

**28.2 LUBA Scope of Review – Denials.** An affidavit of the owner of the subject property stating that a particular structure is removable does not establish, as a matter of law, that the structure is removable where photographs depict the structure as being located on the subject property during the rainy season over many years. *Armstrong v. Jackson County*, 81 Or LUBA 651 (2020).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** Where LUBA concludes that a local government’s conclusion that an application did not meet an applicable approval criterion was a valid basis for denial, although any error committed with respect to alternative or independent bases for denial would generally not provide a basis for reversal or remand, remand is nonetheless required where LUBA also concludes that the local government failed to address a threshold argument from the applicant that, if correct, would prevent the local government from applying criteria that would prohibit approval of the application. *M & T Partners, Inc. v. City of Salem*, 80 Or LUBA 221 (2019).

**28.2 LUBA Scope of Review – Denials.** Local governments are not required to condition approvals rather than deny noncompliant applications. *H2D2 Properties, LLC v. Deschutes County*, 80 Or LUBA 528 (2019).

**28.2 LUBA Scope of Review – Denials.** LUBA need not address a petitioner’s challenges to a county’s alternative basis for denial, that the subject property is designated as undevelopable “open space,” where LUBA has affirmed the county’s primary basis for denial, that the subject property is designated as undevelopable “common area.” Where LUBA has affirmed one basis for denial, any error committed with respect to alternative or independent bases would not provide a basis for reversal or remand. *Kine v. Deschutes County*, 75 Or LUBA 407 (2017).

**28.2 LUBA Scope of Review – Denials.** Where LUBA affirms a local decision-maker’s interpretation and conclusion regarding the applicability of a comprehensive plan policy, no purpose would be served by addressing other challenges to alternative bases for local government’s decision to deny the application. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

**28.2 LUBA Scope of Review – Denials.** Where LUBA has affirmed a local government’s primary interpretation of a comprehensive plan policy, supporting the local government’s decision to deny the application, LUBA need not resolve challenges to independent, alternative interpretations supporting denial. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** LUBA typically affirms a decision denying an application for land use approval as long as there is one valid basis for denial, notwithstanding other invalid bases for denial. However, LUBA will remand a county governing body’s decision that reverses a planning commission approval of a conditional use, where the only valid basis for denial is a correctable findings and evidentiary deficiency, and the governing body’s choice to reverse the planning commission decision rather than remand was based on the governing body’s erroneous conclusion that the proposed conditional use is prohibited as a matter of law. In that circumstance, LUBA will remand the decision for the governing body to consider whether the planning commission decision should be remanded rather than reversed. *Hood River Valley PRD v. Hood River County*, 67 Or LUBA 314 (2013).

**28.2 LUBA Scope of Review – Denials.** In denying an application for land use approval based on a finding that the application does not comply with applicable criteria, the local government’s findings must be sufficient to inform the applicant either what steps are necessary to obtain approval or that it is unlikely that the application will be approved. *Bridge Street Partners v. City of Lafayette*, 56 Or LUBA 387, 394 (2008). *Housing Authority of Jackson County v. City of Medford*, 65 Or LUBA 295 (2012).

**28.2 LUBA Scope of Review – Denials.** Although it is only necessary for one assignment of error to be sustained to uphold a denial of a permit application, LUBA will review other assignments of error if they are capable of arising again if a solution to the first assignment is found on remand. *Wilson v. Washington County*, 63 Or LUBA 314 (2011).

**28.2 LUBA Scope of Review – Denials.** Because only one sustainable basis for denying a permit application is required, LUBA need not address additional assignments of error after sustaining one basis for denial. Where additional assignments of error are relatively straightforward and can be resolved within the statutory deadline for issuing LUBA’s decision, LUBA may resolve those additional assignments of error where they would provide additional independent bases for sustaining the decision. However, where those additional assignments of error present close and difficult questions of law, and may require LUBA to consider issues that the parties have not

briefed, LUBA will not decide such assignments of error. *Onsite Advertising Services LLC v. Washington County*, 63 Or LUBA 414 (2011).

**28.2 LUBA Scope of Review – Denials.** In general, to successfully overcome a denial of a permit on evidentiary grounds, a petitioner must demonstrate that the burden of proof was met as a matter of law. *Adams v. Jackson County*, 54 Or LUBA 103 (2007).

**28.2 LUBA Scope of Review – Denials.** To support a denial decision, the local government need only establish the existence of one adequate basis for denial. Once LUBA has rejected all assignments of error directed at one of several alternative bases for denial, LUBA will not reach other assignments of error, absent a showing that resolving such assignments of error in petitioner’s favor would provide a basis for reversal or remand. *Wal-Mart Stores, Inc. v. Hood River County*, 47 Or LUBA 256 (2004).

**28.2 LUBA Scope of Review – Denials.** To successfully challenge a permit denial decision on evidentiary grounds, a petitioner must demonstrate that it met its burden of proof as a matter of law. That is a particularly difficult burden where the relevant approval standard is subjective. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

**28.2 LUBA Scope of Review – Denials.** Where a local government finds that a zoning map amendment applicant failed to demonstrate that the request was consistent with a number of applicable criteria, and on appeal to LUBA the applicant fails to challenge the city’s findings concerning two of those applicable criteria, the city’s decision must be affirmed. *Doman v. City of Woodburn*, 45 Or LUBA 158 (2003).

**28.2 LUBA Scope of Review – Denials.** Remand is necessary where the hearings officer cites a nonexistent requirement for “substantial and compelling findings,” and appears to apply that standard in determining that the applicant does not satisfy the stability standard. *Elliott v. Jackson County*, 43 Or LUBA 426 (2003).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** In challenging a decision denying a permit on evidentiary grounds, it is not sufficient to show the evidence would also have supported approval of the permit. The evidence must show that petitioner sustained his burden of proof as a matter of law. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** Where a hearings officer's interpretation that the county's street frontage requirement mandates street frontages be on a public road or street is contrary to the plain language of the county's zoning ordinance, a denial of a partition based solely on that interpretation will be reversed. *Miller v. Clackamas County*, 31 Or LUBA 104 (1996).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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 will be affirmed. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** LUBA must sustain a local government decision to deny a proposed plan or code amendment, if the decision demonstrates that one or more applicable standards are not met. *Hess v. City of Portland*, 23 Or LUBA 343 (1992).

**28.2 LUBA Scope of Review – Denials.** 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. *Seger v. City of Portland*, 23 Or LUBA 334 (1992).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** Where there is conflicting believable evidence in the record, LUBA cannot say a reasonable decision maker could only believe the evidence relied upon by petitioner, and will reject a challenge to the evidentiary support for a decision denying development approval. *Joyce v. Multnomah County*, 23 Or LUBA 116 (1992).

**28.2 LUBA Scope of Review – Denials.** To overturn on evidentiary grounds a local government's determination that an applicable approval criterion is not met, it is not sufficient for petitioners to show that there is substantial evidence in the record to support their position. Rather, the "evidence must be such that a reasonable trier of fact could only say petitioners' evidence should be believed." *Barber v. Marion County*, 23 Or LUBA 71 (1992).

**28.2 LUBA Scope of Review – Denials.** Where evidence in the record establishes that with adequate drainage a parcel could be put to farm use, petitioner has not established as a matter of law that the proposed nonfarm use is located on land “generally unsuitable” for farm use. *Barber v. Marion County*, 23 Or LUBA 71 (1992).

**28.2 LUBA Scope of Review – Denials.** Where a petitioner challenges a local government’s decision to deny his application, the petitioner must establish compliance with all relevant standards as a matter of law. Where reasonable people could draw inferences from evidence cited in the record to support either the local government’s or the petitioner’s position, LUBA may not conclude as a matter of law that all relevant standards are met. *Coyner v. City of Portland*, 23 Or LUBA 79 (1992).

**28.2 LUBA Scope of Review – Denials.** 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).

**28.2 LUBA Scope of Review – Denials.** 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. Petitioners must demonstrate they sustained their burden of proof of compliance with the criterion as a matter of law. *Kane v. City of The Dalles*, 22 Or LUBA 608 (1992).

**28.2 LUBA Scope of Review – Denials.** 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 his position. Rather, the evidence must be such that a reasonable trier of fact could only say that petitioner’s evidence should be believed. *Samoilov v. Clackamas County*, 22 Or LUBA 446 (1991).

**28.2 LUBA Scope of Review – Denials.** A local government’s denial of a land development application will be sustained if the local government’s determination that any *one* approval standard is not satisfied is sustained. *Patton v. Clackamas County*, 22 Or LUBA 415 (1991).

**28.2 LUBA Scope of Review – Denials.** In challenging on evidentiary grounds a local government’s determination that applicable approval standards are not met, petitioner must demonstrate that the applicant carried his burden of demonstrating compliance with those standards as a matter of law. *Patton v. Clackamas County*, 22 Or LUBA 415 (1991).

**28.2 LUBA Scope of Review – Denials.** In challenging a determination of noncompliance with an approval standard on evidentiary grounds, petitioners bear a heavy burden. The evidence must be such that a reasonable trier of fact could only say petitioners’ evidence should be believed. *Wickwire v. Clackamas County*, 21 Or LUBA 278 (1991).

**28.2 LUBA Scope of Review – Denials.** LUBA may reverse or remand a county’s determination that an applicant failed to carry his burden to demonstrate compliance with statewide planning goal exception criteria only where it is demonstrated the exception requirements are met as a matter of law. *Carsey v. Deschutes County*, 21 Or LUBA 118 (1991).

**28.2 LUBA Scope of Review – Denials.** Where LUBA upholds one or more bases for a county’s decision denying a request for land use approval, findings concerning an additional basis for denying approval provide no basis for reversal or remand, even if such findings are erroneous. *Carsey v. Deschutes County*, 21 Or LUBA 118 (1991).

**28.2 LUBA Scope of Review – Denials.** In order to overturn on evidentiary grounds a local government’s determination that an applicable approval criterion is not met, petitioner must demonstrate that he sustained his burden of proof of compliance with applicable criteria as a matter of law. *Walton v. Clackamas County*, 21 Or LUBA 69 (1991).

**28.2 LUBA Scope of Review – Denials.** A local government’s denial of a land use development application will be sustained if the local government’s determination that any one approval criterion is not satisfied is sustained. *McCaw Communications, Inc. v. Polk County*, 20 Or LUBA 456 (1991).

**28.2 LUBA Scope of Review – Denials.** In denying an application, the local government need only adopt findings demonstrating that one or more of the applicable approval standards are not met. *West v. Clackamas County*, 20 Or LUBA 433 (1991).

**28.2 LUBA Scope of Review – Denials.** To overturn on evidentiary grounds a local government’s determination that an applicable approval standard is not met, it is not enough for a petitioner to show that there is substantial evidence in the record to support his position. Rather, the evidence must be such that a reasonable trier of fact could only say the petitioner’s evidence should be believed. *West v. Clackamas County*, 20 Or LUBA 433 (1991).

**28.2 LUBA Scope of Review – Denials.** Where a development denial decision is based on determinations of noncompliance with more than one applicable approval standard, LUBA will affirm the denial if petitioner does not successfully challenge *every* determination of noncompliance. *Adams v. Jackson County*, 20 Or LUBA 398 (1991).

**28.2 LUBA Scope of Review – Denials.** If findings in support of a denial of quasi-judicial land use approval adequately explain a sufficient basis for denial, they will be upheld. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

**28.2 LUBA Scope of Review – Denials.** In challenging a denial on evidentiary grounds, petitioner must show the evidence is such that a reasonable decision maker could *only* say petitioner’s evidence should be believed. *Forest Park Estate v. Multnomah County*, 20 Or LUBA 319 (1990).

**28.2 LUBA Scope of Review – Denials.** In order to overturn a county determination that a nonconforming use does not exist on evidentiary grounds, 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. *J and D Fertilizers v. Clackamas County*, 20 Or LUBA 44 (1990).



**28.2 LUBA Scope of Review – Denials.** Where the city did not base its decision to deny land use approval on anticipated traffic impacts, a challenge to the city’s findings concerning traffic impacts provides no basis for reversal or remand. *J.K. Land Corporation v. City of Gresham*, 19 Or LUBA 66 (1990).

**28.2 LUBA Scope of Review – Denials.** Where the county denies a proposed use because it violates a particular plan provision on two different bases, petitioner does not state grounds on which LUBA may grant relief if petitioner challenges only one basis for the county’s denial. *Garre v. Clackamas County*, 18 Or LUBA 877 (1990).