



**NATURE OF THE DECISION**

Petitioner appeals a decision by the city approving a conceptual and detailed development plan and a tentative subdivision plat.

**FACTS**

The subject property is a vacant 2.55-acre parcel. The applicant sought approval of a conceptual and detailed development plan and tentative subdivision plat for a nine lot residential subdivision. A portion of the property contains natural hazards that are identified on the city’s Natural Hazards Map. The planning commission approved the applications, and petitioner appealed the planning commission decision to the city council. The city council held a hearing and affirmed the planning commission’s approval. This appeal followed.<sup>1</sup>

**FIRST ASSIGNMENT OF ERROR**

Petitioner’s first assignment of error contains a subsection entitled “General Introduction.” As far as we can tell, this subsection does not assign error to any portion of the challenged decision, but merely cites to and quotes portions of the Corvallis Land Development Code (LDC), Oregon statutes, and Statewide Planning Goal 7 (Areas Subject to Natural Disasters and Hazards) that petitioner apparently believes have some bearing on the city’s decision. However, petitioner does not develop an argument that the decision violates Goal 7. Moreover, the city responds that petitioner is precluded under ORS 197.763(1) from challenging the decision based on Goal 7 because he failed to raise any

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<sup>1</sup> In the portion of the petition for review setting forth the material facts, petitioner requests that LUBA take official notice under OEC 201(a) and (b) “for informational and not for adjudicative purposes” of a fact that petitioner alleges was reported by the Joint Interim Task Force on Landslides and Public Safety to the 70<sup>th</sup> Legislative Assembly, *viz*, that “[r]apidly moving landslides’ usually range in velocity from ten and thirty-five miles per hour and are difficult or impossible for people to outrun or escape.” Petition for Review 2, 4. Because it is not clear what relevance such a statement has to the issues in the appeal, we decline petitioner’s request.

1 issue below regarding Goal 7. Petitioner does not respond to the city’s waiver argument, and  
2 we do not consider any argument regarding Goal 7.

3 Petitioner’s first assignment of error is difficult to follow, but we understand it to  
4 challenge the geotechnical report submitted by the applicant. We understand petitioner to  
5 argue that the city erred in accepting a geotechnical report that the applicant submitted  
6 because the geotechnical report does not include information from any off-site tests  
7 regarding whether the subject property could be affected by rapidly moving landslides.<sup>2</sup> The  
8 city responds, and we agree, that the requirement to submit a geotechnical report is an  
9 application requirement found at LDC 4.5.60.04(b)(1), and is not an independent approval  
10 criterion. Moreover, because a portion of the property is identified on the city’s Natural  
11 Hazards Map, LDC 4.5.70.03(a) requires the geotechnical report to address the “presence,  
12 characteristics, and precise location of the identified hazard(s) on the subject property which  
13 is/are depicted on the Natural Hazards Map.” There is no requirement in the LDC, as  
14 petitioner suggests, that the geotechnical report include data from off-site tests. As such,  
15 petitioner’s argument that the city erred in accepting the report provides no basis for reversal  
16 or remand.

17 Petitioner also argues that the city erred in failing to adopt findings addressing the  
18 requirements of ORS 195.250 to ORS 195.260. ORS 195.260(1)(a) gives local governments  
19 the authority to require a geotechnical report before issuing a building permit for properties  
20 located in a “further review area” as defined in ORS 195.250(1).<sup>3</sup> ORS 195.260(1)(d) gives

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<sup>2</sup> ORS 195.250(3) defines “rapidly moving landslide” as a “landslide that is difficult for people to outrun or escape.”

<sup>3</sup> ORS 195.250(1) defines “further review area” as:

“[A]n area of land within which further site specific review should occur before land management or building activities begin because either the State Department of Geology and Mineral Industries or the State Forestry Department determines that the area reasonably could be expected to include sites that experience rapidly moving landslides as a result of excessive rainfall.”

1 local governments the authority to deny a building permit if the geotechnical report discloses  
2 that the property is potentially subject to a rapidly moving landslide. We do not see that  
3 these statutes apply directly to the applications at issue in this appeal. First, the statutes  
4 merely provide authority for local governments to take certain actions; they do not mandate  
5 any particular action. Second, the applications at issue in this appeal are not for building  
6 permits, but instead for approval of conceptual and detailed development plans and a  
7 tentative subdivision plat. Finally, the city argues that there is no evidence in the record that  
8 the subject property is located in a “further review area,” and disputes petitioner’s unstated  
9 assumption that it is located in a further review area. We agree with the city that petitioner’s  
10 arguments under ORS 195.260 do not provide a basis for reversal or remand.

11 The first assignment of error is denied.

12 **SECOND ASSIGNMENT OF ERROR**

13 In the second assignment of error, petitioner argues that the city erred in approving  
14 the application because there is not substantial evidence that the application satisfies ORS  
15 195.260(1)(d). We have already explained above that ORS 195.260 does not apply to the  
16 subject applications. Therefore, the second assignment of error provides no basis for reversal  
17 or remand of the decision.

18 The second assignment of error is denied.

19 The city’s decision is affirmed.