

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

3
4 LAWRENCE JOHNSON and JEFFREY LAMB,
5 *Petitioners,*

6
7 and

8
9 CATHERINE BISCOE,
10 *Intervenor-Petitioner,*

11
12 vs.

13
14 CITY OF PHILOMATH,
15 *Respondent,*

16
17 and

18
19 SCOTT LEPMAN COMPANY and
20 GLORIETTA BAY, LLC,
21 *Intervenors-Respondents.*

22
23 LUBA No. 2019-132

24
25 FINAL OPINION
26 AND ORDER

27
28 Appeal from City of Philomath.

29
30 Lawrence Johnson, Corvallis, and Jeffrey Lamb, Philomath, filed a joint
31 petition for review and a reply brief. Lawrence Johnson argued on behalf of
32 himself.

33
34 Catherine Biscoe, Philomath, filed a joint petition for review and a reply
35 brief, and argued on behalf of herself.

36
37 No appearance by City of Philomath.
38

1 Micheal M. Reeder, Eugene, filed a response brief and argued on behalf of
2 intervenors-respondents.

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4 RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board
5 Member, participated in the decision.

6
7 AFFIRMED

06/25/2020

8
9 You are entitled to judicial review of this Order. Judicial review is
10 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners appeal a city council decision approving a master plan for development of property zoned Industrial Park and Heavy Industrial.

MOTION TO DISMISS AND MOTION TO STRIKE

On March 27, 2020, petitioners and intervenor-petitioner Catherine Biscoe (together, petitioners) filed a petition for review. On April 27, 2020, the Board received a motion to dismiss and motion to strike from intervenors-respondents (intervenors).

A. Motion to Dismiss

Intervenors argue that the petition for review fails to comply with the requirements in OAR 660-010-0030(4) that “in effect, no petition for review was filed at all.” Intervenors’ Combined Motion to Dismiss and Motion to Strike 2. In particular, intervenors argue that the petition for review lacks a summary of material facts as required by OAR 661-010-0030(4)(b)(C); fails to identify a standard of review as required by OAR 661-010-0030(4)(d); and fails to include a copy of the challenged decision as required by OAR 661-010-0030(4)(e). In their reply brief, petitioners respond that deficiencies in the petition for review

1 are “technical violations,” and cite an Oregon Rule of Civil Procedure that has
2 no applicability to a LUBA appeal.¹

3 LUBA has the discretion to refuse to consider a petition for review or
4 response brief that does not substantially conform to OAR 661-010-0030 or OAR
5 661-010-0035. *Cox v. Polk County*, 174 Or App 332, 337, 25 P3d 970 (2001). In
6 *Gallagher v. City of Myrtle Point*, 50 Or LUBA 303, 305-06 (2005), the petitioner
7 submitted a letter to LUBA that was apparently intended to be a petition for
8 review, but it was so noncompliant with the requirements for petitions for review
9 that we did not even recognize it as a petition for review. The city filed a response
10 brief attempting to respond to the letter and also filed a motion to dismiss or to
11 compel petitioner to comply with the requirements for a petition for review.
12 Petitioner submitted another letter purporting to respond to the motion to dismiss.
13 We dismissed the petitioner’s appeal because the letter was so grossly
14 noncompliant with the requirements for a petition for review that we had nothing
15 to review.²

¹ OAR 661-010-0005, which petitioners do not cite, provides in relevant part that “[t]echnical violations not affecting the substantial rights of parties shall not interfere with the review of a land use decision or limited land use decision.”

² We held:

“The letter includes no statement of facts establishing petitioner’s standing, no statement of the case, no description of the challenged decision or request for relief, no summary of arguments or material facts, no statement of jurisdiction, no assignments of error, and no

1 The problem with intervenors’ argument is that the petition for review does
2 include a section that is a “Summary of the Facts.” Intervenors’ dispute is with
3 the completeness and relevance of the factual summary. Each assignment of error
4 in the petition for review also includes a section that is entitled “Standard of
5 Review.” However, none of those sections identify a standard of review that
6 applies to LUBA’s review of the parties’ arguments, which is set out in ORS
7 197.835 and OAR 661-010-0071 and 661-010-0073.³ Intervenors are correct that
8 the petition for review fails to include a copy of the challenged decision.
9 However, that failure does not require that we dismiss the appeal.

10 Although it is a close call, we conclude that the petition for review is not
11 so grossly deficient that it fails to substantially conform to OAR 661-010-
12 0030(4).

copy of the challenged decision. For that matter, it also fails to
comply with almost all of the specifications for a petition for review
under OAR 661-010-0030(2).” 50 Or LUBA at 305-06 (footnote
omitted).

³ OAR 661-010-0030(4)(d) provides in relevant part that “[e]ach assignment
of error must state the applicable standard of review.” LUBA’s standard of
review of land use decisions is generally set out at ORS 197.835.

By way of example, under the first assignment of error heading, the petition
for review states: “Applicable Standard of Review: Question of Law, Question
of Due Process.” Petition for Review 18. Under the second assignment of error
heading, the petition for review states: “Applicable Standard of Review: Question
of Law, Matter/Abuse of Discretion.” Petition for Review 21.

1 **B. Motion to Strike**

2 The petition for review includes a single page “Declaration” at page 3.
3 Intervenors move to strike the declaration because it includes statements and facts
4 that are not part of the record and no motion to take evidence pursuant to OAR
5 661-010-0045 was submitted seeking for LUBA to consider it. Petitioners do not
6 respond to the motion to strike.

7 We agree with intervenors. Petitioners’ declaration at page 3 of the petition
8 for review is stricken and the Board will not consider it.

9 **FACTS**

10 On March 21, 2019, intervenors submitted six applications—for
11 Conceptual Planning Development (CPD) approval, Detailed Planned
12 Development (DPD) approval, two site design review applications, conditional
13 use review, and a variance—in connection with their proposal to develop a 10-
14 acre property zoned Industrial Park (IP) and Heavy Industrial (HI). Record 1143.
15 The subject property is the site of a former timber processing mill. Intervenors
16 propose to develop the property with the following uses: indoor self-storage
17 facility, outdoor recreational vehicle and boat storage facility, a recreational
18 vehicle park, and industrial flex-space buildings. Record 397.

19 The planning commission held hearings on the application, and at the
20 conclusion of the open record period, denied the applications for CPD and DPD
21 approval, but approved the conditional use and variance applications. Record
22 520-22. Intervenors, petitioners and Biscoe filed separate appeals of the planning

1 commission’s decision. On October 15, 2019, the city council held a hearing on
2 both appeals. At the conclusion of the hearing, the city council left the record
3 open for seven days for additional written testimony, and for an additional seven
4 days for rebuttal of testimony submitted during the first open record period. At
5 its November 12, 2019 meeting, the city council voted to approve all six of the
6 applications. This appeal followed.

7 **FIRST AND SECOND ASSIGNMENTS OF ERROR**

8 Petitioners’ first and second assignments of error are difficult to follow,
9 and, as noted, do not identify the standard of review that LUBA should apply to
10 the assignment of error, as required by OAR 661-010-0030(4)(d).⁴ In the first
11 assignment of error, we understand petitioners to argue that the city committed a
12 procedural error in processing and approving the applications because, according
13 to petitioners, the applications were incomplete when the city made its decision,
14 and ORS 227.178(1) prohibits the city from approving an incomplete

⁴ By way of example, under the first assignment of error heading, the petition for review states: “Applicable Standard of Review: Question of Law, Question of Due Process.” Petition for Review 18. Under the second assignment of error heading, the petition for review states: “Applicable Standard of Review: Question of Law, Matter/Abuse of Discretion.” Petition for Review 21.

1 application.⁵ ORS 197.835(9)(a)(B).⁶ We understand petitioners' second
2 assignment of error to argue that the city council's imposition of 25 conditions of
3 approval and the requirements included in those conditions of approval
4 demonstrate that the application was incomplete when the city made its decision.⁷
5 Petition for Review 21.

6 Intervenor's respond, initially, that the issues raised in the first and second
7 assignments of error were not raised prior to the close of the initial evidentiary
8 hearing, and accordingly may not be raised for the time on appeal to LUBA. ORS
9 197.763(1); ORS 197.835(3). ORS 197.763(1) and ORS 197.835(3) together
10 require that a party identify in the record where an issue was raised with sufficient
11 specificity to afford the local government the opportunity to respond. *Boldt v.*
12 *Clackamas County*, 107 Or App 619, 622-23, 813 P2d 1078 (1991). In addition,

⁵ Petitioners cite ORS 227.178(1), which provides:

“Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.”

⁶ ORS 197.835(9)(a)(B) provides that LUBA will remand a decision based on procedural error if the board finds that the local government “[f]ailed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner.” ORS 197.835(9)(a)(B).

⁷ We do not understand petitioners to challenge the adequacy of the conditions of approval.

1 where a party has the opportunity to object to a procedural error before the local
2 government, but fails to do so, that error cannot be assigned as grounds for
3 reversal or remand of the resulting decision. *Torgeson v. City of Canby*, 19 Or
4 LUBA 511, 519 (1990); *Dobaj v. Beaverton*, 1 Or LUBA 237, 240 (1980). This
5 obligation to object to procedural errors overlaps with, but exists independently
6 of ORS 197.763(1) and 197.835(3). *Confederated Tribes v. City of Coos Bay*, 42
7 Or LUBA 385, 393 (2002); *Simmons v. Marion County*, 22 Or LUBA 759, 774
8 n 8 (1992).

9 In the petition for review, petitioners cite Record pages 233-34, 617, 626,
10 and 706 as raising the issues raised in the first and second assignments of error.
11 Petition for Review 21, 24. We have reviewed the cited record pages. Record 233
12 is a written statement from Biscoe that argues “[t]he record still shows that the
13 application is incomplete and that the criteria has not been met * * *.” Record
14 233 (emphases in original). That argument is repeated on Record 234.⁸ However,
15 nothing in the record pages cited to us presents the issue raised in the first
16 assignment of error, or takes the position that ORS 227.178(1) prohibited the city
17 from approving the application. Accordingly, we agree with intervenors that the
18 issues that are raised in the first and second assignments of error were not raised

⁸ Record 234 is Biscoe’s written testimony that argues that “[a]s the City Council reviews this application * * * their conclusion should be that the application is incomplete and that ALL of the criteria have not been met.”

1 in any of the cited record pages, and petitioners are precluded from raising the
2 issues for the first time on appeal to LUBA.

3 The first and second assignments of error are denied.

4 **THIRD AND FIFTH ASSIGNMENTS OF ERROR**

5 These assignments of error relate to water capacity and water treatment.
6 They are difficult to follow. In their third assignment of error, we understand
7 petitioners to argue that the city’s findings that address water capacity are
8 inadequate because the findings do not account for what petitioners describe as
9 “[p]reviously approved developments.” Petition for Review 24-25. In their fifth
10 assignment of error, we understand petitioners to argue that the city council’s
11 decision that sufficient water exists for the development is not supported by
12 substantial evidence in the record and that the evidence in the record supports a
13 conclusion that the city does not have the capacity or infrastructure to provide
14 water to the development.⁹

⁹ Petitioners cite Philomath Comprehensive Plan (PCP) Policies 1 and 8 in the fifth assignment of error.

PCP Policy 1 provides:

“The City of Philomath’s primary water source shall be the Mary’s River. The secondary water sources shall be the City Wells.”
Petition for Review 28.

PCP Policy 8 provides:

1 Intervenors respond, initially, that petitioners failed to demonstrate that the
2 issues raised in the third and fifth assignments of error were raised with
3 specificity prior to the close of the initial evidentiary hearing and petitioners are
4 precluded from raising the issues for the first time at LUBA. However, we
5 disagree with intervenors. First, the city council’s findings regarding water
6 supply were adopted for the first time in the final decision. Petitioners were not
7 required to anticipate and raise an issue regarding those findings in order to be
8 able to challenge them. *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993)
9 (generally, to preserve issues under ORS 197.763(1), a party must raise issues
10 regarding compliance with the applicable approval criterion, but is not required
11 to anticipate the actual findings or conditions a local government adopts to
12 demonstrate compliance with that criterion, or to question the adequacy of the
13 evidence accepted into the record to support findings of compliance).

14 Second, in their petition for review, petitioners cite the same record pages
15 cited in the first and second assignments of error, with the additional citations to
16 Record 189-190, 235-44, 627, 704 and 705. Petition for Review 26, 31. We have
17 reviewed the cited record pages, and we conclude that the issues raised in the
18 third and fifth assignments of error were raised with sufficient specificity on those

“The City shall take necessary steps to ensure that water supply sources are adequate for future community needs.” Petition for Review 29.

1 record pages to meet the requirement of ORS 197.763(1) and ORS 197.835(3),
2 and they are not waived.

3 However, intervenors also respond, and we agree, that the city’s findings
4 that were adopted in response to testimony from petitioners and others regarding
5 the sufficiency of water are adequate to explain the council’s conclusion that
6 sufficient water exists to serve the development and that the evidence in the
7 record supports that conclusion.¹⁰ Absent any acknowledgement of those

¹⁰ The city council found:

“1. Philomath has the available supply of water to service this development.

“Water Production Capacity	2.18 MGD
“Peak Day Demand	1.47 MGD
“Planned project projected	0.49 MGD
“Oak Springs Apts.	0.053 MGD
“Boulevard Apts.	0.162 MGD
“Mill Pond Crossing Sub	0.105 MGD
“Beelart Annexation	0.136 MGD
“Newton Creek Sub	0.034 MGD
“Reserve peak day water capacity	0.22 MGD
“Projected Peak Day Demand	0.0671 MGD
“RV Park	0.0640 MGD

1 findings, petitioners’ arguments provide no basis for reversal or remand of the
2 decision.

3 Finally, we agree with intervenors that petitioners’ undeveloped reference
4 to “numerous additional local developments that have already been approved” as
5 demonstrating that the water supply is not sufficient is undeveloped, and
6 accordingly, also fails to provide a basis for reversal or remand of the decision.
7 *Deschutes Development Co. v. Deschutes County*, 5 Or LUBA 218, 220 (1982)

“Self-Storage	0.0008 MGD
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“Flex Industrial Space	0.0023 MGD
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“Based on the above analysis, upon full build-out of all approved and anticipated developments, the water system would have a reserve peak day capacity of 0.22 MGD. The proposed development of 175 RV spaces, self-storage facility and flex industrial space would require 0.0671 MGD. Therefore, the City’s current water system has adequate capacity to serve the proposed development.

“2. The two new 12-inch public water mainlines that cross through this development will complete the looping of the public waterline system as depicted in the City of Philomath Water Masterplan.

“3. Providing for the looping of the water line will improve the fire flows with the area.

“4. That the proposed Fire water supply is sufficient to supply all public fire hydrants, the onsite private fire hydrants and the proposed on site fire sprinkler systems.” Record 36.

1 (“It is not our function to supply petitioner with legal theories or to make
2 petitioner’s case for petitioner.”)

3 The third and fifth assignments of error are denied.

4 **FOURTH ASSIGNMENT OF ERROR**

5 Petitioners’ fourth assignment of error is:

6 “The current water infrastructure in the City of Philomath fails to
7 provide adequate fire redundancy measures. In the event of a
8 disastrous fire event, adequate water flows cannot be maintained to
9 all present neighborhoods in Philomath.” Petition for Review 26.

10 Intervenors respond that the issue raised in the fourth assignment of error was not
11 raised during the proceedings below. Petitioners cite Record 233-34 as raising
12 the issue. Petition for Review 27. We have reviewed the cited record pages, and
13 we agree with intervenors that the issue was not raised on those record pages.
14 Accordingly, it is waived. ORS 197.763(1); ORS 197.835(1).

15 The fourth assignment of error is denied.

16 **SIXTH ASSIGNMENT OF ERROR**

17 In their sixth assignment of error, petitioners argue that the two traffic
18 impact analyses (TIAs) submitted by intervenors are not substantial evidence that
19 PCP Policy 5 is met because the TIAs do not consider background traffic from
20 nine approved residential and commercial developments. ORS 197.835(9)(a)(C).
21 Petitioners cite Record 233-44 to establish that the issue was preserved. Petition
22 for Review 35.

1 Intervenors respond that the issue raised in the sixth assignment of error
2 was not raised with specificity at Record 233-34.¹¹ As noted, Record 233-34 is
3 written testimony submitted by Biscoe. The only mention of a traffic study is at
4 Record 233, which says:

5 “The record still shows that the application is incomplete and that
6 criteria has not been met on:

7 “* * * * *

8 “Complete traffic study that includes other area developments–
9 (Blvd, Oak Springs, Mill Pond, and Corvallis’ more than +1000
10 recently approved developments)[.]” Record 233 (emphasis in
11 original).

12 While it is a close call, we conclude that the issue raised in the sixth assignment
13 of error–whether the TIAs provide substantial evidence of compliance with PCP
14 Policy 5–was raised with enough specificity to give the local government notice
15 of the issue.

16 However, we agree with intervenors that petitioners have not established
17 that the city council’s decision is not supported by substantial evidence, or that
18 the conclusions in the TIAs are flawed merely because they do not include the
19 nine other developments identified in the petition for review. The city council
20 adopted findings concluding that the TIAs provided sufficient evidence that no
21 off-site mitigation was required. Record 34. Intervenors also point to evidence in

¹¹ We do not understand intervenors to argue that PCP Policy 5 is not an applicable approval criterion.

1 the record from intervenors’ traffic engineer that concludes that even if the TIAs
2 had counted all background traffic from other developments, the effected
3 intersections would continue to function at acceptable levels of service. Record
4 136-37. That evidence is evidence a reasonable decision maker would rely on in
5 concluding that the applicable approval criteria were satisfied and that no off-site
6 mitigation is required. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d
7 608 (1993) (citing *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262
8 (1988)) (“Substantial evidence exists to support a finding of fact when the record,
9 viewed as a whole, would permit a reasonable person to make that finding.”).

10 The sixth assignment of error is denied.

11 **SEVENTH, EIGHTH, AND ELEVENTH ASSIGNMENTS OF ERROR**

12 ORS 197.835(9)(a)(B) provides that LUBA shall reverse or remand a land
13 use decision if LUBA finds the local government “[f]ailed to follow the
14 procedures applicable to the matter before it in a manner that prejudiced the
15 substantial rights of the petitioner[.]” In these assignments of error, we
16 understand petitioners to argue that the city committed a variety of procedural
17 errors.

18 One of the requirements to establish a procedural error is that a petitioner
19 must identify the procedure allegedly violated. *Stoloff v. City of Portland*, 51 Or
20 LUBA 560, 563 (2006). A second requirement to establish a procedural error is
21 that a petitioner must establish that its substantial rights were prejudiced. *See*
22 *Deumling v. City of Salem*, 76 Or LUBA 99, 125 (2017) (petitioner fails to allege

1 a basis for reversal or remand when petitioner fails to allege the procedural error
2 prejudiced petitioner’s substantial rights). Finally, as noted, where a party has the
3 opportunity to object to a procedural error before the local government, but fails
4 to do so, that error cannot be assigned as grounds for reversal or remand of the
5 resulting decision. *Torgeson*, 19 Or LUBA at 519; *Dobaj*, 1 Or LUBA at 240
6 (1980).

7 In their seventh assignment of error, we understand petitioners to argue
8 that the city committed a procedural error in failing to hold a separate appeal
9 hearing for their appeal of the planning commission’s decision, and that the city
10 committed a procedural error when it limited petitioners’ testimony at the
11 October 15, 2019 appeal hearing to three minutes each (for a total of nine
12 minutes).¹² In their eighth assignment of error, we understand petitioners to argue
13 that the city committed a procedural error when the mayor closed the city council
14 hearing without providing additional opportunity for city councilors to question
15 intervenors and their experts.¹³ In their eleventh assignment of error, we
16 understand petitioners to argue that the city committed a procedural error in
17 making the staff report for the city council available only five days prior to the

¹² Petitioners’ statement of preservation of the issue is: “Preserved in the Record: Achieved through this timely LUBA appeal as record was closed.” Petition for Review 39.

¹³ Petitioners’ statement of preservation of the issue is: “Was Not Preserved in the Record: Through LUBA Record establishing Testimony of Chas Jones October 22, 2019, Pg 231 of Record).” Petition for Review 41.

1 city council hearing, rather than the seven days required by Philomath Municipal
2 Code 18.105.070(4).¹⁴

3 Intervenor's respond, initially, that petitioners have failed to establish that
4 the issues raised in these assignments of error were preserved. We agree. For the
5 seventh assignment of error, petitioners argue that they were not required to
6 object to the procedural error because "the record was closed." Petition for
7 Review 39. However, after the close of the hearing, the record was left open for
8 an additional two weeks for additional testimony, and petitioners do not explain
9 why they could not have raised their procedural objections during the open record
10 period.

11 For the eighth assignment of error, petitioners cite Record 231 to establish
12 that they objected to the procedural error alleged in the eighth assignment of
13 error. We have reviewed Record 231, and we do not see any issue raised that
14 argues that the city committed a procedural error in closing the public hearing
15 without allowing city councilors to question intervenors or their experts. For the
16 eleventh assignment of error, petitioners do not include a record citation to any
17 place where the objection was raised. Rather, petitioners argue that the staff
18 report itself establishes that the issue was raised. However, arguing that the staff

¹⁴ Petitioners' statement of preservation of the issue is: "Established on the Record: Staff Report, Agenda and Packet were first publicly available on Thursday, October 10, 2019, only 5 days for the Lepman Master Plan Development Application Land Use Public Hearing scheduled on October 15, 2019." Petition for Review 49.

1 report was available only five days prior to the hearing is not sufficient to raise
2 the issue raised in the eleventh assignment of error, which is that the city
3 committed a procedural error in providing the staff report five, rather than seven,
4 days prior to the hearing. Accordingly, we agree with intervenors that petitioners
5 have not established that the issues raised in the seventh, eighth, and eleventh
6 assignments of error may be raised for the first time at LUBA.

7 Even assuming the issues in these assignments of error were not waived,
8 petitioners have failed to develop any argument that any of the alleged procedural
9 errors violated their substantial rights. ORS 197.835(9)(a)(B). Accordingly,
10 absent any demonstration of prejudice to the substantial rights of petitioners,
11 these assignments of error provide no basis for reversal or remand of the decision.

12 The seventh, eighth, and eleventh assignments of error are denied.

13 **NINTH ASSIGNMENT OF ERROR**

14 In this assignment of error, petitioners cite PCP Housing policies 5 and 8
15 and argue that the city council’s decision is “inconsistent with these * * *
16 policies.” Petition for Review 42.

17 Intervenors respond that the issue raised in the ninth assignment of error
18 was not raised during the proceedings below. Petitioners cite Record 519, 626-
19 27, 704 and 706 as preserving the issue. Petition for Review 44. While we agree
20 with petitioners that those record pages include general statements about
21 affordable housing, nothing in the cited record pages references or cites PCP
22 Housing policies 5 and 8 or argues that the applications do not satisfy those

1 policies. Accordingly, we agree with intervenors that the issue presented in the
2 ninth assignment of error is waived.

3 Even if the issue was not waived, we also agree with intervenors that
4 petitioners have not established that the cited PCP housing policies are applicable
5 approval criteria for any of the applications. Absent any attempt by petitioners
6 to establish that those PCP policies are mandatory approval criteria or apply to
7 any of the six applications, petitioners' arguments provide no basis for reversal
8 or remand of the decision.

9 The ninth assignment of error is denied.

10 **TENTH ASSIGNMENT OF ERROR**

11 In their tenth assignment of error, petitioners argue that the city council's
12 decision is inconsistent with PCP Storm Drain Policy 1, and with PCP Air, Water,
13 and Land Quality Policy 4. Petitioners also argue that intervenors failed to
14 provide a storm drainage plan.

15 Intervenors respond that the city council's findings addressed the cited
16 PCP policies and concluded that "the project conforms to the City of Philomath
17 storm water drainage standards and with the Oregon DEQ and NOAA Fisheries
18 storm water drainage standards. * * * Policies 1 and 4 [have] been met." Record
19 37. Intervenors also respond that the record includes the stormwater management
20 plan prepared by intervenors' engineer at Record 1471-1573. Petitioners do not
21 acknowledge or address the city council's findings or otherwise explain why the

1 project, including the stormwater management plan, does not satisfy the cited
2 PCP Policies.

3 The tenth assignment of error is denied.

4 **TWELFTH ASSIGNMENT OF ERROR**

5 Petitioners' twelfth assignment of error relates to Statewide Planning Goal
6 1 (Citizen Involvement). Petitioners allege that "[t]he City has consistently failed
7 to acknowledge and obtain the recommendations of this Committee of Citizen
8 Involvement in this and other Land Use applications" in a manner that we
9 understand petitioners to argue is inconsistent with Goal 1. Petition for Review
10 50. Petitioners cite Record 276 and Record 626 as preserving the argument.

11 Intervenors respond that the issue was not preserved. We agree with
12 petitioners that the issue was raised at Record 276 and Record 626. However, we
13 also agree with intervenors that the assignment of error does not present a basis
14 for reversal or remand, because petitioners do not establish that Goal 1 applies to
15 any of the applications and do not otherwise develop their argument.

16 The twelfth assignment of error is denied.

17 The city's decision is affirmed.