

1.2.2 Administrative Law – Denials – Requirements for. Where Big Game habitat protections in a local code allow a modification of building setbacks for a proposed forest template dwelling where the habitat protections either (1) render the parcel unbuildable or (2) the Oregon Department of Fish and Wildlife approves an alternate siting plan, the hearings official cannot deny the application on the basis of lack of an ODFW-approved site plan without adopting findings addressing the applicant’s evidence and argument that habitat protections render the parcel unbuildable. *Joe Ben, LLC v. Jackson County*, LUBA No 2020-115 (Apr 12, 2021).

1.2.2 Administrative Law – Denials – Requirements for. A local government errs in denying an application to modify a previously approved site plan, to add a vehicle access door to a building, based on findings that the applicant had abandoned the access point, and had failed to demonstrate a need for the access, where those findings were not based on any applicable approval criteria. However, such errors do not provide a basis for remand where the local government identifies at least one valid basis for denial. *Byrnes v. City of Aurora*, LUBA No 2020-092 (June 15, 2021).

1.2.2 Administrative Law – Denials – Requirements for. LUBA will affirm a local government’s denial of a proposed dwelling with a turret that exceeds the 28-foot height restriction applicable in the zone, notwithstanding the applicant’s contention that the turret is merely a “projection” that is allowed to exceed the height limit, where the local government plausibly interprets its code to limit projections to non-habitable structures, and concludes that the proposed turret, accessible to human occupation via ladder, is not a projection. *Najimi v. City of Cannon Beach*, LUBA No 2020-118 (June 21, 2021).

1.2.2 Administrative Law – Denials – Requirements for. Notwithstanding that the application for annexation and the application for a planned unit development (PUD) for a residential golf course were processed together, a city errs in denying the annexation application based not on the annexation criteria, but on the PUD criteria, and on concerns regarding the specific PUD proposal. Each application is subject to its own criteria, and where nothing in the city code authorizes the city to deny the annexation application based solely on noncompliance with PUD criteria, LUBA will remand the decision to the city to address the annexation criteria. *Tukwila Development LLC v. City of Woodburn*, LUBA No 2021-058 (Nov 5, 2021).

1.2.2 Administrative Law – Denials – Requirements for. LUBA will affirm a local government’s denial of an application to create partition a 1,156-acre parcel to create two smaller parcels for nonfarm dwellings, based on a condition of a 1994 partition approval that prohibited further partitions of the “parent parcel” for nonfarm uses, where the petitioner fails to establish as a matter of law that the subject property was not the “parent parcel,” or that the condition had been voided by planning staff, or otherwise that the condition no longer applied to restrict partition of the subject property. *Woods v. Wallowa County*, LUBA No 2021-064 (Nov 18, 2021).

1.2.2 Administrative Law – Denials – Requirements for. When LUBA has affirmed at least one valid basis for denial the Board typically does not address challenges directed at other, alternate, bases for denial. Such an action would result in rendering what are essentially advisory adjudications, which is not consistent with the statutory mandate that LUBA’s review should be conducted pursuant to sound principles of judicial review. ORS 197.805. *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 245 (2018).

1.2.2 Administrative Law – Denials – Requirements for. To succeed in a motion to take evidence outside the record and pursuant to OAR 661-010-0045(1), and (2)(a) and (c), regarding an alleged violation of petitioners’ rights under the privileges and immunities clause of the Oregon Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution, the movant must develop a legal theory and a set of factual assertions sufficient to allow LUBA to determine how consideration of the proffered evidence would “affect the outcome of the review proceeding.” *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

1.2.2 Administrative Law – Denials – Requirements for. In a motion to take evidence outside the record pursuant to OAR 661-010-0045(1), and (2)(a) and (c), petitioners’ argument—that two city employees violated petitioners’ rights under the privileges and immunities clause of the Oregon Constitution, and the equal protection clause of the 14th Amendment to the United States Constitution because the employees engaged in the “unequal” application of the applicable standards in processing two similarly situated planned unit development (PUD) projects—fails to demonstrate that the proffered evidence would concern “procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision” because petitioners do not allege that the final decision maker violated petitioners’ constitutional rights. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

1.2.2 Administrative Law – Denials – Requirements for. Where intervenor applied for, and received, two consecutive land use compatibility statements (LUCS), and argues it has now abandoned any reliance on the first LUCS decision, and instead has chosen to proceed with development pursuant to the second LUCS decision, the intervenor’s current intent does not necessarily render the first LUCS decision ineffective. Unless and until the local government takes action to withdraw, revoke, or supersede the first LUCS decision, it remains as a potential basis for intervenor to proceed with development based on the LUCS as a final and binding county decision, and is therefore not moot. *Bishop v. Deschutes County*, 76 Or LUBA 515 (2017).

1.2.2 Administrative Law – Denials – Requirements for. A decision by the city that it will not approve any road that is located in the conceptual location approved in a previously approved conceptual development plan, and that is also shown in the city’s adopted transportation systems plan and the adopted area refinement plan for the city, would not be a land use decision that is “in compliance with the acknowledged plan and land use regulations.” ORS 197.175(2)(d). *GPA I LLC v. City of Corvallis*, 74 Or LUBA 527 (2016).

1.2.2 Administrative Law – Denials – Requirements for. Where a road is proposed in the conceptual location approved in a previously approved conceptual development plan, and is also shown in the city’s adopted transportation systems plan and the adopted area refinement plan for the city, the city has a heightened obligation under *Commonwealth Properties v. Washington County*, 35 Or App 387, 400, 582 P2d 1384 (1978), to either (1) approve the proposed alignment that is consistent with the planned and approved location, or (2) make it very clear which of five other alternative proposed alignments the city will accept. *GPA I LLC v. City of Corvallis*, 74 Or LUBA 527 (2016).

1.2.2 Administrative Law – Denials – Requirements for. If a local government interprets its

code to the effect that federal particulate matter standards supply the relevant test for compliance with local approval standards, articulates that interpretation for the first time in its final decision, and denies the application for failure to present evidence of compliance with the federal standards, remand would likely be necessary to give the applicant an opportunity to present evidence addressing the federal standards. However, remand is not warranted where the decision merely discusses federal standards, but ultimately concludes that those standards do not govern. *Easterly v. Polk County*, 59 Or LUBA 417 (2009).

1.2.2 Administrative Law – Denials – Requirements for. Findings to explain the basis for denial of a permit are inadequate where the findings do not explain which criteria the application fails to meet or otherwise inform the applicant what steps are necessary to obtain approval under the relevant criteria. *Bridge Street Partners v. City of Lafayette*, 56 Or LUBA 387 (2008).

1.2.2 Administrative Law – Denials – Requirements for. Under a variance standard requiring that the “hardship” not be “self-created,” a finding that the “applicant’s desire to partition his property” created the “hardship” is an insufficient basis to deny the variance request, where the hardship is the lack of alternative access to the proposed parcel and there is no explanation in the findings how petitioner’s desire to partition his property created the lack of alternative access to the proposed parcel. *Krishchenko v. City of Canby*, 52 Or LUBA 290 (2006).

1.2.2 Administrative Law – Denials – Requirements for. The conclusory nature of a finding that faults the applicant for failing to present any evidence or evaluation of adverse impacts does not provide a basis for remand, where the hearings officer interpreted the code to require at least some evidence or evaluation of adverse impacts, and the applicant provided none. *Wiper v. City of Eugene*, 47 Or LUBA 21 (2004).

1.2.2 Administrative Law – Denials – Requirements for. Assuming ORS 197.522 is applicable outside the moratoria context, that statute does not require a local government to develop on its own conditions of approval that would render proposed development compliant with applicable criteria, as an alternative to denial. Rather, the initial burden of proposing conditions to make development consistent with applicable criteria belongs to the applicant. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

1.2.2 Administrative Law – Denials – Requirements for. ORS 197.522 does not require a local government to reopen the record after reaching a tentative decision to deny a development application, to allow the applicant an opportunity to propose conditions that would allow approval. Rather, the applicant must propose such conditions during the evidentiary proceedings or in making final legal arguments to address concerns raised during the proceedings and ensure compliance with applicable criteria. *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

1.2.2 Administrative Law – Denials – Requirements for. Where a city attorney denies four applications for “billboards” on the grounds that “billboards” are not among the types of signs allowed under the city’s sign ordinance, it is reasonably clear that the basis for denial is the fact that the applicant proposed a type of sign not allowed by the city’s code. The city’s *post-hoc* explanation that the basis for denial was actually the size of the proposed signs is not credible, where the challenged decision contains no hint that size was a consideration. *West Coast Media v.*

City of Gladstone, 44 Or LUBA 503 (2003).

1.2.2 Administrative Law – Denials – Requirements for. When an applicant asserts below that it is entitled to a well under the statutory exemption to obtaining a water use permit pursuant to ORS 537.545 and the findings supporting denial on the basis of lack of a water source do not address or respond to that assertion, the findings are inadequate. *Molalla River Reserve, Inc. v. Clackamas County*, 42 Or LUBA 251 (2002).

1.2.2 Administrative Law – Denials – Requirements for. When the applicant and the local government address approval criteria using different approaches, findings denying the application must provide an explanation for why the applicant’s approach is inadequate and explain, in at least a general way, how the applicant must address the criteria under the local government’s approach. *Molalla River Reserve, Inc. v. Clackamas County*, 42 Or LUBA 251 (2002).

1.2.2 Administrative Law – Denials – Requirements for. LUBA will remand a decision denying an application to place and remove fill in a riparian zone, where the findings do not independently address the relevant standards and it is not clear what evidence the hearings officer relied on to apply the standards. *Griffin v. Jackson County*, 41 Or LUBA 159 (2001).

1.2.2 Administrative Law – Denials – Requirements for. Where the applicant presents argument and evidence that property designated and zoned for forest use is not in fact forest land protected by Goal 4, making an exception to that goal unnecessary to rezone the property for residential use, the county errs in denying the rezoning application without addressing the issue or explaining why it believes the subject property is protected by Goal 4. *Potts v. Clackamas County*, 40 Or LUBA 371 (2001).

1.2.2 Administrative Law – Denials – Requirements for. In denying an application for land use approval based on a finding that the application does not comply with applicable criteria, a local government must explain in its findings why it believes the applicable criteria are not satisfied. Further, the local government’s findings must be sufficient to inform petitioner either what steps are necessary to obtain approval or that it is unlikely that the application will be approved. *Rogue Valley Manor v. City of Medford*, 38 Or LUBA 266 (2000).

1.2.2 Administrative Law – Denials – Requirements for. Where a local government finds noncompliance with an approval criterion because an intersection outside the traffic study area is inadequate to serve the subject property, but it is not clear why the local government believes the intersection “serves” the property, LUBA will remand to allow the local government to provide a more adequate interpretation of the criterion. *Ontrack, Inc. v. City of Medford*, 37 Or LUBA 472 (2000).

1.2.2 Administrative Law – Denials – Requirements for. A county’s finding that a proposed nonforest dwelling is inconsistent with forest uses is inadequate where the finding is so conclusory that it fails to inform the applicant either what steps are necessary to obtain approval or that it is unlikely that the application can be approved. *Eddings v. Columbia County*, 36 Or LUBA 159 (1999).

1.2.2 Administrative Law – Denials – Requirements for. Even though a city’s denial of a land use application need only include findings adequate to demonstrate that one applicable criterion is not satisfied, before the city can reach such a conclusion it must first explain the applicable criteria, state the facts the city relied upon in reaching the decision and justify the decision based upon the criteria and facts. *Boehm v. City of Shady Cove*, 31 Or LUBA 85 (1996).

1.2.2 Administrative Law – Denials – Requirements for. While findings of noncompliance with applicable criteria need not be exhaustive, they must at least either inform the applicant of the standards the application does not meet or of the steps necessary to satisfy the standards. *Boehm v. City of Shady Cove*, 31 Or LUBA 85 (1996).

1.2.2 Administrative Law – Denials – Requirements for. ORS 227.173(2) does not require a local government to make findings regarding criteria which could support approval of an application, or to make findings regarding criteria upon which it did not rely in reaching its decision to deny an application. *Holland v. City of Cannon Beach*, 30 Or LUBA 85 (1995).

1.2.2 Administrative Law – Denials – Requirements for. When a challenged decision denies development approval, the county need only adopt findings, supported by substantial evidence, demonstrating that one approval standard is not met. *Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995).

1.2.2 Administrative Law – Denials – Requirements for. To support denial of a land use permit, a local government need only establish the existence of one adequate basis for denial. *Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632 (1995).

1.2.2 Administrative Law – Denials – Requirements for. Where the challenged decision is one to deny a development proposal, a local government need only adopt findings, supported by substantial evidence, demonstrating that one or more standards are not met. *Duck Delivery Produce v. Deschutes County*, 28 Or LUBA 614 (1995).

1.2.2 Administrative Law – Denials – Requirements for. Where the challenged decision denying development approval fails to inform the applicant of the steps it must take to gain approval of its application or, alternatively, of the standards the application does not meet, the decision must be remanded. *Ellis v. City of Bend*, 28 Or LUBA 332 (1994).

1.2.2 Administrative Law – Denials – Requirements for. Where the challenged decision is one to deny proposed development, LUBA must sustain the decision if there are adequate findings, supported by substantial evidence in the record, determining that one applicable standard is not met. *Newsome v. Clackamas County*, 27 Or LUBA 578 (1994).

1.2.2 Administrative Law – Denials – Requirements for. Where an approval standard for partitioning timber zoned property into nonresource parcels requires that the subject property be “generally unsuitable land for the production of farm or forest products,” and petitioner does not challenge a county determination that the subject property is generally suitable for *farm use*, that determination provides an independent basis for affirming the county’s decision to deny the partition. *Newsome v. Clackamas County*, 27 Or LUBA 578 (1994).

1.2.2 Administrative Law – Denials – Requirements for. Only one sustainable basis for a decision to deny a conditional use permit is required. Where such a sustainable basis for denial exists, LUBA does not consider challenges to other unrelated aspects of the decision. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

1.2.2 Administrative Law – Denials – Requirements for. Only one sustainable basis for a decision to deny a request for land use approval is required. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

1.2.2 Administrative Law – Denials – Requirements for. While it may be that findings of noncompliance with a relevant approval standard need not be as exhaustive or detailed as those necessary to establish compliance with that approval standard, a local government is obligated to provide an explanation for its conclusion that the standard is not met. *Salem-Keizer School Dist. 24-J v. City of Salem*, 27 Or LUBA 351 (1994).

1.2.2 Administrative Law – Denials – Requirements for. Where a code approval standard *prohibits* the proposed use *unless* an exception is justified under a second code standard that requires the local government to have a “short term parking strategy,” if the local government has not adopted a “short term parking strategy,” it cannot make use of the exception provided by the second standard and must deny the application. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994).

1.2.2 Administrative Law – Denials – Requirements for. Although a local government may impose conditions and rely on such conditions to determine a development application meets applicable approval standards, there is no general requirement that a local government *must* apply conditions to modify a proposal so that applicable standards are met, rather than deny the application. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

1.2.2 Administrative Law – Denials – Requirements for. Where a local government denies a request to remove a condition placed on a previous land use approval, based on its determination that *neither* of two sets of circumstances giving rise to the condition has changed, and petitioner challenges the local government’s determination concerning only one set of circumstances, LUBA will affirm the local government’s decision. *Livingston v. Jackson County*, 26 Or LUBA 395 (1994).

1.2.2 Administrative Law – Denials – Requirements for. To support a denial, a local government need only establish the existence of one adequate basis for denial. *Kangas v. City of Oregon City*, 26 Or LUBA 177 (1993).

1.2.2 Administrative Law – Denials – Requirements for. Because an applicant for development approval bears the burden of proof in a local government proceeding, if the challenged local government’s decision denies petitioner’s request for zoning clearance, only one sustainable basis for the decision is required. *McPeck v. Coos County*, 26 Or LUBA 165 (1993).

1.2.2 Administrative Law – Denials – Requirements for. To support denial of a development

application, a local government need only establish the existence of one adequate basis for denial. *Hahn v. Marion County*, 26 Or LUBA 18 (1993).

1.2.2 Administrative Law – Denials – Requirements for. Because a permit applicant has the burden of demonstrating compliance with each approval criterion, a single supported finding of noncompliance with an approval criterion is sufficient to support a decision denying the permit. *Ball and Associates v. Josephine County*, 25 Or LUBA 525 (1993).

1.2.2 Administrative Law – Denials – Requirements for. For LUBA to sustain a challenged decision to deny proposed development, the local government need only adopt findings supported by substantial evidence that the proposal fails to meet one applicable standard. *Oregon Raptor Center v. City of Salem*, 25 Or LUBA 401 (1993).

1.2.2 Administrative Law – Denials – Requirements for. While a local government is free to impose conditions to enable it to approve a development application, it is not required to do so and may instead choose to deny development that, as proposed, does not satisfy relevant standards. *Decuman v. Clackamas County*, 25 Or LUBA 152 (1993).

1.2.2 Administrative Law – Denials – Requirements for. For LUBA to sustain a local government's denial decision, LUBA must find that the local government adopted findings supported by substantial evidence, demonstrating that one or more applicable standards are not met. *Decuman v. Clackamas County*, 25 Or LUBA 152 (1993).

1.2.2 Administrative Law – Denials – Requirements for. To support a denial decision, a local government need only establish the existence of one adequate basis for denial. *Roozenboom v. Clackamas County*, 24 Or LUBA 433 (1993).

1.2.2 Administrative Law – Denials – Requirements for. Where the challenged decision is one to deny proposed development, the local government need only adopt findings, supported by substantial evidence, demonstrating that at least one standard is not satisfied. *Stockwell v. Clackamas County*, 24 Or LUBA 358 (1992).

1.2.2 Administrative Law – Denials – Requirements for. Where the challenged decision denies a proposed development, the local government need only adopt findings, supported by substantial evidence, demonstrating that one or more standards are not met. Further, in challenging a denial decision on evidentiary grounds, petitioners have the burden of establishing compliance with each and every criterion as a matter of law. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

1.2.2 Administrative Law – Denials – Requirements for. To support a decision denying proposed development, local government need only adopt findings, supported by substantial evidence, demonstrating that one or more standards are not met. *Leopold v. City of Milwaukie*, 24 Or LUBA 246 (1992).

1.2.2 Administrative Law – Denials – Requirements for. Inadequate findings concerning one of the bases for denying a permit application provide no basis for reversal or remand where there are other adequate findings of noncompliance with applicable approval standards. *Reeder v.*

Clackamas County, 23 Or LUBA 583 (1992).