

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

3
4 E. M. EASTERLY,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF SALEM,
10 *Respondent,*

11
12 and

13
14 TITAN HILL PROPERTY LLC,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2023-092

18
19 FINAL OPINION
20 AND ORDER

21
22 Appeal from City of Salem.

23
24 E. M. Easterly filed the petition for review and reply brief and argued on
25 behalf of themselves.

26
27 Fred Wilson filed the joint respondent's and intervenor-respondent's brief
28 and argued on behalf of respondent.

29
30 Alan M. Sorem filed the joint respondent's and intervenor-respondent's
31 brief and argued on behalf of intervenor-respondent. Also on the brief was
32 Saalfeld Griggs PC.

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

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

37
38 AFFIRMED

04/12/2024

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

Petitioner appeals the city council’s adoption of Ordinance No. 15-23 (the Ordinance), an amendment to the city’s Transportation System Plan (TSP).

BACKGROUND

The city’s 2020 TSP explains that the city’s street system includes local streets, arterials, and collectors and defines each classification.¹ 2020 TSP 2-7. “Local” streets have a primary function of property access and a secondary function of the movement of traffic. 2020 TSP App B-2. “Arterial” streets are “[h]igh capacity—and typically high speed—streets that serve both intra- and intercity travel needs of the community.” *Id.* at B-1. “Collector” streets are “used to distribute neighborhood traffic from the local street system to the arterial street system.”² *Id.*

The 2020 TSP includes a list of low priority new streets and extensions of existing streets and provides:

“The following streets will be extended through future development, possible expansion of the UGB, or City-initiated projects. These streets should be constructed to full urban standards. Map 3-6 shows the location and approximate alignment of these new street

¹ Petitioner includes graphics from the 2020 TSP in their petition for review. Petition for Review 9, Ex F 7. We assume that the 2020 TSP is the applicable version of the TSP.

² Highways are also recognized as part of the city’s street system in the 2020 TSP. 2020 TSP 2-7.

1 extensions.

2 “* * * * *

3 “*Colorado Drive NW Extension (South terminus of Colorado*
4 *Drive NW to Orchard Heights Road NW) (166)* This will
5 extend the current streets that follow the bowl-shaped contour
6 topography north of Orchard Heights Road NW and west of
7 Doaks Ferry Road NW to create a loop road connected to and
8 north of Orchard Heights Road NW. The loop road will be
9 comprised of Grice Hill Drive NW, Vickery Lane NW,
10 Colorado Drive NW, and possibly Landaggard Drive NW.
11 *This will be a new collector, which will curve around to*
12 *connect back to Orchard Heights Road NW.*

13 “* * * * *.” 2020 TSP 3 30-31 (emphases added).

14 Thus, the 2020 TSP includes a description of the location and “approximate
15 alignment” of Project 166, which will create a connection beginning and ending
16 on Orchard Heights Road NW, and will potentially include Landaggard Drive
17 NW. *Id.* Project 166 is shown roughly a third of the way from the bottom of the
18 Map 3-6 excerpt reproduced below. 2020 TSP 3-26.

1 The city council considered the Ordinance after, in May 2023, the city
2 approved Titan Hill Property LLC’s (intervenor-respondent or intervenor) multi-
3 family housing development consolidated applications (2023 Titan Hill
4 Development Approval) on property containing a portion of the property
5 underlying Project 166. In its staff report addressing the Ordinance, city staff
6 explained that as part of its 2023 Titan Hill Development Approval, intervenor
7 “will extend Colorado Drive NW to Doaks Ferry Road NW which will eliminate
8 the need for Landaggard Drive NW to serve as a collector and allow Landaggard
9 Drive NW to be reclassified as a local street, which is consistent with its current
10 function.”³ Record 78.

³ Additional background information provided in a report from intervenor’s transportation consultant explained:

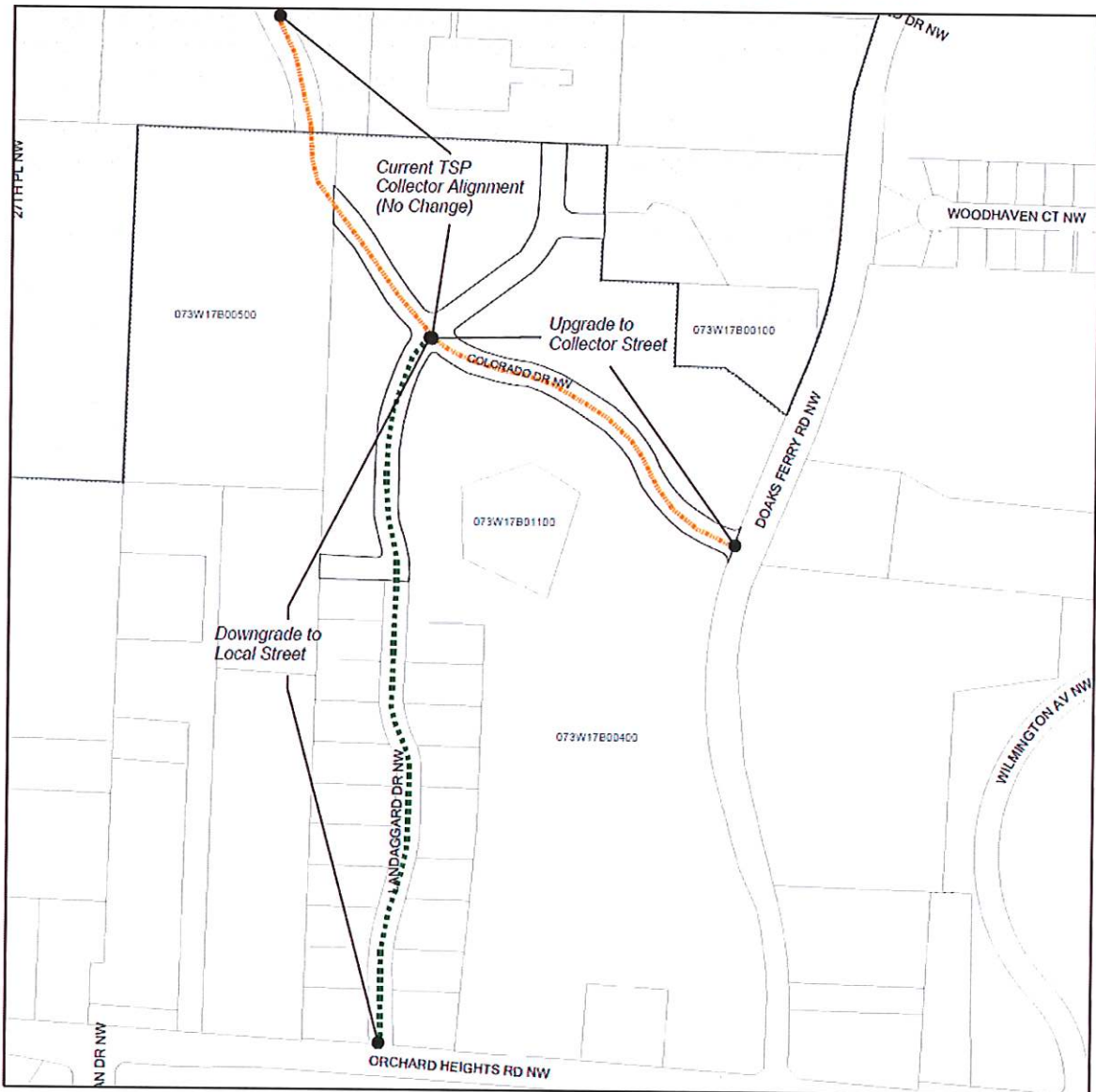
“The proposed development of the Titan Hill, LLC multifamily project will provide the eastern connection of this Collector. As discussed within the prior zone change application, if the continuation of the Collector were extended south along the built segment of Landaggard Drive NW it would route the majority of the site-generated trips from the multifamily project through a more rural residential neighborhood, connecting with the Orchard Heights Road NW entrance to West Salem High School. The subsequent Transportation Impact Analysis dated September 28, 2022 shows that this Collector connection to Orchard Heights Drive NW does not provide adequate capacity to support the school operations and the additional Titan Hill multifamily trips. Without the project the intersection operates at a Level of Service ‘E’ and on the borderline of the Level of Service ‘F’ standard in the morning, and with the project would operate with a failing level of service both in the morning and evening periods (see Table 1). In addition, the route serves as the most direct pedestrian connection from the apartments

1 On October 9, 2023, the city council conducted its first reading of the
2 Ordinance. On November 27, 2023, the city council held a public hearing on the
3 Ordinance. Following the close of the public hearing, and after approving
4 modifications to draft findings, the city council conducted the second reading and
5 adopted the Ordinance. The map below illustrates the changes to Colorado NW
6 Drive and Landaggard Drive approved in the Ordinance.

7

to the high school, and there are 49 pedestrian crossings during the peak afternoon hour occurring today.” Record 292.

TRANSPORTATION SYSTEM PLAN (TSP) AMENDMENT CA23-05 LANDAGGARD AND COLORADO DRIVES NW



Legend

- Taxlots
- Proposed Local Street
- City Limits
- Proposed TSP Collector Alignment
- Outside Salem City Limits



EXHIBIT MAP

RECORD 000090

1

2 Record 90.

1 This appeal followed.

2 **MOTION TO TAKE EVIDENCE**

3 On March 12, 2024, petitioner filed a pleading containing a motion to take
4 evidence and reply brief. Petitioner makes a contingent motion to take evidence,
5 asking that *if* we conclude that Landaggard Drive is a collector road in the 2020
6 TSP, we conduct an evidentiary hearing to obtain from the city:

7 “1. Copies of the wording and graphics contained in the
8 originally adopted version of TSP project 166.

9 “2. Specific evidence of if, when, and under what conditions the
10 original graphics were modified.

11 “3. Copies of the Urban Service Area submissions and approvals
12 associated with the intervenor-respondent property.

13 “4. Copies of the conditions of approval which address or
14 reference TSP project 166 or Colorado Drive NW that are
15 included in the ordinance approving the annexation of
16 [intervenor’s property].” Joint Motion and Reply App A, at 2.

17 On March 18, 2024, the city filed its response to petitioner’s motion to take
18 evidence and reply, in which it objects to the motion. We agree with the city that
19 petitioner’s motion does not comply with OAR 661-010-0045(2), which provides
20 that a motion to take evidence must contain a statement explaining with
21 particularity how the facts sought to be established pertain to the grounds for

1 taking evidence set out in OAR 661-010-0045(1).⁴ OAR 661-010-0045(1)
2 provides, in part:

3 “The Board may, upon written motion, take evidence not in the
4 record in the case of disputed factual allegations in the parties’ briefs
5 concerning unconstitutionality of the decision, standing, ex parte
6 contacts, actions for the purpose of avoiding the requirements of
7 ORS 215.427 or 227.178, or other procedural irregularities not
8 shown in the record and which, if proved, would warrant reversal or
9 remand of the decision.”

10 Petitioner cites the “other procedural irregularities” language in OAR 661-010-
11 0045(1). Joint Motion and Reply App A 1. Petitioner does not present any
12 argument that the above items *relate to a procedural irregularity not shown in*
13 *the record that would justify reversal or remand*. Petitioner’s motion to take
14 evidence is denied.

15 **OVERVIEW**

16 OAR 661-010-0030(4)(d) requires that the petition for review:

17 “Set forth each assignment of error under a separate heading. Each
18 assignment of error must demonstrate that the issue raised in the
19 assignment of error was preserved during the proceedings below.
20 Where an assignment raises an issue that is not identified as
21 preserved during the proceedings below, the petition shall state why
22 preservation is not required. Each assignment of error must state the
23 applicable standard of review. Where several assignments of error
24 present essentially the same legal questions, the argument in support
25 of those assignments shall be combined[.]”

⁴ Petitioner’s joint motion to take evidence and reply brief also fails to comply with our rule requiring that “[a]ll motions * * * be filed as a separate document and * * * not be included with any other filing.” OAR 661-010-0065(3).

1 **A. Preservation**

2 The city and intervenor (jointly respondents) filed a joint respondent’s
3 brief. Respondents point out that the petition for review does not identify where
4 any assignments of error were preserved below, or explain why preservation is
5 not necessary, as required by OAR 661-010-0030(4)(d). Respondents’ Brief 6.
6 Respondents also acknowledge, however, that the Ordinance is a legislative
7 decision and that preservation is generally not required for legislative decisions.
8 *McCaffree v. Coos County*, 79 Or LUBA 512, 517 (2019) (stating that the “raise
9 it or waive it” requirements of ORS 197.763(1) and 197.835(3) do not apply to
10 legislative proceedings).

11 Petitioner provides citations in their reply brief in support of their argument
12 that they preserved their assignments of error. In response, the city argues that
13 the reply brief exceeds the 1,000-word limitation set out in OAR 661-010-0039
14 and asks that we disregard all but the first 24 words of the reply. The city also
15 observes that the petitioner’s exceeding of the word limit is largely academic
16 because, again, preservation generally is not required for legislative decisions.

17 We have recently reiterated that preservation may not be addressed for the
18 first time in a reply brief. *Rosewood Neighborhood Association v. City of Lake*
19 *Oswego*, ___ Or LUBA ___, ___ (LUBA No 2023-035, Nov 1, 2023) (slip op at
20 9). Petitioner was required to explain in their petition for review where in the
21 record preservation occurred or why preservation was not required. However, we

1 agree with respondents that because the decision is legislative, preservation was
2 not required. We will turn to the standard of review.

3 **B. Standard of Review**

4 Although petitioner divides their petition for review into seven
5 assignments of error, petitioner does not identify applicable standards of review
6 as required by OAR 661-010-0030(4)(d). Respondents state that their substantial
7 rights are prejudiced by petitioner’s failure to identify the applicable standard of
8 review for each assignment of error and that they are left to guess as to
9 petitioner’s arguments.⁵ *See, e.g.,* Respondents’ Brief 7. We agree with
10 respondents that petitioner’s failure to identify the applicable standard of review
11 in their assignments of error makes it difficult to discern what error(s) petitioner
12 is asserting. We will, however, address petitioner’s assignments of error to the
13 extent that we understand them.⁶

⁵ Respondents do not request any action on our part based upon the failure of the petition to include standards of review.

⁶ We will not, however, address arguments made for the first time in the reply brief. For example, petitioner argues for the first time in the reply that the TSP amendment Ordinance was required to precede intervenor’s development approvals. Petitioner also raises numerous factual assertions in its reply and argues “[t]he record and the [respondents’] response brief fail to identify or acknowledge the historical development proposals associated with the intervenor’s parcel of land or the unstated assumptions and conclusions therein.” Reply 2. “A reply brief shall be confined to responses to arguments in the respondent’s brief * * * but shall not include new assignments of error or advance new bases for reversal or remand.” OAR 661-010-0039.

1 **C. Challenged Decision**

2 An appeal at LUBA is initiated by filing a notice of intent to appeal (NITA)
3 a land use decision. OAR 661-010-0015(1). “To the extent petitioner attempts in
4 [their] assignment of error to challenge a land use decision that is not the subject
5 of [their] NITA or that the county did not make, that challenge provides no basis
6 for reversal or remand of the decision.” *Just v. Linn County*, 59 Or LUBA 233,
7 235 (2009).

8 As part of the 2023 Titan Hill Development Approval, intervenor sought
9 approval of (1) an alignment of the portion of Colorado Drive NW it will
10 construct, and (2) an alternative street grade for Colorado Drive NW. Although
11 Salem Revised Code (SRC) 803.035(c) provides that local streets may have a
12 12% grade, collector streets are generally limited to an 8% grade.⁷ The 2023 Titan

⁷ SRC 803.035(c) provides:

“All streets shall be designed with a vertical alignment that conforms to the Public Works Design Standards. No grade of parkway, major arterial, or minor arterial shall exceed six percent. No grade of a collector street shall exceed eight percent. No grade of a local street shall exceed 12 percent.”

SRC 803.065 contains “Alternative street standards” and provides:

“(a) The Director may authorize the use of one or more alternative street standards:

“(1) Where exiting development or physical constraints make compliance with the standards set forth in this chapter impracticable;

1 Hill Development Approval approved the alignment and allowed a 12% grade on
2 Colorado Drive NW, and became final on May 25, 2023. That approval was not
3 appealed, and is final. We agree with respondents that petitioner may not
4 collaterally attack the 2023 Titan Hill Development Approval approving the
5 Colorado Drive alignment and a variation from the 8% grade generally applicable
6 to collectors.⁸

7 With that understanding, we proceed to the assignments of error.

8 **FIRST ASSIGNMENT OF ERROR**

9 SRC 64.020(a) identifies two types of comprehensive plan amendments:
10 major and minor.⁹ The city council considered the Ordinance a minor

“(2) Where the development site is served by fully developed streets that met the standards in effect at the time the streets were originally constructed; or

“(3) Where topography or other conditions make the construction that conforms to the standards impossible or undesirable.

“(b) Authorization of an alternative street standard may require additional or alternative right-of-way width, easements, and improvements to accommodate the design and construction using the alternative standard.”

⁸ Respondents also argue, and we also agree, that the street standards are not identified as a comprehensive plan amendment approval criterion in SRC 64.020(f).

⁹ SRC 64.020(a) provides: “Amendments to the comprehensive plan, other than an amendment to a plan map, as that term is defined in SRC 64.025, shall be adopted as provided in this section. The two types of comprehensive plan

1 comprehensive plan amendment. Record 6. Petitioner requests that we remand
2 the city council decision “in order for the Respondent to address [the Ordinance]
3 as a major comprehensive plan amendment and to provide appropriate findings
4 supporting the significant effect of the amendment upon the planned
5 transportation facility,” the extension of Colorado Drive NW identified in the
6 TSP. Petition for Review 11.

7 **A. SRC 64.020(b)**

8 SRC 64.020(b) provides:

9 “A major comprehensive plan amendment is any amendment to the
10 comprehensive plan that involves the creation, revision, or
11 implementation of broad public policy generally affecting more than
12 one property owner or affecting a large number of individual
13 properties.”

14 Petitioner argues that the city council should have addressed the Ordinance as a
15 major comprehensive plan amendment. Petition for Review 11.

16 As explained in a preceding section, petitioner has not identified an
17 applicable standard of review. Respondents argue that petitioner asserts a
18 procedural error under ORS 195.835(9)(a)(B), that is, that the city council’s
19 failure to follow applicable procedures prejudiced the substantial rights of

amendments are major and minor.” SRC 64.025 governs amendments to “the urban growth boundary, the comprehensive plan map, or a general land use map in a neighborhood plan.” SRC 64.025(a).

1 petitioner.¹⁰ Respondents also maintain that petitioner was required to raise their
2 objection to the city’s processing of the Ordinance as a minor comprehensive
3 plan amendment during the city proceedings. Respondents’ Brief 11.

4 “LUBA has long held that where a party has the opportunity to
5 object to a procedural error before the local government, but fails to
6 do so, that error cannot be assigned as grounds for reversal or
7 remand of the resulting decision. * * * This obligation to object to
8 procedural errors overlaps with, but exists independently of, ORS
9 197.763(1) and 197.835(3).” *McCaffree*, 79 Or LUBA at 517.

10 In *Dobson v. City of Newport*, the city’s comprehensive plan included a
11 policy providing that “[w]henver a major change (as determined by the
12 Commission) to the Comprehensive Plan or an implementing ordinance is under
13 consideration, three persons from the community at large shall be designated by
14 the Planning Commission as a Citizens’ Advisory Committee.” 47 Or LUBA
15 267, 275 (2004). We concluded:

¹⁰ ORS 197.835(9)(a) provides that we will reverse or remand a decision if we determine that the local government:

- “(A) Exceeded its jurisdiction;
- “(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;
- “(C) Made a decision not supported by substantial evidence in the whole record;
- “(D) Improperly construed the applicable law; or
- “(E) Made an unconstitutional decision[.]”

1 “If the challenged ordinance is a major change and the planning
2 commission should have appointed a special three-person citizens
3 advisory committee, the planning commission’s error in failing to
4 do so is a procedural error. To assert a procedural error as a basis for
5 remand at LUBA, petitioners must establish that they objected
6 below and that the error prejudiced their substantial rights.” *Id.* at
7 277.

8 We conclude, however, that petitioner’s first assignment of error is not
9 procedural.

10 SRC 64.020(d) provides: “Procedure type. Major and minor
11 comprehensive plan amendments are legislative land use decisions, and are
12 processed according to the Legislative Procedures under SRC chapter 300.”

13 Petitioner does not allege that the city council violated the applicable procedure
14 to process the Ordinance and respondents do not identify any difference in
15 procedure applicable to major versus minor comprehensive plan amendments.
16 Petitioner did not raise a procedural error as set out in ORS 197.835(9)(a)(B).
17 Petitioner was not required to object to the city’s treatment of the Ordinance as a
18 minor plan amendment.

19 We do agree with respondents that petitioner is arguing that the city
20 council misconstrued SRC 64.020(b). Respondents’ Brief 8. Petitioner cites the
21 definition of “major comprehensive plan amendment” and argues “it appears that
22 the amendment of the [TSP] falls under the major amendment provisions * * *
23 not the minor amendment * * * requirements.” Petition for Review 7. Petitioner
24 argues that the city council was required to *address* the Ordinance as a major
25 comprehensive plan amendment because the evidence is 22 properties along

1 Landaggard Road will be impacted by the Ordinance and the Ordinance fails to
2 execute TSP Policy 4.4, providing that “[n]ew arterial and collector streets
3 alignments shall be surveyed and delineated after their adoption in the Salem
4 Transportation System Plan.” *Id.* at 10-11. We will remand a local government
5 decision if the local government improperly construed the law. ORS
6 197.835(9)(a)(D).

7 We agree with respondents that properly construing the SRC requires
8 examination of its text and context. *State v. Gaines*, 346 Or 160, 171-73, 206 P3d
9 1042 (2009); Respondents’ Brief 9. SRC 64.020(b) provides that a major
10 comprehensive plan amendment *involves the creation, revision or*
11 *implementation of broad public policy* “generally affecting more than one
12 property owner or affecting a large number of individual properties.” Petitioner’s
13 broad assertion that the Ordinance does not execute a specific policy and impacts
14 22 properties does not address the SRC 64.020 language “involves the creation,
15 revision or implementation of broad public policy.” We will not develop an
16 argument for them. *Deschutes Development Co. v. Deschutes County*, 5 Or
17 LUBA 218, 220 (1982).

18 Furthermore, where a city council’s mischaracterization of a code
19 amendment does not result in the city council’s failure to address applicable law,
20 the error is harmless. *Whittemore v. City of Gearhart*, 75 Or LUBA 374 (2017).
21 SRC 64.020(f) “Criteria” provides:

22 “(1) A major comprehensive plan amendment may be made if:

1 “(A) *The amendment is in the best interest of the public*
2 *health, safety and welfare of the City.*

3 “(B) *The amendment conforms to the applicable statewide*
4 *planning goals and applicable administrative rules*
5 *adopted by the Department of Land Conservation and*
6 *Development.*

7 “(2) A minor comprehensive plan amendment may be made if:

8 “(A) The amendment does not significantly change or
9 amend key principles or policies in the comprehensive
10 plan;

11 “(B) The amendment does not require substantial changes to
12 plan language to maintain internal plan consistency;

13 “(C) The amendment does not require significant factual or
14 policy analysis;

15 “(D) *The amendment is in the public interest of the public*
16 *health, safety and welfare of the City; and*

17 “(E) *The amendment conforms to the applicable statewide*
18 *planning goals and applicable administrative rules*
19 *adopted by the Department of Land Conservation and*
20 *Development.*” (Emphases added.)

21 The minor comprehensive plan amendment approval criteria include the two
22 criteria applicable to major comprehensive plans. Any error in characterizing the
23 decision as a major comprehensive plan amendment is harmless.¹¹

24 This subassignment of error is denied.

¹¹ As part of its argument that petitioner raised a procedural error, respondents maintain that petitioner has not shown any prejudice to their substantial rights because of this overlap of criteria. Respondents’ Brief 15-16.

1 **B. SRC 64.020(f)(2)(C)**

2 SRC 64.020(f)(2)(C) requires that a minor comprehensive plan
3 amendment “not require significant factual or policy analysis.” Petitioner argues
4 that the city council’s findings in response to SRC 64.020(f)(2)(C) are
5 unsupported by evidence.

6 The city council’s findings conclude that the Ordinance does not require
7 significant factual or policy analysis because the Colorado Drive NW “loop
8 connection to Doaks Ferry Road NW would perform the same function as the
9 planned connection to Orchard Heights Road NW through Landaggard Drive
10 NW.” Record 7. The city council also concluded, in part:

11 “The realigned collector street will be developed with sidewalks and
12 bike lanes thereby supporting mobility and multimodal travel needs.
13 Maintaining Landaggard Drive NW as a local street, together with
14 the construction of a new collector street alignment, supports the
15 goal of local connectivity. The amendment satisfies [SRC
16 64.020(f)(2)(C)].” Record 7.

17 Statewide Planning Goal 2 (Land Use Planning) requires that a legislative
18 land use decision be supported by an “adequate factual base,” which is the
19 equivalent of substantial evidence, which in turn is evidence a reasonable person
20 would rely upon to make a decision. *DLCD v. Douglas County*, 37 Or LUBA
21 129, 132 (1999) (citing *1000 Friends of Oregon v. City of North Plains*, 27 Or
22 LUBA 372, 377-78, *aff’d*, 130 Or App 406, 882 P2d 1130 (1994); *Dodd v. Hood*
23 *River County*, 317 Or 172, 179, 855 P2d 608 (1993). Consistent with ORS

1 197.835(9)(a)(C), we will remand a land use decision that is not supported by an
2 adequate factual base.

3 “We have previously stated that for this Board to perform its review
4 function, it is generally necessary either (1) that a challenged
5 legislative decision be supported by findings demonstrating
6 compliance with applicable legal standards, or (2) that respondents
7 provide in their briefs argument and citations to facts in the record
8 adequate to demonstrate that the challenged legislative decision
9 complies with applicable legal standards.” *Redland/Viola/Fischer’s*
10 *Mill CPO v. Clackamas County*, 27 Or LUBA 560, 564 (1994).

11 First, petitioner argues that the city council’s finding that SRC
12 64.020(f)(2)(C) is met is incorrect or unsubstantiated. Petitioner argues that the
13 city council’s finding that “[t]he loop connection to Doaks Ferry Road NW would
14 perform the same function as the planned connection to Orchard Heights Road
15 NW through Landaggard Drive NW” is a flawed interpretation of the TSP
16 wording. Petition for Review 8. We understand petitioner to argue that the TSP
17 text identified Landaggard Drive only as a *possible* collector, that the TSP map
18 showing a collector does not override TSP text, and that Landaggard Drive is in
19 fact a local road. We also understand petitioner to argue that Policy 4.4 requires
20 surveying and delineation of roads in the TSP and because those actions have not
21 occurred, the city council may not rely on street locations described in the TSP.
22 Respondents argue that petitioner fails to adequately develop their argument for

1 review. Respondents’ Brief 16. Regardless, respondents maintain that the city
2 council’s decision is supported by an adequate factual base.¹²

3 We agree with respondents that the city council’s conclusion that the
4 Ordinance does not require significant policy or factual analysis is supported by
5 an adequate factual base. We agree with respondents that petitioner has not
6 established that 2020 TSP Policy 4.4 sets out a specific time after inclusion in the
7 TSP by which road alignments must be surveyed and delineated in order to be
8 valid TSP streets. Petitioner included a graphic from the 2020 TSP in their
9 petition for review. Petition for Review 9. We have reviewed related 2020 TSP
10 text. The 2020 TSP text states that the TSP maps illustrate the classification of
11 the streets. The 2020 TSP explains that “[t]he entire street classification system
12 for the Salem Urban Area is shown on Map 3-1.” 2020 TSP 3-9. In the middle of
13 the excerpt from Map 3-1 provided below, Colorado Drive NW is shown as a
14 collector, as is an unlabeled road to the southeast of Colorado Drive. Petitioner
15 acknowledges that the TSP maps show Landaggard Drive as “a potential future

¹² Respondents posit that petitioner may, however, be arguing that Landaggard Drive NW

“was not necessarily the proper future collector to connect Colorado to the rest of the street system. While the existing TSP map showed Landaggard as a future collector street to connect Colorado to Orchard Heights, there was a gap between the two streets so the TSP explained that there could be a different alignment. That is precisely what occurred in the challenge decision.” Respondents’ Brief 16.

1 link between the Colorado Drive NW southern terminus and Orchard Heights
2 Road NW.” Petition for Review 13. We understand the unlabeled road to be
3 Landaggard Drive and to be shown as a collector.



4
5 The record includes the explanation that Landaggard Drive is currently
6 unimproved, serves 22 residences and *operates* as a local street.¹³ This is not

¹³ As city staff explained:

“Landaggard Drive NW is currently an unimproved, dead-end street lined by single family homes that extends approximately 1,200 feet north from Orchard Heights Road NW. In the TSP, Landaggard Drive NW is classified as a collector street that is planned to be extended north to connect to Colorado Way NW and Grice Hill Drive NW, thereby forming a looped collector street that connects back to Orchard Heights Road NW.” Record 78.

As city staff further explained:

1 inconsistent with Landaggard Drive being classified as a collector in the TSP and
2 possibly part of an Orchard Heights Drive collector *loop* in the future. Petitioner
3 has not shown that a reasonable person could not rely upon the evidence relied
4 upon by the city council to conclude that the revised Project 166 meets the
5 objectives of the original Project 166 and that significant policy or factual
6 analysis is not required. Petitioner has not established that the city council
7 findings lack an adequate factual basis.

8 This subassignment of error is denied.

9 The first assignment of error is denied.

10 **SECOND ASSIGNMENT OF ERROR**

11 Again, SRC 64.020(f)(2)(C) provides that a minor comprehensive plan
12 amendment may “not require significant factual or policy analysis.” At the
13 beginning of its findings addressing SRC 64.020(f)(2)(C), the city council
14 explained:

15 “The Public Works Design Standards provide for a maximum eight

“The property through which [the TSP] proposed Landaggard Drive NW extension runs is primarily owed by [intervenor]. The site is undeveloped and zoned for multi-family residential use. [Intervenor] submitted an application to the City to develop the property with multi-family units (Refer to Case No SUB-UGA-SPR-ADJ-TRV-DR23-02). Associated with the development proposal, [intervenor] submitted an application to amend the TSP to realign the proposed collector street, Colorado Drive NW, to intersect with Doaks Ferry Road NW and to reclassify Landaggard Drive NW from a collector to a local street.” Record 79.

1 percent grade for collector streets. City Council approved an
2 alternative street standard of up to twelve percent for the new
3 collector street in the [2023 Titan Hill Development Approval] for
4 the six-lot subdivision for Titan Hill Estates and Titan Hill
5 Apartments. While the extension of Colorado Drive NW as a
6 collector street meets the applicable criteria, a collector street grade
7 exceeding eight percent is not supportive of the goal of serving the
8 mobility and multimodal travel needs of all abilities.” Record 6-7.

9 The city council then proceeded to explain in its findings why it concluded that
10 the criterion was met.

11 In their second assignment of error, petitioner argues the city council’s
12 finding that the criterion is met “is not supported by substantial evidence in the
13 record,” or as we previously explained, an adequate factual base. Petition for
14 Review 16, 18; Record 6. Petitioner maintains that the city council may not rely
15 on its prior approval of the Colorado Drive alignment and a 12% grade for
16 Colorado Drive to approve the Ordinance. At the conclusion of their second
17 assignment of error, petitioner states:

18 “I request that Ordinance No. 15-23 be remanded so that the
19 Respondent may provide findings that support the ‘approved street
20 standard’ which allows a previously affirmed ‘local street’
21 alignment to be reclassified a collector street in order to legitimize
22 the linking of Colorado Drive NW across the Titan Hill Estates six-
23 lot subdivision to Doaks Ferry Road NW along a previously
24 approv[ed] local street alignment without conforming to the eight
25 percent maximum collector street slope requirement of SRC
26 803.035(c).” Petition for Review 19-20.

27 Petitioner maintains:

28 “The prior Council act does not abrogate the Respondent’s
29 obligation *to provide findings which confirm the legality of the prior*

1 *decision when approving the Ordinance No. 15-23 Colorado Drive*
2 *NW re-alignment.* As I challenged the basic assumptions
3 underpinning the approved alternative street standard the
4 Respondent adopted above, I further challenge the respondent to
5 provide the SRC 200.025 - Urban Growth Preliminary Declaration
6 upon which the adopted realignment of Colorado Drive NW is
7 based.” Petition for Review 18 (emphasis added).

8 Petitioner argues that the 2023 Titan Hill Development Approval
9 contradicts the intent and language of a TSP policy providing that “[a]ll
10 development shall include sidewalk and walkway construction as required by the
11 [SRC] and the adopted City of Salem Design Standards” and “the [SRC] because
12 the new collector street grants an alternative collector street functional
13 classification allowing an up to twelve percent slope which exceeds the collector
14 street maximum grade of eight percent.” Petition for Review 16-17.

15 We agree with respondents that petitioner’s arguments challenging the
16 2023 Titan Hill Development Approval are impermissible collateral attacks on a
17 prior land use decision. Respondents’ Brief 20. The city council approved the
18 Colorado Drive NW alignment and 12% grade when it approved intervenor’s
19 development approvals and the findings in support of the challenged decision
20 simply reference that prior approval. This prior decision is not subject to
21 challenge in this appeal.

22 Further, petitioner does not address the bulk of the city council’s findings
23 explaining why the amendment does not require significant policy or factual
24 analysis. *American Tower Corporation v. City of Tualatin*, 78 Or LUBA 350, 354
25 (2018) (absent a challenge to the city council’s responsive findings, petitioner

1 has not provided a basis for remand). The city council found that significant
2 policy or factual analysis was not required because the new Project 166 will
3 perform the same function as the prior Project 166, travel distances are roughly
4 equivalent, and sidewalks and bike lanes will support mobility and multimodal
5 travel needs. Record 7.

6 Petitioner has not identified a basis for remand.¹⁴

7 The second assignment of error is denied.

8 **THIRD AND FIFTH ASSIGNMENTS OF ERROR**

9 SRC 64.020(f)(2)(A) provides that a minor comprehensive plan
10 amendment may not “significantly change or amend key principles or policies in
11 the comprehensive plan.” Petitioner’s third assignment of error is that the city
12 council failed to provide an adequate factual base to support the conclusion that
13 the Ordinance “meets the minor comprehensive plan policy standards” and
14 therefore complies with SRC 64.020(f)(2)(A).¹⁵ Petition for Review 20.
15 Petitioner’s fifth assignment of error is that Policy 2.7 is not met. We address
16 these assignments of error together.

¹⁴ Petitioner does not explain the relevance of the referenced “Urban Growth Preliminary Declaration” decision adopting a realignment of Colorado Drive. Petition for Review 18. We do not address it further.

¹⁵ Petitioner cites SRC 64.020(f)(2)(A): “The amendment does not significantly change or amend key principles or policies in the comprehensive plan” emphasizing “amend key principles or policies.” Petition for Review 20 n 24.

1 The city council’s findings of compliance with SRC 64.020(f)(2)(A)
2 reference TSP Policy 1.5: “The City’s street system shall contain a network of
3 collector streets that serve to connect local traffic to and from the arterial system.”
4 Petitioner argues in their third assignment of error that the city council did not
5 find that additional plan policies or principles “will not be significantly modified
6 by the proposed amendment,” and that the city council should have addressed
7 other policies. Petition for Review 21. The policies identified by petitioner as
8 unaddressed in their third assignment of error are:

9 Policy 4.4 “Survey and Determination of Arterial and Collector
10 Street Alignments. New arterial and collector streets alignments
11 shall be surveyed and delineated after their adoption in the Salem
12 Transportation System Plan. The determination of alignments will
13 allow for the preservation of land for public rights-of-way and give
14 advance notice to property owners and citizens of where future
15 expansions of the street system will occur.” Petition for Review 21.

16 Policy 2.7 “Development of New Streets Outside of the USA. New
17 development occurring outside of the USA shall provide linking
18 streets to the existing street system per the provisions of the Salem
19 Revised Code, Chapter 66, Urban Growth Management Program.”¹⁶

¹⁶ For example, petitioner argues in their fifth assignment of error:

“There are no provisions within the language of Policy 2.7 to defer ‘shall provide linking streets’ or a clear explanation of how rural Colorado Drive NW, an existing roadway that is linked to the Salem’s Orchard Heights Road NW, will be linked to Doaks Ferry Road NW. Yet, staff affirms the deferral as follows: ‘At such time [the tax lot west of intervenor’s property (TL 500)] develops, staff will evaluate how Colorado Drive NW will traverse through the future development site. If a narrow strip of land is created through

1 Petition for Review 22, 30.

2 Policy 1.6 “Compliance with ADA Standards. The City shall
3 comply with the requirements set forth in the Americans with
4 Disabilities Act regarding the location and design of sidewalks. To
5 do so, the City shall establish Critical ADA Routes where
6 compliance with Americans with Disabilities Act Accessibility
7 Guidelines is prioritized. Critical ADA routes are to be those that
8 provide direct, convenient, and safe on-street and off-street pathway
9 connections to existing and planned neighborhood and community
10 destinations such as schools, shopping areas, parks multifamily
11 developments, government offices, and transit stops.” Petition for
12 Review 23, 30.

13 Policy 1.2 “Connectivity of New Developments to Adjoining
14 Undeveloped Land. Applicants submitting preliminary
15 development plans shall provide for extension of local streets to
16 adjoining undeveloped properties and eventual connection with the
17 existing street system. Street alignments should be sensitive to
18 natural features, topography, and layout of adjacent development.”
19 Petition for Review 24.

20 Petitioner argues that the city council’s conclusion that SRC 64.020(f)(2)(A) is
21 met relies on only Policy 1.5 to conclude that the Ordinance does not significantly
22 change or amend key principles or policies in the comprehensive plan, and

dedication of the future Colorado Drive through [TL 500], it could become right of way or be evaluated for development under provisions in the Salem Revised Code, depending on its ultimate size and configuration.” Petition for Review 30-31.

We understand petitioner to argue that the portion of Colorado Drive to be constructed by intervenor on TL 400 as part of its development approval will not complete the linkage between Doaks Road and the existing Colorado Drive because of an intervening parcel, TL 500.

1 “[s]uch a conclusion is logically inconsistent with the multiple policies contained
2 in the Salem Transportation System Plan.” Petition for Review 24.

3 Respondents argue that petitioner has not established that the Ordinance
4 changes or amends a TSP policy as referenced in SRC 64.020(f)(2)(A) and that
5 the Ordinance does not do so. Respondents’ Brief 24. We agree with respondents
6 that petitioner’s argument that the Ordinance is inconsistent with a given policy
7 or that the findings do not explain how a policy is met does not address the
8 criterion, which asks whether the amendment changes or amends a policy. ORS
9 197.829 provides:

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

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

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

18 “(c) Is inconsistent with the underlying policy that provides
19 the basis for the comprehensive plan or land use
20 regulation; or

21 “(d) Is contrary to a state statute, land use goal or rule that
22 the comprehensive plan provision or land use
23 regulation implements.

24 “(2) *If a local government fails to interpret a provision of its*
25 *comprehensive plan or land use regulations, or if such*
26 *interpretation is inadequate for review, the board may make*

1 *its own determination of whether the local government*
2 *decision is correct.*” (Emphasis added.)

3 The city council did not provide an interpretation of SRC 64.020(f)(2)(A) and we
4 will interpret this provision in the first instance in accordance with ORS
5 197.829(2).

6 We first consider the text. *Gaines*, 346 Or at 171-73. When doing so, our
7 task is “to ascertain and declare what is, in terms or in substance, contained
8 therein.” ORS 174.010. The plain text of SRC 64.020(f)(2)(A) asks whether the
9 amendment modifies principles and policies in the plan. Petitioner argues that the
10 Ordinance is a “*de facto*” modification of numerous comprehensive plan policies
11 and that there is not substantial evidence, that is, an adequate factual base, to
12 support the assumption that the TSP *meets* certain plan policy standards. Petition
13 for Review 21. Webster’s dictionary defines “*de facto*” as “actually: in fact: in
14 reality.” *Webster’s Third New Int’l Dictionary* 590 (unabridged ed 2002). There
15 is no language in the code to support requiring consideration of changes
16 characterized as *de facto* and not reflected in the plain language of the code, or to
17 support asking whether a policy is met. We will not insert what has been omitted.
18 ORS 174.010. Petitioner has not developed an argument in its third assignment
19 of error that an applicable approval criterion was not addressed or was
20 inadequately addressed.¹⁷ The third assignment of error is denied.

¹⁷ The city council’s findings also conclude that amendment does not require significant factual or policy analysis because the Ordinance “satisfies”

1 In their fifth assignment of error, petitioner returns to Policy 2.7 and argues
2 that there is not an adequate factual base to conclude that Policy 2.7 is met.
3 Petition for Review 29. Petitioner does not identify an approval criterion
4 requiring that plan policies are met and we will not develop petitioner's
5 argument. The fifth assignment of error is denied.

6 The third and fifth assignments of error are denied.

7 **FOURTH ASSIGNMENT OF ERROR**

8 SRC 64.020(f)(2)(B) requires that a minor comprehensive plan change
9 amendment "not require substantial changes to plan language to maintain internal
10 plan consistency." Petitioner argues in their fourth assignment of error that there
11 is insufficient evidence in the record for the city to conclude that the amendment
12 does not require substantial changes to plan language to maintain internal plan
13 consistency. Petition for Review 29. Petitioner argues that there is not an
14 adequate factual basis to conclude that federal law and policies are met.¹⁸ *Id.* at
15 25, 27, 29. Petitioner requests that the Ordinance be remanded to the city council
16 to: "(1) revise Salem Transportation System Plan references to the American
17 Disabilities Act [(ADA) and] (2) acknowledge that the Salem Transportation

Transportation Goal 2 "Complete Streets Goal" and Transportation Goal 4 "Local
Connectivity Goal." Record 7.

¹⁸ For example, petitioner requests that the Ordinance be remanded for the city
council to provide findings confirming that the collector street sidewalks will
meet the travel needs of all persons and "promote[] safe convenient and efficient
travel for every user." Petition for Review 29.

1 System Plan policies do conform to the Public Rights-of-Way Accessibility
2 Guidelines (PROWAG)[.]” Petition for Review 27.

3 We agree with respondents that “[p]etitioner makes no effort to explain
4 how the ADA is relevant to a TSP amendment, let alone any approval criteria.”
5 Respondents’ Brief 27. Petitioner also argues that the U.S. Access Board posted
6 the final PROWAG in July 2023 and the guidelines supersede prior ones.
7 Petitioner does not explain why the ADA or PROWAG guidelines are applicable
8 to the Ordinance. Petitioner does not develop its assignment of error. *Deschutes*
9 *Development Co.*, 5 Or LUBA at 220.

10 Petitioner also argues that there is insufficient evidence in the record to
11 conclude that SRC 64.020(f)(2)(B) is met because the Comprehensive Plan Goal
12 T6 Pedestrian System Goal is not addressed. Goal T6 is “[a]ccommodate
13 pedestrians of all ages and abilities by providing a comprehensive system of
14 connecting sidewalks, walkways, trails and pedestrian crossings that will
15 encourage and increase safe pedestrian travel and active transportation to support
16 public health.” We agree with respondents that “[p]etitioner does not identify
17 what substantial change must be made or how the amendment does not maintain
18 internal plan consistency.” Respondents’ Brief 30. Petitioner also does not
19 address the city council findings that SRC 64.020(f)(2)(B)’s requirement that a
20 minor comprehensive plan change amendment “not require substantial changes

1 to plan language to maintain internal plan consistency” is met.¹⁹ Record 6. The
2 fourth assignment of error is not adequately developed for our review.

3 Further, petitioner’s argument that the findings “offer no reference as to
4 how the approved alignment of Colorado Drive NW will serve persons of ‘all
5 ages, abilities, and circumstances’ or detail how sidewalks paralleling Colorado
6 Drive NW will comply with the requirements of the federal Americans with
7 Disabilities Act” is an impermissible collateral attack on approval of the
8 alignment in the development approval. Petition for Review 28-29.

9 The fourth assignment of error is denied.

10 **SIXTH AND SEVENTH ASSIGNMENTS OF ERROR**

11 SRC 64.020(f)(2)(E) requires that a minor comprehensive plan
12 amendment “conform[] to the applicable statewide planning goals and applicable
13 administrative rules adopted by [DLCD].” Petitioner’s sixth assignment of error
14 is that there is not “evidence or findings which confirm that * * * [Statewide
15 Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open
16 Spaces) and Statewide Planning Goal 6 (Air, Water and Land Resources

¹⁹ The city council found that this criterion is met because the Ordinance “requires minor changes to seven maps, one paragraph of text, and one table. Substantial changes are not needed and the amendment satisfies this criterion.” Record 6. Petitioner notes that the city council found that Transportation Goals 2 and 4 were satisfied. This finding was made with respect to SRC 64.020(f)(2)(C), not (B) and therefore is not relevant to petitioner’s argument concerning SRC 64.020(f)(2)(B).

1 Quality)] have been met.” Petition for Review 31. Petitioner’s seventh
2 assignment of error is that the findings do not confirm that Statewide Planning
3 Goal 12 (Transportation) is met. Petition for Review 34.

4 **A. Goals 5 and 6**

5 Goal 5 is “[t]o protect natural resources and conserve scenic and historic
6 areas and open spaces.” Goal 6 is “[t]o maintain and improve the quality of the
7 air, water and land resources of the state.” Petitioner argues that the findings that
8 Goal 5 and 6 are met are “muddled” and do not explain how the goals are met.²⁰
9 Petition for Review 32.

10 With respect to Goal 5, the city council found:

11 “The proposed change to the collector street alignment does not
12 eliminate the requirement for future development on the
13 surrounding property to meet the requirements of SRC Chapter 809
14 (Wetlands), SRC Chapter 601 (Floodplain Overlay Zone), SRC
15 Chapter 808 (Preservation of Trees and Vegetation), SRC Chapter
16 71 (Stormwater), and SRC Chapter 230 (Historic Preservation).
17 Additionally, the right-of-way required for a collector street is the
18 same as what is required for a local street (60 feet). If the collector
19 alignment is not changed, a local street would be constructed in the
20 same location. Stormwater treatment will be required for the

²⁰ Petitioner repeats their argument the alignment grade approved in the 2023 Titan Hill Development Approval does not comply with the 8% applicable to collectors. Petitioner argues that the 2023 Titan Hill Development Approval decision violates SRC and SACP tree conservation plans. This is a collateral attack as we discussed previously in this opinion and we will not address it further. Petitioner also repeats their argument that there is not an alignment survey as required by TSP Policy 4.4, discussed in our resolution of the third assignment of error. We will not address it further.

1 additional roadway width constructed to incorporate bike lanes as
2 part of the extension of Colorado Drive NW to Doaks Ferry Road
3 NW.” Record 9.

4 With respect to Goal 6, the city council found:

5 “The proposed amendment to shift the collector street alignment
6 does not eliminate the requirement for future development of the
7 surrounding property to meet the requirements of SRC 808
8 (Preservation of Trees and Vegetation), SRC Chapter 809
9 (Wetlands), SRC Chapter 601 (Floodplain Overlay Zone), SRC
10 Chapter 71 (Stormwater), and SRC Chapter 810 (Landslide
11 Hazards). These existing regulations aim to protect the quality of air,
12 water, and land resources. The proposed amendment therefore
13 conforms with this goal.” *Id.*

14 Petitioner argues that city council’s findings that the Ordinance does not
15 eliminate the requirement for future development on surrounding property to
16 meet the requirements of SRC Chapters 71, 230, 601, 808, 809, and 810 are
17 inadequate to address Goals 5 and 6.

18 We agree with respondents that the city council was not required to apply
19 Goal 5 to the Ordinance. We have explained:

20 “As a general rule, post-acknowledgment plan amendments
21 (PAPAs) must comply with the statewide planning goals, including
22 Goal 5. ORS 197.175(2); 197.835(6) and (7). The Land
23 Conservation and Development Commission has adopted an
24 administrative rule that specifies the circumstances in which a local
25 government is obligated to apply Goal 5 when adopting a PAPA.
26 OAR 660-023-0250(3) provides:

27 “Local governments are not required to apply Goal 5 in
28 consideration of a PAPA unless the PAPA affects a Goal 5
29 resource. For purposes of this section, a PAPA would affect a
30 Goal 5 resource only if:

1 “(a) The PAPA creates or amends a resource list or a
2 portion of an acknowledged plan or land use regulation
3 adopted in order to protect a significant Goal 5 resource
4 or to address specific requirements of Goal 5;

5 “(b) The PAPA allows new uses that could be conflicting
6 uses with a particular significant Goal 5 resource site
7 on an acknowledged resource list[.]’

8 “To summarize, under the above rule, a local government must
9 apply Goal 5 if the PAPA ‘would affect a Goal 5 resource.’ As
10 potentially relevant in this appeal, a PAPA affects a Goal 5 resource
11 in two circumstances. First, a PAPA ‘would affect a Goal 5
12 resource’ if it ‘amends a * * * portion of an acknowledged plan or
13 land use regulation [that was] adopted in order to protect a
14 significant Goal 5 resource. Second, a PAPA ‘would affect a Goal 5
15 resource’ if it allows new ‘conflicting uses.’” *Johnson v. Jefferson*
16 *County* 56 Or LUBA 72, 96 (2008) (footnotes omitted).

17 The Ordinance does not amend a portion of the comprehensive plan adopted in
18 order to protect a significant Goal 5 resource. Petitioner has not asserted that the
19 decision allows “new uses that could be conflicting uses with a particular Goal 5
20 resource site on an acknowledged resource list.” OAR 660-023-0250(3)(b). Goal
21 5 does not apply.

22 Further, petitioner has not explained why the city council’s finding that
23 Goal 6 is met because existing, applicable regulations *that aim to protect the*
24 *quality of air, water and land resources* apply at the time of development is
25 inadequate to establish that Goal 6 is met. We have explained that we will reject
26 a petitioner’s argument that a criterion is not met where a petitioner does not
27 address local government findings addressing the criterion, and instead argues

1 that a project that is not part of the appealed decision does not meet the criterion.
2 *Trumper v. Washington County*, 24 Or LUBA 552, 556 (1993).

3 The sixth assignment of error is denied.

4 **B. Goal 12**

5 Goal 12 is “[t]o provide and encourage a safe, convenient and economic
6 transportation system.” The city council findings that Goal 12 is met state, in their
7 entirety:

8 “The transportation goal, to provide and encourage a safe,
9 convenient and economic transportation system, is implemented by
10 Oregon Administrative Rules 660-012. This proposed amendment
11 is considered an interim update per OAR 660-012-0012(2)(b)
12 because it is not a major update and notice will be submitted prior
13 to June 30, 2027. Therefore, the amendment is not required to bring
14 the entire transportation system plan in compliance with all
15 applicable regulations. Interim updates must comply with the
16 applicable requirements in OAR 660-012. The proposed collector
17 street alignment includes pedestrian facilities as required by OAR
18 660-012-0510, bicycle facilities as required by OAR 660-012-0610,
19 and supports the network of collector streets required by OAR 660-
20 012-0810. *Therefore this amendment conforms with Goal 12 as*
21 *implemented by OAR 660-012.*” Record 11 (emphasis added).

22 OAR 660-012-0060 provides, in part:

23 “(1) If an amendment to a functional plan, an acknowledged
24 comprehensive plan, or a land use regulation (including a
25 zoning map) would significantly affect an existing or planned
26 transportation facility, then the local government must put in
27 place measures as provided in section (2) of this rule, unless
28 the amendment is allowed under section (3), (9) or (10) of this
29 rule. A plan or land use regulation amendment significantly
30 affects a transportation facility if it would:

- 1 “(a) Change the functional classification of an existing or
2 planned transportation facility (exclusive of correction
3 of map errors in an adopted plan);
- 4 “(b) Change standards implementing a functional
5 classification system; or
- 6 “(c) Result in any of the effects listed in paragraphs (A)
7 through (C) of this subsection. * * *
- 8 “(A) Types or levels of travel or access that are
9 inconsistent with the functional classification of
10 an existing or planned transportation facility;
- 11 “(B) Degrade the performance of an existing or
12 planned transportation facility such that it would
13 not meet the performance standards identified in
14 the TSP or comprehensive plan; or
- 15 “(C) Degrade the performance of an existing or
16 planned transportation facility that is otherwise
17 projected to not meet the performance standards
18 identified in the TSP or comprehensive plan.
- 19 “(2) If a local government determines that there would be a
20 significant effect, then the local government must ensure that
21 allowed land uses are consistent with the performance
22 standards of the facility measured or projected at the end of
23 the planning period identified in the adopted TSP through one
24 or a combination of the remedies listed in subsections (a)
25 through (e) below[.] * * *
- 26 “* * * * *
- 27 “(c) Amending the TSP to modify the performance
28 standards of the transportation facility.
- 29 “* * * * *”

1 Petitioner argues that there is no finding that the Ordinance does not
2 significantly affect a transportation facility. Petitioner argues that the Ordinance
3 is an amendment to a comprehensive plan that significantly affects an existing or
4 planned transportation facility under OAR 660-012-0060(1)(b) because the
5 Ordinance allows a 12% collector grade and that changes the standards
6 implementing a functional classification system. Petition for Review 35-36.
7 Petitioner argues that the city council’s findings are inadequate because they do
8 not amend the performance standards as set out in OAR 660-012-0060(2).²¹
9 Petition for Review 36.

10 Respondents explain “Colorado was approved as a collector street under
11 the alternative street standards in the [2023 Titan Hill Development Approval].
12 The Titan Hill Decision did not change the standards implementing a functional
13 classification system – it applied the standards implementing the functional
14 classification system by approving the allowable alternative street standards.”
15 Respondents’ Brief 37-38. We understand respondents to argue that the 12%
16 grade was approved in the prior development approval and that the city’s
17 approval process for modifying the grade of a street is part of the standards
18 implementing the functional classification system. We agree with respondents

²¹ OAR 660-012-0005(39) defines “performance standard” as “an indicator used to review comprehensive plan and land use regulation amendments in accordance with OAR 660-012-0060.”

1 that petitioner has not shown that the Ordinance *changes standards in the TSP*
2 *implementing a functional classification system.*

3 Petitioner also argues that the city council’s findings do not address
4 Transportation Plan Policy 6, described as the “Pedestrian System Goal” or TSP
5 Policy 1.6, “Compliance with ADA Standards,” discussed in our resolution of the
6 third assignment of error. Petitioner does not develop an argument explaining
7 why Goal 12 requires that the city address these policies and we will not address
8 them further.

9 Petitioner has not identified a basis for remand.

10 The seventh assignment of error is denied.

11 The decision is affirmed.