 6.31 acres in size and located at the intersection of 53rd Street and Country Club Drive. The subject property is developed with a single-family home and surrounding uses include a mixture of low and medium density residential uses. Intervenors sought a comprehensive plan map and zoning map amendment changing the designation of 6.09 acres of the subject property from low density to high density residential (HDR).

On April 17, 2019, the planning commission considered intervenors' application. On May 1, 2019, the planning commission deliberated and voted to recommend city council approval of the application. On June 3, 2019, the city council held a public hearing on the application. On June 17, 2019, the city council considered and tentatively denied the application, contingent upon adopting formal findings at a later meeting. On July 15, 2019, a council member stated that she attended the June 3 public hearing but was absent from the June 17, 2019 deliberations. The council member explained that she had watched the meeting video and read the meeting minutes and would participate in the July 15, 2019 deliberations. On July 15, 2019, a majority of the city council voted to

1 approve the application and directed staff to draft an ordinance and findings. On
2 August 5, 2019, the city council held its first reading of the ordinance. On August
3 19, 2019, the city council held its second reading of the ordinance adopting the
4 amendment and supporting findings.

5 This appeal followed.

6 **FIRST ASSIGNMENT OF ERROR**

7 Corvallis Comprehensive Plan (CP) 1.2.3 and Corvallis Land
8 Development Code (LDC) 2.1.30.06(b) provide that the comprehensive plan may
9 only be amended when findings are made that:

- 10 “1. There is a demonstrated public need for the change;
- 11 “2. The advantages to the community resulting from the change
12 outweigh the disadvantages; and
- 13 “3. The change proposed is a desirable means of meeting the
14 public need.”

15 Petitioners argue that (1) the city council’s finding of public need is based on
16 inconsistent and contradictory findings, (2) the findings do not support a
17 determination that the comprehensive plan amendment serves a public need, and
18 (3) the findings of public need are not supported by substantial evidence.
19 Petitioners also argue that the city improperly construed CP 1.2.3 and improperly
20 construed the goal post rule at ORS 227.178(3).

21 We deny this assignment of error.

1 **A. Standard of Review**

2 The requirement that the comprehensive plan amendment be responsive to
3 a public need is a matter of local law. ORS 197.829 provides in relevant part:

4 “(1) The Land Use Board of Appeals shall affirm a local
5 government’s interpretation of its comprehensive plan and
6 land use regulations, unless the board determines that the
7 local government’s interpretation:

8 “(a) Is inconsistent with the express language of the
9 comprehensive plan or land use regulation;

10 “(b) Is inconsistent with the purpose for the comprehensive
11 plan or land use regulation;

12 “(c) Is inconsistent with the underlying policy that provides
13 the basis for the comprehensive plan or land use
14 regulation; or

15 “(d) Is contrary to a state statute, land use goal or rule that
16 the comprehensive plan provision or land use
17 regulation implements.”

18 We will review a city council’s interpretation of its own regulations under ORS
19 197.829(1) and affirm it, so long as that interpretation is not inconsistent with the
20 express language of the regulation or its underlying purposes and policies.
21 *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010).

22 **B. Adequacy of Findings**

23 **1. Buildable Lands Inventory**

24 OAR 660-008-0010 implements Statewide Planning Goal 10 (Housing)
25 (“[t]o provide for the housing needs of citizens of the state”) and provides:
26 “Sufficient buildable land shall be designated on the comprehensive plan map to

1 satisfy housing needs by type and density range as determined in the housing
2 needs projection. The local buildable lands inventory must document the amount
3 of buildable land in each residential plan designation.”¹ The city adopted its
4 Buildable Lands Inventory (BLI) in 1998 and the 1998 BLI has been
5 acknowledged by the Land Conservation and Development Commission
6 (LCDC).²

7 The city council determined that

8 “the proposed Comprehensive Plan Map Amendment meets a public
9 need by increasing the supply of land with a[n HDR] designation to
10 address the deficit identified in the City’s 1998 BLI and 2016
11 Housing Needs Analysis[.]” Record 21–22.

12 The 1998 BLI reported a deficit of 12 acres of HDR land during the 1998–2020
13 planning period. Record 20. The 2016 Housing Needs Analysis reported a 12-
14 acre deficit of HDR-zoned land for the 20-year planning period 2016–2036.
15 Record 20–21. It is our understanding that the Housing Needs Analysis has not
16 been acknowledged.

¹ ORS 197.295(1) defines “buildable lands” as “lands in urban and urbanizable areas that are suitable, available and necessary for residential uses. ‘Buildable lands’ includes both vacant land and developed land likely to be redeveloped.”

² Upon local government request, LCDC will evaluate a local government comprehensive plan or land use regulation for consistency with the Statewide Planning Goals. A local provision which LCDC has determined is consistent with the Statewide Goals is deemed “acknowledged.”

1 The city council found that the comprehensive plan amendment would
2 help address the need for higher density residential land identified in both the BLI
3 and Housing Needs Analysis. The city council’s findings also recognized,
4 however, that subsequent to submittal of intervenor’s application, in 2019, the
5 city council had approved applications to rezone other lands totaling 92 acres, to
6 HDR. Petitioners maintained before the city that as a result of those 2019 rezones
7 the BLI and Housing Needs Analysis were outdated and the city no longer had a
8 deficit of HDR land.

9 Petitioners argue that the city council’s findings—that both (1) relied on the
10 BLI and Housing Needs Analysis that showed a deficit and also (2) recognized
11 the city’s subsequent re-designation of more than 92-acres of other land to HDR—
12 results in inconsistent findings. We agree with intervenors that the city council’s
13 findings were not inconsistent, and that the city council could properly rely on its
14 acknowledged BLI in evaluating public need.

15 Petitioners rely upon their tally of the amount of land the city re-designated
16 HDR in 2019 as support for their argument that the BLI is outdated. The
17 calculation of acres rezoned to HDR is essentially a draft report on housing land
18 availability. Petitioners’ calculation is not an inventory included in the
19 comprehensive plan and acknowledged by LCDC, and the city council was
20 allowed to rely upon its acknowledged BLI. In *1000 Friends v. City of Dundee*,
21 203 Or App 207, 124 P3d 1249 (2005), the petitioner challenged the city’s
22 amendment of its comprehensive plan to facilitate construction of a bypass. The

1 petitioner argued that the amendment was flawed because the finding of
2 compliance with Goal 10 was based on a 2003 BLI that was not included in the
3 city’s comprehensive plan. The court held:

4 “Citizens must be able to rely on the fact that the acknowledged
5 comprehensive plan and information integrated in that plan will
6 serve as the basis for land use decisions, rather than running the risk
7 of being ‘sandbagged’ by government’s reliance on new data that is
8 inconsistent with the information on which the comprehensive plan
9 was based.” *Id.* at 216.

10 This is consistent with our holding in *Craig Realty Group v. City of Woodburn*,
11 39 Or LUBA 384 (2001). In *Craig Realty*, petitioners argued that an outdated
12 housing inventory should not be used to evaluate zoning amendment consistency
13 with Statewide Planning Goal 10 (Housing). We held that the city must rely on
14 the acknowledged plan to determine if the proposed amendments were consistent
15 with Goal 10. *Id.* at 394–95. Accordingly, the city council could properly rely
16 upon the acknowledged BLI to evaluate housing need.³

17 The city council did not, however, rely on the case law cited above in
18 determining that the BLI is an appropriate measure of housing need, but rather
19 determined that it could not consider the 2019 rezonings based upon the goal post
20 rule set out in ORS 227.178(3). ORS 227.178(3) limits, in certain circumstances,
21 the standards and criteria applicable to an application to those standards and

³ If the city council relied on a housing need study, the study must be part of the acknowledged comprehensive plan.

1 criteria applicable at the time the application was first submitted.⁴ ORS 227.178
2 does not control the relevant date for ascertaining facts such as the amount of
3 land needed for a particular use, and the city council’s conclusion that ORS
4 227.178 required it to rely upon the 1998 BLI was in error. However, that error
5 does not require reversal or remand, because the city council made findings of
6 public need on a different, independent basis. The city council held:

7 “While this application for a Comprehensive Plan Amendment was
8 under consideration by the City, the City Council adopted
9 ordinances (Ordinance 2019-11, Ordinance 2019-13, and Ordinance
10 2019-15) changing the designation of other properties located within

⁴ ORS 227.178(3) provides:

“(a) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, *approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*

“(b) If the application is for industrial or traded sector development of a site identified under section 12, chapter 800, Oregon Laws 2003, and proposes an amendment to the comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with paragraph (a) of this subsection.” (Emphasis added.)

1 City limits to High Density Residential. These actions eliminated
2 the deficit of High Density Residential land. However, changing the
3 designation to High Density Residential for the subject property will
4 add to the overall supply of High Density Residential lands,
5 diversifying the ownership and location of the available High
6 Density Residential land, and increasing competition in the
7 marketplace.” Record 21.

8 In essence, the city council concluded that its analysis of whether a public need
9 exists was not dependent on or limited to consideration of the BLI or other, more
10 recent data. The city council found that there was a public need to rezone the
11 subject property in order to increase housing diversity in the city, independent of
12 the number of acres of land already zoned HDR, and that the location of the
13 property proposed to be re-designated was a significant factor in determining that
14 a public need exists. The city council explained:

15 “Corvallis has the highest rate of severe rent burden for a City of its
16 size in the State of Oregon, and the costs of renting housing continue
17 to outpace the rise in incomes for Corvallis residents. The applicant
18 notes that increasing the supply of Residential-High Density land
19 may lead to development of housing that is more affordable,
20 although this cannot be conditioned or assured as part of this request.
21 However, given the site’s location, proximity to the Neighborhood
22 Center, transit, multi-use path and other services, the proposed
23 change is a desirable means of meeting the public need.” Record 21.

24 The “public need” requirement in the LDC is solely a product of the local code
25 and the city council’s interpretation of what “public need” means is entitled to
26 deference. *Siporen*, 349 Or 247. The city council explained that the subject
27 property is in a neighborhood of low and medium density housing. The city
28 council concluded that introducing HDR zoning into this area will allow higher

1 density housing in a new location within the city and potentially increase housing
2 supply. The city council concluded that providing additional opportunities for
3 HDR housing in areas that include mostly low and medium density housing
4 serves a public need in the city. Petitioners have not shown that this interpretation
5 of the public need criterion is inconsistent with the express language of the LDC
6 or the CP. The interpretation is also supported by and consistent with CP 3.2.1,
7 discussed in petitioners' second assignment of error, which states that the desired
8 land use pattern in the urban growth boundary includes: "Neighborhoods with a
9 mix of uses, diversity of housing types, pedestrian scale, a defined center and
10 shared public areas." CP 3.2.1(F). The city council's interpretation of the public
11 need criterion is affirmed.

12 This assignment of error is denied.

13 **SECOND ASSIGNMENT OF ERROR**

14 Petitioners argue that the city council made inadequate findings of (1)
15 compliance with transportation criteria applicable to the amendment as well as
16 (2) a requirement that the advantages of the amendment outweigh its
17 disadvantages.

18 We deny this assignment of error.

19 **A. Comprehensive Plan Article 3, Section 3.2.1(E)**

20 CP 3.2.1 provides:

21 "The desired land use pattern within the Corvallis Urban Growth
22 Boundary will emphasize:

- 1 “A. Preservation of significant open space and natural features;
- 2 “B. Efficient use of land;
- 3 “C. Efficient use of energy and other resources;
- 4 “D. Compact urban form;
- 5 “E. Efficient provision of transportation and other public
- 6 services; and
- 7 “F. Neighborhoods with a mix of uses, diversity of housing types,
- 8 pedestrian scale, a defined enter, and shared public areas.” Record
- 9 12.

10 Petitioners argue that the city’s findings provide “no explanation whatsoever
11 * * * as to why this plan amendment will facilitate the efficient provision of
12 transportation services” as required by CP 3.2.1(E). Although intervenors argue
13 that nothing in CP 3.2.1 indicates that it contains approval criteria, the city
14 council appears to treat CP 3.2.1 as such, so we do as well.⁵

15 The city council held:

16 “The subject property is within City limits, and located at the
17 intersection of an Arterial Street (53rd Street) and Collector Street
18 (Country Club Drive). The western edge of the property also aligns
19 with a planned Collector Street (Birdsong/Barley Hill Extension).
20 Development of High Density Residential uses on the property
21 would enable *more efficient*, cost-effective use of existing land

⁵ Contrasting the language in CP 3.2.1 with that in CP 3.2.7, which provides that comprehensive plan changes “*shall be reviewed* to assure compatibility with less intensive uses and potential uses on surrounding lands,” including impacts on transportation facilities, lends support to intervenors’ assertion that CP 3.2.1 does not contain approval criteria. CP 3.2.7 (emphasis added). Given, however that city appears to treat CP 3.2.1 as approval criteria, we do as well.

1 within City limits, and possibly defer the need to annex land
2 elsewhere in order to meet the identified public need, which is an
3 efficient use of land (Policy 3.2.1.B). This *contributes to*
4 *maintaining a compact urban form*, which is consistent with Policy
5 3.2.1.D.” Record 13 (emphases added).

6 At the beginning of its discussion of compliance with CP 3.2.1, the city council
7 explained that the subject property is located at the intersection of an arterial
8 street and a collector street and that the western edge of the property aligns with
9 a planned collector street. Record 13. The type of streets adjacent to the subject
10 property therefore provides context for and is part of the city council’s findings.
11 The LDC’s definition section directs the reader to the Transportation System Plan
12 (TSP) for a description of the different types of streets. LDC 1.6.30. The TSP
13 describes arterial roads as follows:

14 “Arterial streets provide a high degree of mobility linking state
15 highways and major commercial, residential, industrial, and
16 instructional areas. Arterial streets are typically spaced
17 approximately one mile apart. They serve high volumes of traffic
18 over long distances, typically maintain higher posted speeds, and
19 limit direct access to adjacent *land to support the safe and efficient*
20 *movement of people and goods.*” TSP 81 (emphasis added).

21 The TSP describes collectors as serving:

22 “a critical role in the roadway network by connecting traffic from
23 local streets with the arterial network within the Corvallis UGB.
24 Collector routes provide access and circulation within residential
25 neighborhoods and commercial/industrial areas. Standard collectors
26 are characterized by a range of uses resulting in a greater intensity
27 of development along their routes or at major intersections with
28 other collectors or arterials. Typical land uses include: low to
29 medium-high density residential, commercial, or industrial and their
30 associated traffic volumes.” TSP 82.

1 The city council also noted the existing low and medium density residential
2 development in the area. Record 13. The city council found that the high mobility
3 and connectivity provided by an arterial and a collector resulted in efficient
4 transportation in an area characterized by lower density residential development
5 as required by CP 3.2.1(E), even if city did not rely on CP 3.2.1(E) specifically
6 when discussing CP 3.2.1 as a whole. The findings are sufficient.

7 This subassignment of error is denied.

8 **B. Compliance with CP 3.2.7(H) and (I) and LDC 2.1.30.06(c)((8)**
9 **and (9))**

10 CP 3.2.7(H) and (I) provide:

11 “All special developments, lot development options,
12 intensifications, changes or modifications of nonconforming uses,
13 Comprehensive Plan changes, and district changes shall be reviewed
14 to assure compatibility with less intensive uses and potential uses on
15 surrounding lands. Impacts of the following factors shall be
16 considered:

17 “* * * * *

18 “(H) Transportation Facilities; and

19 “(I) Traffic and off-site parking impacts[.]”

20 This requirement is also reflected at LDC 2.1.30.06(c)(8) and (9).⁶ Petitioners
21 also argue that the city council failed to adequately address LDC 2.1.30.06(c),

⁶ LDC 2.1.30.06 provides:

1 and did not evaluate consistency of the proposed increase in density with
2 surrounding land and existing land uses. Petitioners argue that the findings fail to
3 establish that transportation impacts from the amendment will be compatible with
4 less intensive uses and potential uses on surrounding lands as required by both
5 the comprehensive plan and the LDC. We address both challenges here and
6 conclude that the findings are adequate.

7 The city council found:

8 “Policy 3.2.7 includes nine compatibility factors, which are
9 implemented though the Comprehensive Plan Amendment approval
10 criteria in [LDC] Section 2.1.30.06.c. Findings demonstrating
11 compliance with these criteria are provided in Section II,
12 below. * * * Based on the facts noted above, Council finds that the
13 proposed Comprehensive Plan Amendment is consistent with
14 applicable policies in Article 3 of the Comprehensive Plan.” Record
15 13.

16 Petitioners claim that the findings under CP 3.2.7 are inadequate because they do
17 not address compatibility. Petitioners are wrong. The city council expressly
18 stated that compatibility is established through compliance with LDC
19 2.1.30.06(c), and petitioners do not challenge that finding. Petitioners also argue

“(c) Proposed amendments to the Comprehensive Plan Map shall demonstrate compatibility in the following areas, as applicable:

“* * * * *

“(8) Transportation facilities;

“(9) Traffic and off-site parking impacts[.]”

1 that the city council failed to identify the “surrounding lands” for purposes of
2 compatibility and did not describe existing or future uses. Again, petitioners are
3 wrong. The surrounding area and existing and future uses are described as low
4 and medium density residential with an additional collector road planned for the
5 future. Record 13. The findings are adequate.

6 This subassignment of error is denied.

7 **1. Transportation Facility Impacts/Traffic Impacts**

8 With respect to transportation facility impacts, the findings explain that the
9 property is located at the intersection of an arterial street and a collector street
10 with a planned collector street along the western edge. Record 13. The function
11 of these streets and their design are discussed at Record 25, including what
12 improvements will be required. As we explained in our discussion of the first
13 subassignment of error, the classification of the transportation facilities as
14 arterials (SW 53rd Street) or collectors (SW Country Club Drive) relate to the
15 character of the adjacent area and the level of traffic consistent with the character
16 of the street. The findings explain that based on LDC Chapter 4, future
17 development of the site will be required to dedicate additional rights of way for
18 a 34-foot right of way *as well as improvement to city standards.*⁷ Record 26.

19 The findings discuss traffic in the context of the state’s Transportation
20 Planning Rule (TPR) at OAR 660-012-0060, and the city council notes that “a

⁷ LDC 4.1.20 includes parking standards.

1 Transportation Impact Analysis dated February 7, 2019 attached to the
2 application that provides a reasonable worst-case trip generation for both the
3 existing and proposed zones.” Record 27. The findings state:

4 “Under the current RS-6 zoning, the trip generation estimates a total
5 of 30 AM peak hour and 38 PM peak hour trips. The proposed RS-
6 20 zoning trip generation estimates 74 AM peak hour and 89 PM
7 peak hour trips. This represents an increase of 44 AM peak our trips
8 and an increase of 51 peak hour trips. The traffic engineer performed
9 intersection analysis at the site access to SW Country Club Drive,
10 SW 53rd Street at SW Country Club Drive, and SW Philomath
11 Boulevard (Hwy 20/34) at SW 53rd Street. All intersections were
12 found to operate at acceptable volume over capacity (V/C) and
13 Level of Service (LOS) under current and 2040 scenarios. Council
14 does not find the additional peak hour trips to be a significant affect
15 to the transportation system.” Record 27.

16 We conclude that these findings concerning the compatibility of transportation
17 facilities and traffic are adequate.

18 This subassignment of error is denied.

19 **2. Parking Impacts**

20 LDC 2.1.30.06(c) requires that proposed amendments to the
21 Comprehensive Plan Map *demonstrate compatibility* in a number of areas,
22 including off-site parking impacts. Petitioners argue, “What impacts will this
23 increase in traffic have on existing parking over-load on jammed side streets, and
24 the movement of vehicles and pedestrians?” Petition for Review 32.

25 ORS 197.763(1) provides:

26 “An issue which may be the basis for an appeal to the Land Use
27 Board of Appeals shall be raised not later that the close of the record

1 at or following the final evidentiary hearing on the proposal before
2 the local government. Such issues shall be raised and accompanied
3 by statements or evidence sufficient to afford the governing body,
4 planning commission, hearings body or hearings officer, and the
5 parties adequate opportunity to respond to each issue.”

6 Intervenors respond that petitioners do not cite to the record to support where the
7 issue was raised during the proceedings before the city council. Response 24.

8 In response to intervenors’ waiver argument, at oral argument petitioners
9 cited a different section of the petition for review that includes citation to 18
10 record pages. We have reviewed the cited pages and we agree with intervenors
11 that the issue raised in this portion of petitioners’ second assignment of error was
12 not raised in those record pages. The cited record pages include very limited
13 references to general parking concerns. One member of the public stated:

14 “These streets are narrow, without sidewalks in spots or with no
15 possibility to get away from traffic in some stretches because of a
16 wall that borders the street and no sidewalk to buffer the traffic. This
17 part of the neighborhood is a warren of short, narrow streets, and
18 there are multiple cul de sacs, dead end alleys and side lanes, all
19 built up with houses, town houses, back yard residences – like
20 Russian dolls. Parking has been restricted in ways that are difficult
21 to understand, and people park in dubious places because there is
22 not always enough room for all the cars that belong to the residents.

23 “It is unimaginable that substantially more cars would pass through
24 these lanes, as would undoubtedly be the case if yet another high
25 density development takes place nearby.” Record 415.

26 This public comment focused on how the roadways would accommodate
27 additional traffic, not that offsite parking related to the amendment was not
28 compatible with the surrounding area. Another comment stated, “Considering the

1 car to occupant ratio, there will need to be an awful lot of parking on site. None
2 will be allowed on the road.” Record 569. This comment does not argue that off-
3 site parking will be adversely impacted. Rather, it assumes that any development
4 of the subject property will have to accommodate associated vehicles onsite.

5 The April 17, 2019 staff report to the planning commission also identified
6 the off-street parking criterion and proposed the form of findings of compliance
7 ultimately adopted by the city council. Record 631-32. In *Savage v. City of*
8 *Astoria*, 68 Or LUBA 225 (2013), the staff report provided to the planning
9 commission included draft findings of compliance with the TPR. Those draft
10 findings were not challenged at the local level and were ultimately adopted by
11 the planning commission. We held that “unless petitioner or some other party
12 asserted below that the proposed rezoning does not comply with the TPR, so that
13 the city had ‘fair notice’ that it needed to address that issue, petitioner’s TPR
14 issues were not preserved for review in this appeal.” *Id.* at 229. Petitioners have
15 not demonstrated that the issue of the lack of compatibility of the amendment
16 with respect to parking was raised prior to the close of the initial evidentiary
17 hearing, and it is waived.

18 This subassignment of error is denied.

19 **C. CP 11.2.1 and 11.2.2**

20 CP 11.2, Transportation System Planning provides, in relevant part:

21 “11.2.1. The transportation system shall be planned and developed
22 in a manner which contributes to community livability, recognizes
23 and respects the characteristics of natural features, and minimizes

1 the negative effects on abutting land uses.”

2 “11.2.2. The transportation system shall be managed to reduce
3 existing traffic congestion and facilitate the safe, efficient
4 movement of people and commodities within the community.”

5 Petitioners argue that CP 11.2.1 and 11.2.2 are mandatory approval criteria that
6 the city council failed to adequately address.

7 The city council concluded:

8 “The applicant’s site is located at the southwest corner of SW 53rd
9 Street and SW Country Club Drive. Transportation system
10 improvements associated with the site’s 53rd Street and Country
11 Club Drive frontages, as well as future Collector Street
12 improvements identified in the Transportation System Plan are
13 discussed in Section II of the findings below.

14 “Standards contained in LDC Chapter 4.0 implement
15 Comprehensive Plan policies 11.2.1 and 11.2.2, by ensuring
16 necessary transportation infrastructure, as defined in the
17 Transportation System Plan, is provided with development.” Record
18 17.

19 Based on its conclusion that CP 11.2.1 and 11.2.2 are fully implemented by LCD
20 4.0, the city concluded that the amendment is consistent with CP Article 11.

21 We understand petitioners to argue that the city’s findings fail to explain
22 why the amendment meets the comprehensive plan policies, including analyzing
23 how the amendment contributes to community livability and minimizes negative
24 effects on abutting land uses and how it can reduce congestion and facilitate the
25 safe and efficient movement of people. However, the findings conclude that the
26 LDC standards implement CP 11.2.1 and 11.2.2 and note that improvements
27 including the widening of streets and addition of bike lanes are required. The city

1 council made findings that compliance with the LDC standards resulted in
2 compatibility. Petitioners do not challenge those findings. We conclude that the
3 findings are adequate to show that the requirements of CP 11.2.1 and 11.2.2 are
4 met by a demonstration that the LDC provisions are met.

5 This subassignment of error is denied.

6 **D. Statewide Planning Goal 12 Compliance through LDC**
7 **2.1.30.06(d)**

8 LDC 2.1.30.06(d) provides:

9 “Transportation Planning Rule Compliance: Proposals to amend the
10 Comprehensive Plan shall demonstrate the proposal is consistent
11 with the adopted Transportation System Plan and the planned
12 function, capacity and performance standards of the impacted
13 facility or facilities. Proposals shall be reviewed to determine
14 whether they significantly affect a transportation facility pursuant to
15 Oregon Administrative Rule (OAR) 660-012-0060 (Transportation
16 Planning Rule–TPR). Where the City, in consultation with the
17 applicable roadway authority, finds that a proposed amendment
18 would have a significant effect on a transportation facility, the City
19 shall work with the roadway authority and applicant to modify the
20 request or mitigate the impacts in accordance with the TPR and
21 applicable law.”

22 Petitioners argue both that the city failed to address Goal 12 (Transportation), and
23 that the decision fails to address the requirement of LDC 2.1.30.06(d) “that
24 findings and conclusions be presented in the decision that demonstrate
25 compliance with the TPR.” Petition for Review 33. Petitioners argue, “Simply
26 put, LDC 2.1.30.06(d) requires the respondent to make findings and conclusions
27 of compliance with the TPR, specifically that the proposal is consistent with the

1 TSP and the planned function, capacity and performance standards of impacted
2 facilities.” Record 33 (footnote omitted). Petitioners argue, “Because the decision
3 makes no mention of LDC 2.1.30.06(d), consequently it has no findings or
4 conclusions that explain how this application complies.” Petition for Review 33.

5 We agree with intervenors that the city clearly made the requisite findings,
6 even if it did not list LDC 2.1.30.06(d). The Transportation Planning Rule is
7 discussed in the findings Record 26–27. The city council explained:

8 “According to the State’s transportation Planning rule (TPR), OAR
9 660-012-0060, (1) If an amendment to a functional plan, an
10 acknowledged comprehensive plan, or a land use regulation
11 (including a zoning map) would significantly affect an existing or
12 planned transportation facility, then the local government must put
13 in place measures as provided in section (2) of this rule, unless the
14 amendment is allowed under section (3), (9) or (10) of this rule.”
15 Record 26–27.

16 The city council concluded that the additional peak hour trips will not
17 significantly affect the transportation system. Record 27. The findings are
18 adequate.

19 This subassignment of error is denied.

20 **E. Advantages versus Disadvantages of Amendment**

21 CP 1.2.3 and LDC 2.1.30.06(b) require that the city council find that the
22 amendment’s advantages to the community outweigh its disadvantages.
23 Petitioners argue that city failed to demonstrate that the advantages of the
24 amendment outweigh its disadvantages. Petitioners argue that the city council’s
25 finding “that the increase in peak hour trips will not significantly impact the

1 transportation system is not the same as weighing the advantages of the increase
2 in density against the disadvantages of that increase. One is mathematical, the
3 other is subjective.” Petition for Review 35–36.

4 The city council found:

5 “Advantages of changing the designation to High Density are a
6 reduction in the deficit of needed High Density lands and provision
7 of additional opportunities for a variety of housing types that are
8 located in close proximity to an already developed Neighborhood
9 Center, transit, and other services. Disadvantages of the proposed
10 change include a reduction in available Low Density Residential
11 land within City limits and the possibility of compatibility issues with
12 adjacent Low Density uses. A discussion of the compatibility
13 concerns is provided below under the Basic Site Design and Visual
14 Elements criteria.” Record 21.

15 The city found in part that the HDR zoning development standards would provide
16 assurance that the proposed change will result in a compatible development.
17 Record 23. This finding is not challenged by petitioners. Petitioners also fail to
18 challenge the city council’s findings:

19 “The Council notes that verbal and written testimony presented
20 during the June 3, 2019 public hearing in opposition to the
21 application includes statements about how the proposed
22 Comprehensive Plan Map Amendment has more disadvantages than
23 advantages. The Council notes these statements included concerns
24 about impacts to the property’s wetlands, increased traffic, a
25 deficiency in the application’s traffic study, and a loss of a transition
26 between urban uses and rural farmland.

27 “The Council notes the property contains no locally protected
28 wetlands, that the traffic impact analysis submitted with the
29 application complies with the approval criterion for transportation
30 impacts and that the application includes correspondence from the

1 Oregon Department of Transportation noting the proposal’s
2 compliance with the Transportation Planning Rule (Attachment
3 CC-K, pages 18 and 203 of the June 3, 2019 City Council staff
4 report).

5 “The Council notes that Comprehensive Plan policies (CCP) cited
6 in written testimony either refer to maintenance of open space and
7 resource lands outside of the Urban Growth Boundary (CCP 5.5.8)
8 or provision of a buffer or transition area between the urbanizing
9 area and agricultural resource uses outside the Urban Growth
10 Boundary (CCP 14.4.3). The Council notes the proposal is within
11 the Corvallis Urban Growth Boundary. The Council notes that while
12 CCP 14.4.3 refers to a transition between urban and agricultural
13 uses, there are no approval criteria or Land Development Code
14 development standards that have been adopted to implement the
15 transition between urban uses and rural farmland at the subject
16 property’s location.

17 “The Council was not persuaded by these arguments, and finds that
18 the application sufficiently addresses the criterion requiring the
19 application to demonstrate that the proposed change in land use
20 designation provides more advantages than disadvantages.” Record
21 33–34.

22 We will not address an assignment of error challenging findings where petitioner
23 has failed to assign error to alternative findings. *Dion v. Baker County*, 72 Or
24 LUBA 307, 314–15 (2015). Petitioners have failed to challenge the above
25 findings addressing the advantages and disadvantages of the amendment, and
26 petitioners’ argument that challenges isolated findings of engineering compliance
27 with volume over capacity (V/C) and level of service (LOS) standards provides
28 no basis for reversal or remand in light of the other adequate, unchallenged
29 findings. *See Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291,
30 295–96 (2012) (to demonstrate that a local government adopted a decision that is

1 not supported by adequate findings, a petitioner should address and as necessary
2 assign error to all independent findings adopted in support of a decision that a
3 particular criterion is or is not satisfied). .

4 This subassignment of error is denied.

5 This assignment of error is denied.

6 **THIRD ASSIGNMENT OF ERROR**

7 LDC 2.1.30.06(c)(13) provides that comprehensive plan amendments are
8 required to demonstrate compatibility with the riparian corridor and wetland
9 provisions in LDC 4.13. LDC 4.13.20 provides that the code

10 “provisions apply to Significant Riparian Corridor and Wetland
11 areas, as mapped on the Corvallis Riparian Corridors and Wetlands
12 Map. However, state and federal Wetland and riparian regulations
13 will continue to apply to Wetland and Riparian Corridor areas within
14 the City, regardless of whether or not they are mapped on the
15 Corvallis Riparian Corridors and Wetlands Map. Nothing in these
16 regulations should be interpreted as superseding or nullifying state
17 or federal requirements.”

18 Petitioners’ third assignment of error is that the findings and conclusions are
19 inadequate to ensure compliance with LDC 4.13.80, Standards for Properties
20 with Wetlands, are not supported by substantial evidence and constitute an
21 improper interpretation of the code.

22 We deny this assignment of error.

23 The city council found that the subject property does not contain wetlands
24 subject to LDC 4.13. LDC 4.13.80(e) states that “[n]on-locally Protected
25 Wetlands are mapped on the City’s Local Wetlands Inventory Map, but are not

1 subject to local regulations above and beyond state and federal requirements.”
2 LDC Section 4.13 is clear that a property may contain wetlands subject to state
3 or federal regulation yet not be subject to local wetland protection regulations.

4 There is substantial evidence in the record to support the city’s conclusion
5 that wetlands on the subject property are not locally regulated. A map in the
6 record states that “There are no city of Corvallis mapped protected natural
7 features within the project boundary.” Record 682 (emphasis omitted).

8 Petitioners also argue that:

9 “At a minimum, an adequate explanation must include a detailed
10 explanation of why the mapped wetlands here are not locally
11 protected, and why it is that the preservation and protection
12 provisions of Chapter 4.13 do not apply. At no place in this decision
13 is Chapter 4.13 addressed, even to explain why it is this approval
14 criteria does not apply.” Petition for Review 41.

15 The city council explained its conclusions:

16 “[T]estimony presented during the June 3, 2019 public hearing in
17 opposition to the application includes concerns about proposed
18 mitigation for the project’s impacts to the wetlands identified on the
19 property, and concerns about the former property owner placing
20 illegal backfill within the property’s wetlands. The Council notes
21 that wetlands on the subject property are not Locally Protected, and
22 are therefore subject to only State and Federal requirements for
23 wetland fill permits and compensatory mitigation. The
24 Council * * * finds that the application sufficiently addresses local
25 wetland regulations.” Record 33.

26 Petitioners do not establish that the city may not rely on the map in the record to
27 identify locally protected wetlands. Accordingly, petitioners’ argument provides
28 no basis for reversal or remand.

- 1 This assignment of error is denied.
- 2 The city's decision is affirmed.