

1.2.3 Administrative Law – Denials – Burden to Challenge. Where a local code provision allows a reduced setback where “the required setback would prohibit the placement of the residential structure on the parcel due to topography,” and where the decision-maker denied a reduced setback in part because they concluded that there was a buildable area within the setback envelope that did not contain steep slopes, even if LUBA agrees with the petitioners that credible evidence weighs overwhelmingly in favor of a finding that the entire setback envelope contains steep slopes, LUBA must affirm the denial where the petitioners fail to challenge the decision-maker’s further conclusion that steep slopes do not prohibit development but, instead, require further assessment, and where the petitioners did not provide any expert assessment that the entire setback envelope was unbuildable due to steep slopes. *Velasquez v. Jackson County*, 80 Or LUBA 1 (2019).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where a local government adopts independent findings and applies a different substantive analysis for two separate approval criteria, but relies on the same evidence in concluding that those criteria are not met, a petitioner does not effectively challenge the findings for one of those criteria by challenging the findings for the other so as to defeat an argument that it has failed to challenge all valid, alternative, and independent bases for denial. *Himmelberger v. City of Portland*, 79 Or LUBA 367 (2019).

1.2.3 Administrative Law – Denials – Burden to Challenge. OAR 660-012-0035(4) requires local governments to design their transportation system plans to achieve adopted standards for reducing reliance on cars. Although a city errs in finding that OAR 660-012-0035(4) does not apply to specific projects or to targeted amendments to a transportation system plan (TSP), where the findings also (1) identify adopted standards within the city’s TSP, the city’s comprehensive plan, and revised code that include measures to reduce reliance on cars, and (2) additionally conclude that the amendments comply with OAR 660-012-0035(4), and petitioner neither challenges those findings nor identifies any adopted standards in the TSP, comprehensive plan or revised code that the TSP amendments fail to satisfy, petitioners’ arguments provide no basis for reversal or remand. *Deumling v. City of Salem*, 76 Or LUBA 99 (2017).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where petitioners argue that the city’s calculation of future travel demand that relies on projections in the adopted and acknowledged regional transportation analysis prepared by state, regional and local governments is not supported by substantial evidence and petitioners fail to point to any evidence that contradicts or undercuts the city’s traffic models based on the regional transportation analysis, petitioners have failed to set forth a basis for remand or reversal. *Deumling v. City of Salem*, 76 Or LUBA 99 (2017).

1.2.3 Administrative Law – Denials – Burden to Challenge. A hearings officer’s decision relying upon intervenor’s traffic study is supported by substantial evidence where the hearings officer addressed petitioner’s challenges to the credibility of the traffic study by citing to testimony of the intervenor’s traffic engineer responding to each of petitioner’s challenges. *Willis v. Clackamas County*, 76 Or LUBA 244 (2017).

1.2.3 Administrative Law – Denials – Burden to Challenge. In applying a development code standard that authorizes a local government to approve exceptions to lot size standards for planned

developments if the development's "design and amenities" warrant the exceptions, the fact that preservation of open space is encouraged by the comprehensive plan does not mean the exceptions must be approved simply because the proposal would preserve open space. That the proposed open space is consistent with the comprehensive plan does not require approval of the requested exceptions. *J. Conser and Sons, LLC v. City of Millersburg*, 73 Or LUBA 57 (2016).

1.2.3 Administrative Law – Denials – Burden to Challenge. When a local ordinance requires that no additional vehicle trips enter an intersection during peak hours, an applicant cannot overcome a denial by merely encouraging visitors to use other routes to the site. Without an enforcement mechanism or evidence that such encouragement would be completely effective without an enforcement mechanism, the applicant has not demonstrated as a matter of law that no additional vehicle trips would enter the intersection during peak hours. *Vista Construction, LLC v. City of Grants Pass*, 59 Or LUBA 195 (2009).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where a hearings officer's evaluation of the evidence is based in part on a considered assessment that one set of witnesses is more credible or reliable than others with respect to a disputed factual issue, it will be a rare circumstance where LUBA has a basis to overturn that credibility judgment. *Applebee v. Washington County*, 54 Or LUBA 364 (2007).

1.2.3 Administrative Law – Denials – Burden to Challenge. The burden of overturning a permit denial on evidentiary grounds is even more difficult when the applicable approval criteria are highly subjective in nature, such as standards requiring "adequate" transportation improvements to "promote safety" and "reduce congestion." *Oien v. City of Beaverton*, 46 Or LUBA 109 (2003).

1.2.3 Administrative Law – Denials – Burden to Challenge. Given the subjectivity of criteria requiring that (1) the subject property be of adequate size to allow for "aesthetic design treatment," (2) the proposed building be "compatible" in scale and mass with adjoining structures, and (3) the site plan provide for "adequate" buffers, the testimony of residential neighbors that a proposed church on a 3.85-acre parcel fails to comply with these criteria is adequate to support the city's finding of noncompliance. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

1.2.3 Administrative Law – Denials – Burden to Challenge. Conclusory testimony by an acoustic engineer that a proposed church will not violate "maximum allowable noise levels" is insufficient to show compliance as a matter of law with code standards that require a demonstration that proposed uses will not exceed specific decibel levels within a specified distance from adjoining residential uses. *Corporation Presiding Bishop v. City of West Linn*, 45 Or LUBA 77 (2003).

1.2.3 Administrative Law – Denials – Burden to Challenge. Petitioner fails to overcome the county's determination that property is forest land under Goal 4, and fails to demonstrate as a matter of law that land is not "suitable for commercial forest uses," where petitioner's own expert testifies that notwithstanding limitations on productivity the subject property is in a "medium productivity range" and would yield \$81,300 worth of commercial timber at 50 years, after an investment of \$7,450. *Potts v. Clackamas County*, 42 Or LUBA 1 (2002).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where there is evidence in the record to show that limited farm and forest activities may be conducted on the subject property, petitioner has not met his burden in challenging a denial on evidentiary grounds to show that, as a matter of law, only his evidence regarding the practicability of farm and forest use may be believed. *Dhillon v. Clackamas County*, 40 Or LUBA 397 (2001).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where there is conflicting substantial evidence regarding the location of a property line, and the local government determines, as a result, that the applicants failed to show by substantial evidence that all applicable criteria had been met, LUBA will affirm the local government’s denial. *Gambie v. Yamhill County*, 38 Or LUBA 343 (2000).

1.2.3 Administrative Law – Denials – Burden to Challenge. LUBA will not conclude that the statutory definition of high-value soils excludes soil complexes in which listed soils form the predominant part, where petitioner fails to establish a sufficient basis to form that conclusion. *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195 (1999).

1.2.3 Administrative Law – Denials – Burden to Challenge. LUBA must affirm a decision denying a permit to site a dog kennel prohibited on high-value farmland, where petitioner fails to challenge the county’s alternative finding that the subject property is high-value farmland because it is predominantly composed of a combination of two high-value soils. *Tri-River Investment Co. v. Clatsop County*, 37 Or LUBA 195 (1999).

1.2.3 Administrative Law – Denials – Burden to Challenge. A petitioner challenging a city’s denial of its land use application on evidentiary grounds bears the burden of demonstrating that only evidence supporting the application can be believed and that, as a matter of law, such evidence establishes compliance with each of the applicable criteria. *Wiley Mtn., Inc. v. City of Albany*, 36 Or LUBA 449 (1999).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where a hearings officer gives several reasons why she was not persuaded by affidavit testimony submitted by a permit applicant, petitioner does not establish that the applicant carried his burden of proof as a matter of law. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

1.2.3 Administrative Law – Denials – Burden to Challenge. A local government need only adopt one sustainable basis to deny a request for permit approval. Where petitioner fails to challenge all of the city’s bases for denial, the decision must be affirmed. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.2.3 Administrative Law – Denials – Burden to Challenge. Petitioner’s disagreement with the reasons specified by a local government for rejecting the evidence he submitted in support of a land use application provides no basis for reversal or remand. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where a local government denies

a permit application following remand from the Court of Appeals and specifies more than one basis for the denial, in reviewing a subsequent appeal of the denial on remand LUBA need only review and sustain one of the bases for denial. *Johns v. City of Lincoln City*, 34 Or LUBA 594 (1998).

1.2.3 Administrative Law – Denials – Burden to Challenge. Typically only one adequate basis for denial of a land use permit is required to sustain the decision on appeal to LUBA. However, where the approval criteria provide that a setback exception can be granted if any one of several alternative criteria are met and LUBA rejects the hearings officer’s findings of noncompliance with two of those alternative criteria, a remand is appropriate. *Parsley v. Jackson County*, 34 Or LUBA 540 (1998).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where petitioner cites no evidence that partition plat contains words of road dedication and there is unrebutted testimony that a partition plat lacks terms of dedication, the local decision maker’s finding that petitioner failed to prove road dedication on the basis of the partition plat is supported by substantial evidence. *Petersen v. Yamhill County*, 33 Or LUBA 584 (1997).

1.2.3 Administrative Law – Denials – Burden to Challenge. To obtain reversal at LUBA of a city’s variance denial, a petitioner must show that it proved its compliance with the criteria as a matter of law and that only its evidence should be believed. *Main Auto Body v. City of Salem*, 30 Or LUBA 194 (1995).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where the challenged decision denies an application, the local government need only adopt findings, supported by substantial evidence, demonstrating that one or more standards are not met. To challenge a denial on evidentiary grounds, petitioner must demonstrate compliance with all applicable criteria as a matter of law. *Gionet v. City of Tualatin*, 30 Or LUBA 96 (1995).

1.2.3 Administrative Law – Denials – Burden to Challenge. In challenging a local government’s determination of noncompliance with an applicable approval standard on evidentiary grounds, petitioners must demonstrate they sustained their burden of proof of compliance with the applicable standard as a matter of law. *Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632 (1995).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where a local government denies development approval based on noncompliance with a relevant approval standard, a petitioner’s evidentiary challenge to that determination must cite evidence in the record demonstrating the standard is satisfied as a matter of law. *Lyon v. Linn County*, 28 Or LUBA 402 (1994).

1.2.3 Administrative Law – Denials – Burden to Challenge. A Public Works Department memorandum showing traffic counts, setting out accident history and making a conditional recommendation that a traffic study may be deferred is not sufficient to show the applicant carried its burden as a matter of law with regard to compliance with a code minimal adverse impact standard. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where a local government denies an application based on noncompliance with certain comprehensive plan housing policies, petitioners’ argument that other plan housing policies should also be applied provides no basis for reversal or remand, where petitioners fail to establish how the local government’s failure to apply the other policies undermines its decision to deny the application based on the policies it did apply. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

1.2.3 Administrative Law – Denials – Burden to Challenge. Where petitioners were the applicants below, and challenge on evidentiary grounds a local government determination that an applicable approval standard is not met, petitioners must demonstrate, as a matter of law, that they sustained their burden of proof of compliance with the standard. *Kangas v. City of Oregon City*, 26 Or LUBA 177 (1993).

1.2.3 Administrative Law – Denials – Burden to Challenge. To overturn a denial decision on evidentiary grounds, an applicant must establish that the proposal satisfies each applicable approval standard as a matter of law. *Decuman v. Clackamas County*, 25 Or LUBA 152 (1993).

1.2.3 Administrative Law – Denials – Burden to Challenge. In order to overturn, on evidentiary grounds, a local government determination that an applicable approval criterion is not met, it is not sufficient for petitioners to show there is substantial evidence in the record to support their position. Rather, petitioners must demonstrate they sustained their burden of proof of compliance with applicable criteria, as a matter of law. *Thomas v. City of Rockaway Beach*, 24 Or LUBA 532 (1993).

1.2.3 Administrative Law – Denials – Burden to Challenge. To overturn on evidentiary grounds a local government’s determination that an applicable approval standard is not met, a petitioner may not simply show that there is substantial evidence in the record to support his position. Rather, petitioner must demonstrate that he sustained his burden of proof of compliance with all applicable standards, as a matter of law. *Baker v. Marion County*, 24 Or LUBA 519 (1993).

1.2.3 Administrative Law – Denials – Burden to Challenge. In order to overturn on evidentiary grounds a local government’s determination that an applicable approval criterion is not met, it is not sufficient for petitioner to show there is substantial evidence in the record to support its position. Rather, the evidence must be such that a reasonable trier of fact could only say petitioner’s evidence should be believed. *Roozenboom v. Clackamas County*, 24 Or LUBA 433 (1993).

1.2.3 Administrative Law – Denials – Burden to Challenge. To overturn on evidentiary grounds a local government’s determination that an applicable approval criterion is not met, petitioners must demonstrate they sustained their burden of proof of compliance with applicable criteria, as a matter of law. *Stockwell v. Clackamas County*, 24 Or LUBA 358 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. 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).

1.2.3 Administrative Law – Denials – Burden to Challenge. To overturn a local government determination that an applicable approval criterion is not met, on evidentiary grounds, petitioners must demonstrate that they sustained their burden to establish compliance with the applicable criterion as a matter of law. *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. In the absence of evidence in the record establishing the quantity of products delivered or dollar amount of sales by petitioners' business to farm uses within the local agricultural community, petitioners cannot demonstrate as a matter of law that their proposed use is a commercial activity in conjunction with farm use. *Chauncey v. Multnomah County*, 23 Or LUBA 599 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. An evidentiary challenge to a local government finding that the applicant failed to carry his burden of proof below requires that a petitioner at LUBA demonstrate the applicant carried that burden as a matter of law. *Nelson v. Benton County*, 23 Or LUBA 392 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. It is the applicant's burden to establish compliance with each relevant approval standard. Consequently, where the applicant fails to establish compliance with a single approval standard, a decision denying an application must be affirmed. *West v. Clackamas County*, 23 Or LUBA 558 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. It is the applicant's burden to establish compliance with each applicable approval standard, and a local government may not approve a proposal unless each approval standard is met. LUBA will sustain a decision denying land use approval, if such a decision demonstrates that one or more approval standards are not met. *Seeger v. City of Portland*, 23 Or LUBA 334 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. For LUBA to overturn a local government's denial decision, petitioners must establish that the proposed development meets all applicable standards as a matter of law. *Rath v. Hood River County*, 23 Or LUBA 200 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. In order to overturn, on evidentiary grounds, a local government determination that an approval standard is not met, petitioners must establish that the approval standard is satisfied as a matter of law. *Schoppert v. Clackamas County*, 23 Or LUBA 138 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. In order to overturn, on evidentiary grounds, a local government's determination that an applicable approval standard is not met, the evidence must be such that a reasonable trier of fact could only say petitioners' evidence should be believed. *Goffic v. Jackson County*, 23 Or LUBA 1 (1992).

1.2.3 Administrative Law – Denials – Burden to Challenge. A local government's denial of a development application will be sustained if the local government's determination that any one approval standard is not satisfied is sustained. *Goffic v. Jackson County*, 23 Or LUBA 1 (1992).