

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

LIA ANDERSON,
Petitioner,

vs.

CITY OF LAKE OSWEGO,
Respondent,

and

KRUSE WAY LLC,
Intervenor-Respondent.

LUBA No. 2026-020

FINAL OPINION
AND ORDER

Appeal from City of Lake Oswego.

Lia Anderson filed the petition for review and argued on behalf of themselves.

Souvanny Miller filed the joint respondents' brief on behalf of respondent. Also on the brief was Miller Nash LLP, Dana L. Krawczuk, Hayley K. Siltanen, and Stoel Rives LLP.

Dana L. Krawczuk filed the joint respondents' brief and Hayley K. Siltanen argued on behalf of intervenor-respondent. Also on the brief was Stoel Rives LLP, Souvanny Miller, and Miller Nash LLP.

ZAMUDIO, Board Member; WILSON, Board Chair; BASSHAM, Board Member, participated in the decision.

AFFIRMED

10/02/2026

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 Ordinance 2971, a city council decision approving a post-acknowledgement plan amendment (PAPA) changing the comprehensive plan designation for a 12.67-acre parcel from office campus/residential high density (OC/R-3) to office campus/residential high density (OC/R-0) and changing the zoning from OC to R-0.

MOTION TO INTERVENE

Kruse Way LLC (intervenor), the applicant below, moves to intervene on the side of the city in this appeal. The motion is unopposed and is allowed.

FACTS

The subject property is located in Lake Oswego at 4000 Kruse Way Place. Three Sisters Creek runs along the western boundary and the property is subject to a Sensitive Lands Resource Protection (RP) overlay. On August 29, 2025, intervenor submitted a PAPA application. On October 27, 2025, the planning commission held a hearing and continued the hearing to November 3, 2025 and December 8, 2025. On January 12, 2026, the planning commission adopted findings and recommended approval of the application. On February 3, 2026, the city council held a public hearing and tentatively approved the PAPA. On February 17, 2026, the city council enacted the ordinance and incorporated into its findings and reasons the October 15, 2025 planning commission staff report and attached exhibits, the December 3, 2025 staff memorandum to the planning

1 commission, and the January 12, 2026 planning commission findings,
2 conclusions and order, together with supplemental city council findings. Record
3 22. This appeal followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 Petitioner argues that the city misconstrued OAR 660-012-0060 and made
6 a decision that is not supported by adequate findings and substantial evidence in
7 determining that the PAPA does not significantly affect a transportation facility.
8 For the reasons explained below, we deny this assignment of error both as waived
9 and on the merits.

10 OAR 660-012-0060 is part of the Transportation Planning Rule (TPR) that
11 applies to PAPAs. If a local government determines that the PAPA “would
12 significantly affect an existing or planned transportation facility,” “then the local
13 government must ensure that allowed land uses are consistent with the
14 performance standards of the facility measured or projected at the end of the
15 planning period identified in the adopted [Transportation System Plan (TSP)].”¹
16 OAR 660-012-0060(1)-(2).

17 OAR 660-012-0060(1) provides, in part:

¹ “‘Transportation System Plan (TSP)’ means a plan for one or more transportation facilities that are planned, developed, operated, and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.” OAR 660-012-0005(60).

1 “A plan or land use regulation amendment significantly affects a
2 transportation facility if it would:

3 “(a) Change the functional classification of an existing or planned
4 transportation facility (exclusive of correction of map errors
5 in an adopted plan);

6 “(b) Change standards implementing a functional classification
7 system; or

8 “(c) Result in any of the effects listed in paragraphs (A) through
9 (C) of this subsection. If a local government is evaluating a
10 performance standard based on projected levels of motor
11 vehicle traffic, then the results must be based on projected
12 conditions measured at the end of the planning period
13 identified in the adopted TSP. As part of evaluating projected
14 conditions, the amount of traffic projected to be generated
15 within the area of the amendment may be reduced if the
16 amendment includes an enforceable, ongoing requirement
17 that would demonstrably limit traffic generation, including,
18 but not limited to, transportation demand management. This
19 reduction may diminish or completely eliminate the
20 significant effect of the amendment.

21 “(A) Types or levels of travel or access that are inconsistent
22 with the functional classification of an existing or
23 planned transportation facility;

24 “(B) Degrade the performance of an existing or planned
25 transportation facility such that it would not meet the
26 performance standards identified in the TSP or
27 comprehensive plan; or

28 “(C) Degrade the performance of an existing or planned
29 transportation facility that is otherwise projected to not
30 meet the performance standards identified in the TSP
31 or comprehensive plan.”

1 To address this rule, intervenor submitted the Kittelson Technical
2 Memorandum (Kittelson Memo) analyzing whether the PAPA would have a
3 significant effect on the transportation system. Record 215 (Exhibit F-004). The
4 Kittelson Memo concluded that the PAPA “results in a decrease in peak hour trip
5 generation and is thus not expected to have a *significant effect* on the
6 transportation system as defined by the TPR.” *Id.* (italics in original).

7 The planning commission found that “[t]he proposal has no significant
8 negative impact on the transportation system under the [TPR].” Record 110
9 (October 15, 2025 planning commission staff report, citing Exhibit F-004,
10 Record 215). The planning commission found that the PAPA will not
11 significantly affect a transportation facility, relying on the Kittelson Memo
12 conclusion that “changing the site from commercial to residential use may
13 increase average daily trips to the site, but will decrease peak-hour trips leading
14 to no significant effect to nearby transportation facilities.” *Id.* As explained
15 above, the city council adopted the planning commission staff report findings as
16 its own. Record 22.

17 Petitioner argues that the city misconstrued OAR 660-012-0060 by treating
18 a peak-hour trip generation decrease as dispositive of “significant effect.”
19 Petitioner argues that the city was required and failed to analyze whether the
20 amendments change any facility’s functional classification, whether they change
21 any standard implementing a functional classification system, or whether, at the

1 end of the planning period, any affected facility would be degraded below the
2 performance standards identified in the TSP.

3 **A. Waiver**

4 Intervenor and the city (together, respondents) initially respond that the
5 issues raised in petitioner's first assignment of error are waived. ORS 197.835(3)
6 restricts LUBA review to only those "issues raised by any participant before the
7 local hearings body and as provided by * * * ORS 197.797," which provides, in
8 part:

9 "An issue which may be the basis for an appeal to [LUBA] shall be
10 raised not later than the close of the record at or following the final
11 evidentiary hearing on the proposal before the local government.
12 Such issues shall be raised and accompanied by statements or
13 evidence sufficient to afford the governing body, planning
14 commission, hearings body or hearings officer, and the parties an
15 adequate opportunity to respond to each issue." ORS 197.797(1).

16 "Each assignment of error must demonstrate that the issue raised in the
17 assignment of error was preserved during the proceedings below. Where an
18 assignment raises an issue that is not identified as preserved during the
19 proceedings below, the petition shall state why preservation is not required."
20 OAR 661-010-0030(4)(d). We refer to these principles as "raise-it-or-waive-it"
21 or statutory waiver.

22 The "raise it or waive it" principle does not limit the parties on appeal to
23 the exact same arguments made during the local proceeding, but it does require
24 that the issue be raised during the local proceeding with sufficient specificity so

1 as to prevent “unfair surprise” on appeal. *Boldt v. Clackamas County*, 21 Or
2 LUBA 40, 46, *aff’d*, 107 Or App 619, 813 P2d 1078 (1991); *Friends of Yamhill*
3 *County v. Yamhill County*, LUBA No 2021-074 (Apr 8, 2022), *aff’d*, 321 Or App
4 505 (2022) (nonprecedential memorandum opinion), *rev den*, 370 Or 740 (2023)
5 (slip op at 6-8). A particular issue must be identified in a manner detailed enough
6 to give the governing body and the parties fair notice and an adequate opportunity
7 to respond. *Boldt*, 21 Or LUBA at 46. When attempting to differentiate between
8 “issues” and “arguments,” there is no “easy or universally applicable formula.”
9 *Reagan v. City of Oregon City*, 39 Or LUBA 672, 690 (2001). A petitioner
10 adequately raises an issue under ORS 197.797(1) and 197.835(3) by citing the
11 relevant legal standard, presenting argument that includes the operative terms of
12 the legal standard, or taking other actions to raise the issue such that the local
13 government knows or should know that the issue is one that needs to be addressed
14 in its decision. *Reagan*, 39 Or LUBA at 690. In order to raise the issue of whether
15 findings of compliance with an applicable approval criterion are adequate, the
16 petitioner must demonstrate that issues regarding compliance with that criterion
17 were raised below. However, “a petitioner is *not* required to anticipate the actual
18 findings a local government ultimately adopts in support of its final decision or
19 question the adequacy of the evidence accepted into the record to support such
20 findings.” *Lucier v. City of Medford*, 26 Or LUBA 213, 216 (1993) (emphasis in
21 original).

1 **1. Petitioner’s record citations do not demonstrate that the**
2 **issues raised in the first assignment of error are preserved**
3 **for our review.**

4 Petitioner does not reply to respondents’ waiver challenge.² Petitioner’s
5 preservation of error statement in their petition for review points to the city’s
6 decision listing Statewide Planning Goal 12 (Transportation) and OAR 660-012-
7 0060 as applicable approval criteria and statements made by petitioner and other
8 participants regarding transportation impacts and congestion during the
9 proceedings below as having preserved the OAR 660-012-0060 interpretation
10 and application issues under the first assignment of error. Petition for Review 11-
11 12 (citing Record 21-22, 412, Supplemental Record 2).

12 Record 412 is a November 2, 2025 email from petitioner to the planning
13 commission.³ One paragraph, under a heading titled “Consistency with the
14 Comprehensive Plan,” addresses traffic concerns:

15 “Furthermore, the Connected Community section of the
16 Comprehensive Plan calls for safe, efficient circulation systems that
17 minimize congestion and protect neighborhood livability. Increased
18 traffic, noise, and parking demands associated with high-density
19 development would conflict with this directive and worsen
20 conditions along Kruse Way and Boones Ferry Road, areas already
21 identified by residents as congested and unsafe for pedestrians and
22 cyclists.” Record 412-13.

² Petitioner did not file a reply brief or address respondents’ waiver challenges at oral argument.

³ On January 29, 2026, petitioner sent an identically worded email to the mayor and city council. Supplemental Record 1-2.

1 Record pages 21 through 22 are pages of the city's final decision listing out the
2 applicable criteria and standards to the decision, as required by ORS
3 197.797(3)(b). The city council adopted the planning commission findings and
4 supplemented those findings with city council findings on Comprehensive Plan
5 Land Use Planning Policies E-1(f) and E-2(b)(ii), which concern appropriateness
6 of residential development and density designations. Record 22. Petitioner does
7 not assert that Policies E-1(f) and E-2(b)(ii) relate to or implement OAR 660-012-
8 0060, and it does not appear to us that they do.

9 While a petitioner is not required to establish that a precise argument on
10 appeal was made below, that does not mean that "*any* argument can be advanced
11 at LUBA so long as it has some bearing on an applicable approval criterion and
12 general references to compliance with the criterion itself were made below."
13 *Reagan*, 39 Or LUBA at 690 (emphasis in original). We conclude that the
14 statements quoted above do not raise the issues in the first assignment of error
15 specifically enough to give respondents fair notice and an adequate opportunity
16 to respond.

17 Petitioner's concerns are directed at the "Connected Communities" section
18 of the city's comprehensive plan, and do not cite OAR 660-012-0060 or the
19 operative terms of that rule. Those statements are inadequate to preserve
20 petitioner's first assignment of error. Petitioner's record citations do not
21 demonstrate that the issues raised in the first assignment of error are preserved
22 for our review. *See Savage v. City of Astoria*, 68 Or LUBA 225, 231 (2013)

1 (raising general traffic impact issues is not sufficient to permit a petitioner at
2 LUBA to later assign error to failures to comply with technical TPR
3 requirements); *Cornelius First v. City of Cornelius*, 52 Or LUBA 486, 495 (2006)
4 (generalized arguments about lack of justification for commercial zoning are
5 insufficient to raise an issue under Statewide Planning Goal 9 (Economic
6 Development) or the Goal 9 rule where neither Goal 9 nor the Goal 9 rule were
7 cited and no issue was raised regarding the substantive requirements of Goal 9 or
8 the Goal 9 rule); *Cox v. Yamhill County*, 29 Or LUBA 263, 266 (1995) (general
9 argument that good farm land should not be used for a church insufficient to raise
10 an issue under OAR 660-033-0120, which prohibits churches on high value farm
11 land); *Spiering v. Yamhill County*, 25 Or LUBA 695, 712 (1993) (no issue was
12 raised regarding the ORS 215.296 farm impacts test where the statute was not
13 cited and none of the operative terms of the statute were employed in petitioner's
14 arguments below); *ODOT v. Clackamas County*, 23 Or LUBA 370, 375 (1992)
15 (general references to Goal 12 are insufficient to raise an issue under OAR 660-
16 012-0060).

17 **2. The decision does not demonstrate that the issue was**
18 **raised before the city.**

19 Petitioner also argues that “the significant-effect issue was central to the
20 proceedings below and the [c]ity’s decision responds to it.” Petition for Review
21 12 (citing *Nehmzow v. Deschutes County*, 81 Or LUBA 571 (2020), *aff’d*, 308 Or
22 App 533, 479 P3d 340 (2021)). In *Nehmzow*, we observed that the objective of

1 ORS 197.797(1) is to “afford the decisionmaker and the parties ‘an adequate
2 opportunity to respond to each issue.’ * * * ‘The plain thrust of that language is
3 that the statute requires no more than fair notice to adjudicators and
4 opponents[.]’” 81 Or LUBA at 579 (quoting *Boldt*, 21 Or LUBA at 46, brackets
5 and internal quotation marks omitted). The central waiver inquiry is whether the
6 city and the parties were fairly alerted to the issue that petitioner raises on appeal
7 so that respondents had an opportunity to respond to it during the local
8 proceeding. The fact that an applicable law is listed, quoted, and addressed in the
9 challenged decision does not preserve every issue under that standard. *Friends of*
10 *Yamhill County*, LUBA No 2021-074 (slip op 7-8) (concluding that the
11 petitioner’s general citation to OAR 660-012-0065(3)(o) was insufficient to alert
12 intervenors and the county to the issue raised on appeal).

13 We have rejected waiver challenges where it is evident in the challenged
14 decision itself that the same issues raised on appeal were disputed in the local
15 government proceeding because the local government addressed those same
16 issues in the challenged decision. In other words, in some instances, the decision
17 itself evidences that the local government had fair notice of an issue because the
18 findings respond to that issue. *Nehmzow*, 81 Or LUBA at 579; *ODFW v. Jackson*
19 *County*, LUBA No 2025-037 (Nov 06, 2025) (slip op at 11-12); *Guay v.*
20 *Clackamas County*, LUBA No 2024-050 (Dec 12, 2024) (slip op at 9); *Kipp v.*
21 *City of Astoria*, LUBA No 2024-012 (Dec 11, 2024), *aff’d*, 339 Or App 298, 566
22 P3d 721 (2025) (slip op at 21); *1000 Friends of Oregon v. Linn County*, LUBA

1 Nos 2022-003/004 (Sept 26, 2022), *aff'd*, 324 Or App 559 (2023)
2 (nonprecedential memorandum opinion) (slip op at 14-15).

3 Here, the decision does not demonstrate that the OAR 660-012-0060 issues
4 petitioner raises in the first assignment of error were raised and addressed during
5 the local proceedings. The planning commission staff report findings, which the
6 city council adopted, did not address the issues that petitioner raises. The issues
7 petitioner raises criticize the planning commission findings as inadequate and
8 misconstruing OAR 660-012-0060. Petitioner could have and did not raise those
9 issues to the city council during the local proceeding. The city council adopted
10 supplemental findings addressing other issues, which demonstrates that the city
11 council would likely have addressed the OAR 660-012-0060 issues, had
12 petitioner raised them during the local proceeding. We agree with respondents
13 that the OAR 660-012-0060 issues were not raised during the city proceeding.

14 **3. Petitioner was required to raise the issue below.**

15 A petitioner is not required to anticipate erroneous findings or
16 interpretations in a final decision in order to challenge them at LUBA. *Riverview*
17 *Abbey Mausoleum Company v. City of Portland*, 79 Or LUBA 38, 42-43, *aff'd*,
18 297 Or App 192, 440 P3d 684 (2019).

19 “In order to preserve the right to challenge at LUBA the adequacy
20 of the adopted findings to address a relevant criterion or the
21 evidentiary support for such findings, *a petitioner must challenge*
22 *the proposal’s compliance with that criterion during the local*
23 *proceedings*. Once that is done, the petitioner may challenge the
24 adequacy of the findings and the supporting evidence to demonstrate

1 the proposal complies with the criterion. The particular findings
2 ultimately adopted or evidence ultimately relied on by the decision
3 maker need not be anticipated and specifically challenged during the
4 local proceedings.” *Lucier*, 26 Or LUBA at 216 (emphasis added).

5 As explained above, petitioner has not demonstrated that they challenged
6 the proposal’s compliance with OAR 660-012-0060 during the local proceeding.
7 Accordingly, petitioner may not challenge in this appeal the city’s conclusion
8 that that rule is satisfied. We conclude that the issues raised in the first assignment
9 of error were not raised during the local proceedings and are waived under ORS
10 197.797(1).

11 **B. Merits**

12 On the merits, respondents respond, and we agree, petitioner
13 mischaracterizes the Kittelson Memo and the city’s findings relying on the
14 Kittelson Memo as based solely on a projected decrease in peak-hour trip
15 generation. The Kittelson Memo addresses each part of the three-part test in OAR
16 660-012-0060(1).

17 First, the Kittelson Memo finds that the PAPA does not have a significant
18 effect under OAR 660-012-0060(1)(a) because it does not require any “changes
19 to the City’s functional street classification designations or standards[.]” Record
20 951. As respondents observe, subsection (1)(a) is directed at PAPAs that “change
21 the functional classification of a transportation facility that is included in a TSP
22 through an amendment to the TSP.” *Willamette Oaks LLC v. City of Eugene*, 63
23 Or LUBA 75, 85, *rev’d on other grounds*, 245 Or App 47, 261 P3d 85, *rev den*,
24 351 Or 586 (2011). Here, the PAPA does not alter any functional classification,

1 and the Kittelson Memo found that the development allowed under the zone
2 change does not warrant changes to functional street classification designations
3 or standards, evaluating the maximum development traffic impacts under the new
4 zoning. Record 951.

5 Second, and similarly, OAR 660-012-0060(1)(b) is concerned with
6 amendments that change the standards used to implement a transportation
7 system's functional classification framework. *Easterly v. City of Salem*, LUBA
8 No 2023-092 (Apr 12, 2024) (slip op at 40-41). Here, the PAPA does not change
9 standards used to implement a transportation system's functional classification.

10 To evaluate the effects of the PAPA on the transportation system,
11 concerning OAR 660-012-0060(1)(c), Kittelson engineers compared trip
12 generation for the reasonable maximum development scenarios under existing
13 zoning and proposed zoning and determined that the PAPA "would result in a net
14 decrease in the trip generation potential of the project site during the weekday
15 AM and PM peak hours." Record 950. The city adopted those findings and found
16 that there is no significant effect under subsection (1)(c). Record 952. The city
17 did not misconstrue OAR 660-012-0060(1) by reducing the relevant inquiry to
18 peak trip generation.

19 Petitioner argues that the city improperly deferred the OAR 660-012-
20 0060(1) significant effect determination to a future development review.
21 Respondents respond, and we agree, the city did not defer the OAR 660-012-

1 0060(1) inquiry to a later stage. Instead, the city made the determination in the
2 challenged PAPA by relying on the findings and analysis in the Kittelson Memo.

3 The first assignment of error is denied.

4 **SECOND ASSIGNMENT OF ERROR**

5 Petitioner's second assignment of error is that "[t]he [c]ity's findings are
6 inadequate to demonstrate compliance with Statewide Planning Goal 5 [(Natural
7 Resources, Scenic and Historic Areas, and Open Spaces)]." Petition for Review
8 15. However, as respondents point out, petitioner's substantive argument is under
9 the city's comprehensive plan Healthy Ecosystems Goal 5 resources policies 2,
10 3, and 9. Those policies are:

11 "Policy 2: Maintain Resource Protection (RP) district regulations for
12 the protection of significant streams and wetlands, and their adjacent
13 vegetated corridors, consistent with Goal 5, Metro Title 3, and Clean
14 Water Act requirements.

15 "* * * * *

16 "Policy 3: Prohibit diversion or impoundment of significant streams
17 from their natural channels[.]"

18 "* * * * *

19 "Policy 9: Prohibit the placement of contaminants or discharge of
20 pollutants in streams, wetlands, wildlife habitat areas, and ground
21 water." Record 107.

22 Three Sisters Creek runs along the subject property's western boundary
23 and is the reason for the RP overlay. The application narrative explained: "After
24 water quality treatment and flow control, the majority of the site will outfall to

1 the public system and ultimately Three Sisters Creek using an existing 18" public
2 storm main in the site's southwest corner." Record 169. The planning
3 commission found that the Goal 5 resources policies 2, 3, and 9 are met because
4 the conceptual site plan submitted by intervenor demonstrates that the site can be
5 developed without diverting or impounding Three Sisters Creek and without
6 placement of contaminants or discharge of pollutants into Three Sisters Creek or
7 groundwater on site. Record 107. The city also relied on intervenor's application
8 narrative and supporting materials.

9 Petitioner argues that the conceptual site plan is a non-binding illustration,
10 not a commitment, and the city's findings are inadequate because they do not
11 explain how compliance with the Goal 5 resources policies is "assured, as
12 opposed to merely illustrated, at the plan-amendment stage, or how the increased
13 density authorized by the rezone was factored into the conclusion that the RP
14 district would be unaffected." Petition for Review 17. For the reasons explained
15 below, we deny this assignment of error both as waived and on the merits.

16 **A. Waiver**

17 Respondents initially respond that this issue is waived. Petitioner does not
18 reply to the waiver challenge. Petitioner's preservation statement in the petition
19 for review cites to Record 391, 412, and 355. Petition for Review 16.

20 Record 391 is a part of intervenor's pre-application materials, generally
21 addressing site characteristics and environmental constraints. That document

1 mentions sensitive land regulations and the required setback from Three Sisters
2 Creek, but does not mention the Goal 5 resources policies.

3 Record 412 is the November 2, 2025 email from petitioner to the planning
4 commission. One paragraph of that email provides:

5 “Environmental and Habitat Significance:

6 “The 4000 Kruse Way Place contains one of the last stands of
7 mature Oregon white oak woodland within the Kruse Way corridor.
8 These trees are not merely landscape features; they are part of a rare
9 and declining habitat type recognized by the Oregon Department of
10 Fish and Wildlife as ‘critical’ for regional biodiversity. The site
11 provides essential canopy cover, stormwater absorption, and habitat
12 for birds, pollinators, and small mammals.

13 “Rezoning and redevelopment would almost certainly result in
14 large-scale tree removal, loss of native understory, and destruction
15 of established wildlife corridors. This directly conflicts with
16 Comprehensive Plan Goal 5 (Open Spaces, Scenic and Natural
17 Resources), which directs the City to ‘protect, restore, and enhance
18 natural resources that contribute to the livability and environmental
19 health of Lake Oswego.’” Record 412.

20 Record 355 is a part of intervenor’s November 17, 2025 final written
21 argument submitted to the planning commission responding to issues raised
22 during those proceedings, including that the city’s comprehensive plan requires
23 natural resource protection for Oregon White Oaks and Three Sisters Creek.
24 Record 354-55. Intervenor states that “[t]he conceptual site plan anticipates
25 preserving significant natural features, including setbacks from Three Sisters
26 Creek and having the development minimize impacts to the Oregon White

1 Oak grove.” Record 355. Intervenor explains that “resource protection measures
2 occur during development review.” *Id.*

3 Respondents argue that none of these citations provide notice of the issue
4 that petitioner raises in the second assignment of error concerning Goal 5
5 resources policies 2, 3, and 9. Similar to the waiver analysis under the first
6 assignment of error, we agree that the issue was not raised in the record citations
7 that petitioner provided. Petitioner does not assert that the decision demonstrates
8 that the issue was raised before the city, or that preservation was not required.
9 We agree that the Goal 5 resources policies issues raised in the second assignment
10 of error are waived.

11 **B. Merits**

12 On the merits, we agree with respondents that the city’s Goal 5 resources
13 policies findings are adequate and supported by substantial evidence. Generally,
14 findings must (1) address the applicable standards, (2) set out the facts relied
15 upon, and (3) explain how those facts lead to the conclusion that the standards
16 are met. *Heiller v. Josephine County*, 23 Or LUBA 551, 556 (1992). “What is
17 needed for adequate judicial review is a clear statement of what, specifically, the
18 decision-making body believes, after hearing and considering all the evidence, to
19 be the relevant and important facts upon which its decision is based.” *Sunnyside*
20 *Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 21, 569 P2d 1063 (1977).

21 Substantial evidence is evidence a reasonable person would rely on in
22 making a decision. *Dodd v. Hood River County*, 317 Or 172, 179, 855 P2d 608

1 (1993). A finding of fact is supported by substantial evidence if the record,
2 viewed as a whole, would permit a reasonable person to make that finding.
3 *Younger v. City of Portland*, 305 Or 346, 358-60, 752 P2d 262 (1988).

4 As explained above, petitioner argues that the city's findings are
5 inadequate because they rely on a conceptual site plan. Record 107. The findings
6 identify the applicable standards by setting out the comprehensive plan policies
7 and explain that the conceptual plan and intervenor's application narrative
8 demonstrate that the policies can be met.

9 Petitioner argues that a reasonable person would not rely on a conceptual
10 site plan to find that the Three Sisters Creek Goal 5 resources will be protected
11 because the conceptual plan is not a commitment or a condition of approval and,
12 thus, does not ensure resource protection consistent with the pertinent policies.
13 Respondents respond that the conceptual site plan illustrates that future
14 development can be undertaken in compliance with applicable development
15 standards and the city found that "[a]ny future development within the site would
16 require a Sensitive Lands Development Review approval due to the location of
17 the creek." Joint Respondents' Brief 27 (quoting Record 900). The subject
18 decision does not alter the RP overlay and any future development will have to
19 satisfy sensitive lands development review under Lake Oswego Code 50.05.010.
20 Respondents also point to the narrative submitted by intervenor, and incorporated
21 into the planning commission's staff report, as further support for the findings.
22 Joint Respondents' Brief 25-26 (citing Record 900, 22, 86, 868).

1 We agree with respondents that the decision is supported by substantial
2 evidence. Accepting the unchallenged finding that future development will
3 require sensitive lands development review, a reasonable person could rely on
4 the conceptual site plan, along with the incorporated submittals from intervenor,
5 to find that the PAPA is consistent with the comprehensive plan Goal 5 resources
6 policies 2, 3, and 9.

7 The second assignment of error is denied.

8 **THIRD ASSIGNMENT OF ERROR**

9 Petitioner asserts that the city's findings on the comprehensive plan
10 Connected Community policies A-7, C-1, C-6, and C-7 are inadequate.⁴ Those
11 policies and the responsive planning commission findings are as follows:

12 "Policy A-7: Identify safety concerns for motor vehicles at high
13 traffic volume streets and/or locations with high levels of demand
14 among all modes of travel, and implement improvements.

15 "Staff Comment: Exhibit F-004 [(the Kittelson Memo)]
16 demonstrates an expected decrease in peak hour trip generation with
17 the proposed [PAPA]. If improvements are necessary, they will be
18 determined and required as part of the development application
19 process. This policy is met.

20 " * * * * *

21 "Policy C-1: Maintain arterial and major collector streets to planned

⁴ Petitioner also lists policies A-1, B-1, B-2, B-3, B-5, D-4, F-2, and G-6 as applicable criteria, but does not develop any argument concerning those policies. Petition for Review 18. We therefore do not address those policies.

1 level of service standards, whenever practical.

2 “Staff Comment: As the applicant discusses on page 31 of the
3 narrative (Exhibit F-001), the proposal will decrease AM and PM
4 peak trip generation for the site, which will maintain or potentially
5 even improve level of service standards, which focus on peak hour
6 trips. This policy is met.

7 “Policy C-6: Require applicants for zone change requests and
8 conditional use permits to determine the resulting extent of impacts
9 to the transportation system and provide mitigation deemed
10 appropriate by the City to maintain transportation system efficiency.

11 “Staff Comment: The applicant has provided a technical
12 memorandum [(the Kittelson Memo)] addressing potential impacts
13 to the transportation system for the proposed [PAPA] (Exhibit F-
14 004). As discussed above under polices A-7, B-2, B-3, and C-1, the
15 proposal is expected to decrease peak hour trips. Any mitigation
16 necessary to maintain transportation system efficiency for average
17 daily trips will be considered as part of a future development review
18 application. This policy is met.

19 “Policy C-7: Require development applicants to provide facilities
20 for the movement of people to and from the site by walking,
21 bicycling, automobiles and transit.

22 “Staff Comment: As discussed under Policies A-1 and B-2, above,
23 and demonstrated in the conceptual site plan (Exhibit E-006), it is
24 feasible for this policy to be met during the development review
25 process. This policy is met.” Record 105-106.

26 Petitioner argues that the city erred in relying on the Kittelson Memo
27 because that study and report did not analyze the site’s physical constraints and
28 the performance-standards analysis under OAR 660-012-0060. Petitioner further
29 argues that the city erred by deferring safety and street improvements to a later
30 development-review stage.

1 **A. Waiver**

2 Respondents initially respond that these issues are waived. Petitioner does
3 not reply to the waiver challenge. Petitioner's preservation statement in the
4 petition for review cites to Exhibit G-524 and Exhibit G-514. Petition for Review
5 18. Exhibit G-514 is the November 2, 2025 email from petitioner to the planning
6 commission and Exhibit G-524 is an identically worded January 29, 2026 email
7 from petitioner to the city's mayor and city council. Both emails include the
8 following paragraph:

9 "[T]he Connected Community section of the Comprehensive Plan
10 calls for safe, efficient circulation systems that minimize congestion
11 and protect neighborhood livability. Increased traffic, noise, and
12 parking demands associated with high-density development would
13 conflict with this directive and worsen conditions along Kruse Way
14 and Boones Ferry Road, areas already identified by residents as
15 congested and unsafe for pedestrians and cyclists." Supplemental
16 Record 2, Record 413.

17 Respondents argue that petitioner's general statements concerning the
18 Connected Community policies did not provide the city and intervenor fair notice
19 of the issues that petitioner raises in the third assignment of error. We agree that
20 the issues of the adequacy of the Kittelson Memo and OAR 660-012-0060 were
21 not raised in the record citations that petitioner provided. We agree that those
22 issues are waived.

23 Differently, we conclude that petitioner raised and did not waive the issue
24 that the city impermissibly deferred safety and street improvements to a later
25 development-review stage. Petitioner argues that "[a] finding that a

1 Comprehensive Plan safety or circulation policy is ‘met’ because unspecified
2 improvements ‘will be determined and required’ later does not explain how the
3 policy is presently satisfied; it defers the determination rather than making it.”
4 Petition for Review 19-20. Petitioner argued to the planning commission and
5 reiterated to the city council that the Connected Community policies are intended
6 to ensure and maintain “safe, efficient circulation systems that minimize
7 congestion and protect neighborhood livability.” Record 413. Petitioner further
8 argued that “[i]ncreased traffic, noise, and parking demands associated with high-
9 density development would conflict with this directive and worsen conditions
10 along Kruse Way and Boones Ferry Road, areas already identified by residents
11 as congested and unsafe for pedestrians and cyclists.” *Id.* Those assertions refer
12 to the substantive requirements in Policies A-7 and C-6 with adequate specificity
13 to put respondents on fair notice that petitioner asserted that the city was required
14 to satisfy the safety and street improvement requirements at the PAPA review
15 stage. Policy A-7 requires the city to “[i]dentify safety concerns for motor
16 vehicles at high traffic volume streets and/or locations with high levels of demand
17 among all modes of travel, and *implement* improvements.” Record 105
18 (emphases added). Policy C-6 requires “applicants *for zone change requests* and
19 conditional use permits to determine the resulting extent of impacts to the
20 transportation system *and provide mitigation deemed appropriate by the City* to
21 maintain transportation system efficiency.” *Id.* (emphases added).

1 **B. Merits**

2 Petitioner's assertion that the city impermissibly deferred safety and street
3 improvements to a later development-review stage invokes *Rhyne v. Multnomah*
4 *County*, 23 Or LUBA 442 (1992).

5 “*Rhyne* involved the approval of a 22-space manufactured housing
6 development under a multi-stage approval process. We held in
7 *Rhyne* that where compliance with an approval standard in a multi-
8 stage approval process is subject to conflicting evidence, the county
9 must either (1) find the standard is satisfied or find that it is feasible
10 to satisfy the standard, and delegate responsibility for assuring
11 compliance to staff as part of the second stage; (2) deny the
12 application; or (3) defer determination of compliance until the
13 second stage, conditioned upon providing statutory notice and
14 hearings.” *Tenly Properties Corp. v. Washington County*, 34 Or
15 LUBA 352, 356 (1998).

16 Respondents do not respond to petitioner's argument that the city
17 misconstrued Policies A-7 and C-6 and impermissibly deferred finding
18 compliance with those standards. Nevertheless, we conclude that those
19 arguments, such as they are, are undeveloped for our review. Petitioner cites the
20 standard of review for comprehensive plan interpretations, but does not develop
21 any argument under that standard of review. Petition for Review 18 (“LUBA
22 affirms a local government's interpretation of its own comprehensive plan
23 provisions if the interpretation is plausible and not inconsistent with the express
24 language, purpose, or policy of the provision. ORS 197.829.”). “It is not our
25 function to supply petitioner with legal theories or to make petitioner's case for
26 petitioner.” *Deschutes Development v. Deschutes Cty.*, 5 Or LUBA 218, 220

1 (1982). Petitioner does not explain why the city's interpretation of Policies A-7
2 and C-6 are implausible. Similarly, petitioner does not explain whether or how
3 *Rhyne* applies to the facts of this case, which involves a zone change and no
4 proposed development. We reject those arguments as undeveloped.

5 We agree with respondents that the city's Connected Community policies
6 findings are adequate and supported by substantial evidence. The findings
7 identify the applicable standards by setting out the comprehensive plan policies
8 and explaining that the city relies on the Kittelson Memo and intervenor's
9 narrative for finding those policies are satisfied. A reasonable person could rely
10 on intervenor's narrative, conceptual site plan, and the Kittelson Memo to find
11 the plan policies are satisfied for the challenged zone change.

12 The third assignment of error is denied.

13 The city's decision is affirmed.