

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

3  
4                   LIEF MORIN and SANI MORIN,  
5                                   *Petitioners,*

6  
7                                   vs.

8  
9                                   CITY OF SEASIDE,  
10                                   *Respondent,*

11  
12                                   and

13  
14                                   SUNSET RIDGE L.L.C.,  
15                                   *Intervenor-Respondent.*

16  
17                                   LUBA No. 2025-026

18  
19                                   FINAL OPINION  
20                                   AND ORDER

21  
22                   Appeal from City of Seaside.

23  
24                   Zack P. Mittge filed the petition for review and reply brief and argued on  
25 behalf of petitioners. Also on the brief was Hutchinson Cox.

26  
27                   No appearance by respondent.

28  
29                   Dean N. Alterman filed the intervenor-respondent's brief and argued on  
30 behalf of intervenor-respondent. Also on the brief was Alterman Law Group PC.

31  
32                   WILSON, Board Member; ZAMUDIO, Board Chair; participated in the  
33 decision.

34  
35                   BASSHAM, Board Member, did not participate in the decision.

36  
37                   REMANDED

03/11/2026

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**

Petitioners appeal a city decision approving a tentative plan subdivision for a 15-lot subdivision and a variance to allow an overlength cul-de-sac.

**FACTS**

Intervenor-respondent (intervenor) owns a 6.2-acre residentially zoned property. The subject property is located between Aldercrest Street to the south and Forest Drive to the north. Intervenor seeks to develop a 15-lot subdivision with access to Aldercrest Street to the south, which is elevated above the rest of the property. The property is essentially a ridge between two ravines on the east and west of the property. Intervenor sought variances to allow an overlength cul-de-sac to serve the 15 lots and to allow intervenor to develop sidewalks on only one side of the cul-de-sac, instead of both. The planning commission approved the subdivision and variances. On appeal to the city council, the city council approved the subdivision and the variance for an overlength cul-de-sac, but denied the sidewalk variance.<sup>1</sup> This appeal followed.

**FIRST ASSIGNMENT OF ERROR**

Petitioners argue that the city erred in approving intervenor's application after the 180-day time period in ORS 227.178(4) had expired. ORS 227.178 provides in pertinent part:

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<sup>1</sup> The sidewalk variance is not at issue in this appeal.

1           “(1) Except as provided in subsections (3), (5) and (11) of this  
2 section, the *governing body of a city or its designee shall take*  
3 *final action on an application*, including resolution of all  
4 appeals under ORS 227.180, within the shortest applicable  
5 period of the following periods, all of which begin on the date  
6 that the application is *deemed complete*:

7           “(a) 120 days;

8           “\* \* \* \* \*

9           “(2) If an application is incomplete, the governing body or its  
10 designee shall notify the applicant in writing of exactly what  
11 information is missing within 30 days of receipt of the  
12 application and allow the applicant to submit the missing  
13 information. The application is *deemed complete* for the  
14 purpose of subsection (1) of this section *upon receipt* by the  
15 governing body or its designee of:

16           “(a) All of the missing information;

17           “(b) Some of the missing information and written notice  
18 from the applicant that no other information will be  
19 provided; or

20           “(c) Written notice from the applicant that none of the  
21 missing information will be provided.

22           “\* \* \* \* \*

23           “(4) On the 181st day *after first being submitted*, the application  
24 *is void if* the applicant has been notified of the missing  
25 information as required under subsection (2) of this section  
26 and has not submitted:

27           “(a) All of the missing information;

28           “(b) Some of the missing information and written notice  
29 that no other information will be provided; or

1                   “(c) Written notice that none of the missing information  
2                   will be provided.” (Emphases added.)

3                   ORS 215.427 is the county analog to ORS 227.178. The Court of Appeals  
4 explained the interoperation of subsections (1), (2), and (4) as follows:

5                   “Turning to the text and context of ORS 215.427, we note that the  
6 statute contains two deadlines that serve different purposes. The first  
7 deadline is in subsection (1) and provides the time within which *a*  
8 *county must act* on an application after it is ‘deemed complete’—  
9 here, 150 days. If the county fails to act within that time, the  
10 applicant can bring a mandamus action against the county. Thus, for  
11 purposes of that deadline, the important date is the date on which  
12 the application is ‘deemed complete,’ because the timeline for the  
13 county to act begins to run from *that* date. For purposes of  
14 subsection (1), subsection (2) sets out when an application is to be  
15 ‘deemed complete.’

16                   “The second deadline is in subsection (4) and provides the time  
17 within which *an applicant must act* after receiving notice that its  
18 application is missing information—which is 180 days from the date  
19 that the application was submitted. If the applicant fails to act within  
20 that time, then the application becomes void on the 181st day. For  
21 purposes of *that* deadline, the important date is the date on which  
22 the application is first submitted, because the timeline for the  
23 applicant to act begins to run from *that* date. The date that the county  
24 gives notice of missing information does not affect, or inform, the  
25 deadline date for the applicant to act for purposes of subsection (4).”  
26 *Bora Architects/Allgood v. Tillamook County*, 291 Or App 537, 543-  
27 44, 422 P3d 412 (2018) (emphases in original).

28                   Once notified that the application is incomplete, the applicant must take  
29 one of the listed actions to avoid the voiding provision in subsection (4). *Painter*  
30 *v. City of Redmond*, 56 Or LUBA 311 (2008). Petitioners argue that the city erred  
31 in approving the application because it was void on August 27, 2025, the 181st

1 day after the application was submitted. According to petitioners, intervenor did  
2 not take steps sufficient under ORS 227.178(4)(a) through (c) to prevent the  
3 application from becoming void on August 27, 2025, because intervenor did not  
4 (a) provide all of the missing information; (b) provide some of the missing  
5 information and notice that no other information will be required; or (c) notify  
6 the city no other information would be provided.

7 Intervenor submitted the application on February 27, 2024. On March 13,  
8 2024, within the 30-day window of ORS 227.178(2), the city notified intervenor  
9 that the application was missing 11 specific items. Record 778-79.<sup>2</sup> On May 23,  
10 2024, intervenor submitted information responding to the city's March 13, 2024  
11 letter. Record 679-82. On June 16, 2024, the city notified intervenor that it was  
12 still missing information regarding items 1, 7, 8, 9, and 10. Supplemental Record  
13 30. On July 25, 2024, intervenor emailed revised plans to the city that responded  
14 to the five remaining points. The email concludes with:

15 "These items should make the application complete, ready to be  
16 processed by the city, and ready for a public hearing if required by  
17 code. Please confirm the city agrees that the application is

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<sup>2</sup> LUBA received the original record in this appeal on April 28, 2025. All citations to the record are to the April 26, 2025 transmittal. LUBA also received an amended supplemental record on November 14, 2025. All citations to the supplemental record are to the November 14, 2025 transmittal.

1 complete.” Record 495.<sup>3</sup>

2 Intervenor argues that by responding to all of the requests for missing  
3 information and stating that “[t]hese items should make the application  
4 complete,” that it complied with the requirements of ORS 227.178(2). We agree  
5 with intervenor that the application was “deemed complete” “upon receipt” of  
6 intervenor’s July 25, 2024 response. If an applicant responds in accordance with  
7 ORS 227.178(2)(a) to (c), then the application “is deemed complete” “upon  
8 receipt” of the response. *See Portland General Electric v. Clackamas County*,  
9 LUBA No 2024-069 (Jan 23, 2025) (Ryan, Board Member, concurring) (slip op  
10 at 18). ORS 215.427(2) does not grant the city discretion to determine whether  
11 the application *should be* “deemed complete.” In fact, a local government may  
12 conclude that an application remains incomplete after an applicant has responded  
13 in writing that no other information will be provided. Nevertheless, the local  
14 government must proceed to evaluate the application against the approval  
15 criteria. ORS 227.178(4) results in a void application only when an applicant has  
16 failed to respond to an incompleteness notice within 180 days after the  
17 application is first submitted.

18 While it would be clearer if intervenor had specifically stated that it had  
19 provided all of the missing information or that “no other information would be

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<sup>3</sup> Petitioners argue that the July 25, 2024 email is not in the record. However, the city incorporated as findings intervenor’s attorney’s February 21, 2025 memorandum that describes the email.

1 provided,” ORS 227.178(2) does not require magic words that mimic the statute  
2 verbatim. *See Smith v. City of Gearhart*, 71 Or LUBA 184, 189 (2015)  
3 (applicant’s statement that she planned to submit no additional information other  
4 than an estimate for a building permit and that her application is considered  
5 complete complied with ORS 227.178(4)). Intervenor’s attorney’s July 25, 2024  
6 email demonstrates that intervenor believed it had supplied all of the missing  
7 information and that the city should begin processing the application. The email  
8 demonstrates that intervenor did not plan to submit any additional information to  
9 respond to the city’s March 13, 2024 incompleteness letter. That is sufficient to  
10 satisfy the requirements of ORS 227.178(4). The application was therefore  
11 complete on July 25, 2024.<sup>4</sup>

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<sup>4</sup> Although petitioners point to Record 1561, which is a city form that states that the application was deemed complete on November 13, 2024, the incorporated findings state that the application was complete on August 24, 2024. *See* Record 20 (finding that the application was complete on or before the 31st day from the July 25, 2024 email). Record 1561 is not incorporated as findings. The city’s position therefore is that the application was complete on August 24, 2024. The incorporated findings deem the application complete on August 24, 2024 as that was 30 days after the July 25, 2024 submittal and there was no additional request for the missing information. As intervenor’s brief observes, however, the application was “deemed complete” on July 25, 2024, as there is no 30-day period associated with responses to incompleteness letters. Intervenor-Respondent’s Brief 11-12. Once an applicant complies with ORS 227.178(2) the application is complete. The incorporated findings’ error is harmless as the application was nonetheless complete within the 180-day period of ORS 227.178(4).

1           Petitioners argue that intervenor continued to supply information regarding  
2 the missing items from the city’s March 13, 2024 incompleteness letter after the  
3 August 26, 2024 180-day deadline for making the application complete. The  
4 findings at Record 493-96 explain that the additional information submitted after  
5 the 180-day deadline were either clarifications of earlier submitted materials or  
6 entirely new materials not submitted in response to the items identified as missing  
7 in the March 13, 2024 incompleteness letter. While petitioners argue that  
8 intervenor submitted additional information in response to the March 13, 2024  
9 incompleteness letter, petitioners do not challenge the city’s adopted findings at  
10 493-96. More importantly, nothing in ORS 227.178 nullifies that an application  
11 is “deemed complete” “upon receipt” if an applicant later submits additional  
12 information or engages in ongoing back and forth with the city to clarify  
13 previously submitted information.

14           The first assignment of error is denied.

15           **SECOND ASSIGNMENT OF ERROR**

16           Petitioners argue that the city misconstrued the applicable law and made a  
17 decision with inadequate findings by relying on conditions of approval to defer  
18 the development of plans for sanitary sewer and stormwater systems until after  
19 tentative approval without demonstrating that such systems are feasible.  
20 According to petitioners, conditions of approval requiring later submittal of  
21 sewer and stormwater plans impermissibly defer satisfying tentative plan  
22 subdivision approval criteria to a later city engineer review that does not provide

1 for the required public participation as required in *Rhyne v. Multnomah County*,  
2 23 Or LUBA 442 (1992). *Rhyne* states:

3 “Where the evidence presented during the first stage approval  
4 proceedings raises questions concerning whether a particular  
5 approval criterion is satisfied, a local government essentially has  
6 three options potentially available. First, it may find that although  
7 the evidence is conflicting, the evidence nevertheless is sufficient to  
8 support a finding that the standard is satisfied or that feasible  
9 solutions to identified exist, and impose conditions necessary.  
10 Second, if the local government determines there is insufficient  
11 evidence to determine the feasibility with the standards, it could on  
12 that basis deny the application. Third, if the local government  
13 determines that there is insufficient evidence to determine the  
14 feasibility of compliance with the standard, instead of finding that  
15 the standard is not met, it may defer a determination concerning  
16 compliance to the second stage. In selecting this third option, the  
17 local government is not finding all applicable approval standards are  
18 complied with, or that it is feasible to do so, as part of the first stage  
19 approval (as it does under the first option described above).  
20 Therefore, the local government must assure that the second stage  
21 approval process to which the decision making is deferred, provides  
22 the statutorily required notice and hearing, even though the local  
23 code may not require such notice and hearing for second stage  
24 decisions in other circumstances.” 23 Or LUBA at 447-48  
25 (Footnotes and citation omitted.)

26 Petitioners argue that the city found that there was insufficient evidence to satisfy  
27 the requirement for adequate sewer and stormwater treatment but did not provide  
28 the required notice and hearing required by the third option in *Rhyne*.

29 The city’s subdivision ordinance is somewhat unusual. Sections 5 through  
30 17 of the Subdivision and Land Partitioning Ordinance (SLPO) explain the  
31 informational and procedural requirements for subdivisions, but they do not

1 include any actual approval criteria. SLPO sections 32 through 42 provide  
2 developments standards, and sections 33 through 37 regulate improvements.

3 **A. Sanitary Sewer Plan**

4 SLPO sections 5 through 17 do not provide any specific approval criteria  
5 for tentative subdivision approval – they merely contain information and  
6 procedural requirements. SLPO 10 “Supplemental Proposals with Tentative  
7 Plan” provides in pertinent part:

8 “Any of the following *may be required* by the City to supplement  
9 the tentative plan.

10 “A general explanation of the improvements and public utilities,  
11 including water supply and sewage disposal proposed to be  
12 installed.

13 “\* \* \* \* \*

14 “Proposals for sewage disposal, [stormwater] drainage and flood  
15 control, including profiles of proposed drainage ways.” (Emphasis  
16 added.)

17 SLPO 43 – “Improvement Standards and Approval” provides in pertinent part:

18 “In addition to other requirements, all improvements shall conform  
19 to the requirements of this ordinance and any other improvement  
20 standards or specifications adopted by the City and shall be installed  
21 in accordance with the following procedure:

22 “Improvement work shall not be commenced until plans have been  
23 checked for adequacy and approved by the City. *To the extent  
24 necessary for evaluation of the proposal, the plans may be required  
25 before approval of the tentative plan of a subdivision or  
26 partition.* \* \* \*

1           “\* \* \* \* \*

2           “Sewer services will be extended to unserved areas only if they are  
3           within the city limits. All subdivisions and partitions within city  
4           limits shall be connected to the sewer system where available and  
5           subject to capacity limitations.” (Emphasis added.)

6           SLPO 44 “Improvement Requirements” provides in pertinent part:

7           “Improvements to be installed at the expense of the subdivider or  
8           partitioner and at the time of subdivision or partition.

9           “\* \* \* \* \*

10          “Sewers: Sanitary sewer facilities connecting with the existing City  
11          sewer system and [stormwater] sewers, of design, layout and  
12          location approved by the City, shall be installed.”

13          The city’s findings regarding a sanitary sewer plan under SLPO 43 and 44

14          state:

15          “[Intervenor] is required to submit additional civil and utility plans  
16          prior to the issuance of permits to commence construction. The  
17          plans will be reviewed by the Fire Department and Public Works to  
18          ensure utilities proposed to be installed are acceptable.

19          “\* \* \* \* \*

20          “[Intervenor’s] property is located within city limit[s]. The current  
21          status of this sewer shed is being evaluated by the City’s engineers.  
22          The City is under a Mutual Agreement and Order with DEQ due to  
23          overflows at the pump station that services this sewer shed. The  
24          City’s engineers believe upgrades to this pump station will be  
25          necessary to handle further capacity. [Intervenor] will be required to  
26          submit an alternate plan for sewage disposal that is required to be  
27          approved by the City’s engineers.

28          “\* \* \* \* \*

1            “[Intervenor] will need to submit an alternate sewer utility plan, as  
2            the current plan connects to a sewer that is experiencing capacity  
3            issues. Alternatively, [intervenor] can wait to connect until the  
4            system has been upgraded for additional capacity. The City is  
5            currently working on a scope of work, funding, and a timeframe for  
6            these necessary upgrades.” Record 14-16.

7            The city imposed condition of approval two to satisfy these requirements:

8            “The sanitary sewer site plan shall be prepared by a licensed  
9            Professional Engineer and must clearly detail all contributing  
10           sanitary flows and plumbing systems within this development area.  
11           The analysis shall outline the method of sanitary sewage  
12           conveyance and treatment at a DEQ-approved facility, with no  
13           discharge directed to the City’s existing Wahanna Pump Station  
14           without approval from the City’s Public Works Department.”  
15           Record 2.

16           Petitioners are correct that the city did not find that there was a feasible  
17           sanitary sewer plan for the subdivision. Although the city’s findings state that  
18           intervenor could wait until the existing sanitary sewer system is upgraded, the  
19           city did not determine that a sewer system upgrade and connection was feasible.  
20           The city’s findings do not find that there was a feasible sanitary sewer plan, but  
21           instead defers that determination until a later date with review by only the public  
22           works department, with no further public process. The question is whether the  
23           city was required under the SLPO to find that there was a feasible sanitary sewer  
24           plan.<sup>5</sup>

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<sup>5</sup> Cities are required to “adopt standards and procedures” “by regulation or ordinance” for “the submission and approval of tentative plans and plats of subdivisions.” ORS 92.044(1)(a). Petitioners do not argue that the city’s interpretation of its subdivision ordinance violates state law. Accordingly, we

1 Intervenor argues that there is no approval criterion that requires  
2 submission of a sanitary sewer plan at the tentative plan stage. As quoted earlier,  
3 SLPO 44 provides that “[s]anitary sewer facilities connecting with the existing  
4 City sewer system \* \* \* of design, layout and locations approved by the City shall  
5 be installed.” As quoted earlier, SLPO 43 provides that “[t]o the extent necessary  
6 for evaluation of the proposal, the plans may be required before approval of the  
7 tentative plan of a subdivision or partition.” Intervenor argues that SLPO 43  
8 merely requires that the sanitary sewer system must eventually be connected to  
9 the city sewer system. Intervenor argues that SLPO 43 explicitly makes  
10 submission of a sanitary sewer plan at the tentative plan stage discretionary for  
11 the city. Although the city engineer asked for alternate plans, intervenor argues  
12 that requests from the city engineer are not approval criteria. According to  
13 intervenor, it was up to the city council – not the city engineer – to decide whether  
14 a sanitary sewer plan would be required as part of the tentative plan subdivision  
15 application. Intervenor argues that because the city council did not require a  
16 sanitary sewer plan as part of the subdivision application, the city implicitly  
17 concluded that no such plan was required.

18 Under ORS 197.829(1), as construed in *Siporen v. City of Medford*, 349  
19 Or 247, 259, 243 P3d 776 (2010), LUBA must defer to a local governing body’s  
20 interpretation of its comprehensive plan and land use regulations, unless the local

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address only petitioners’ challenge to the city council’s application and interpretation of the city’s subdivision ordinance.

1 government's interpretation is inconsistent with the express language, purpose,  
2 or underlying policy of the comprehensive plan or land use regulation. *Crowley*  
3 *v. City of Hood River*, 294 Or App 240, 244, 430 P3d 1113 (2018). In *Crowley*,  
4 an appeal that involved the city council's interpretation of the city's  
5 comprehensive plan, the Court of Appeals explained: "Whether the city's  
6 interpretation of its comprehensive plan is inconsistent with the plan, or the  
7 purposes or policies underlying that plan, depends on whether the interpretation  
8 is plausible, given the interpretive principles that ordinarily apply to the  
9 construction of ordinances under the rules of *PGE v. Bureau of Labor and*  
10 *Industries*, 317 Or 606, 610-12, 859 P2d 1143 (1993), as modified by *State v.*  
11 *Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009)." *Id.* (internal quotation marks  
12 and brackets omitted). The standard of review under ORS 197.829(1) and  
13 *Siporen* is "highly deferential" to the city, and the "existence of a stronger or  
14 more logical interpretation does not render a weaker or less logical interpretation  
15 'implausible.'" *Mark Latham Excavation, Inc. v. Deschutes County*, 250 Or App  
16 543, 555, 281 P3d 644 (2012).

17 Local ordinances often have approval criteria that require an applicant to  
18 demonstrate that there are adequate public utilities for approval of proposed  
19 development. In such cases, as petitioners state, a local government may not defer  
20 that determination until a later stage that does not have the same public process  
21 as the initial application. If that were the situation in the present case, we would  
22 agree with petitioners that the city improperly deferred consideration of the

1 sanitary sewer and stormwater plans until a later stage. As discussed earlier,  
2 however, the city’s subdivision ordinance is unusual. The SLPO does not contain  
3 specific approval criteria for tentative subdivision plan approval. SLPO 10 and  
4 43 provide that the city “may” require sanitary sewer and stormwater plans in  
5 order to obtain tentative plan approval. As such language is discretionary, the city  
6 may also decide not to require such plans.

7 While it appears that the city engineer, at least at some point, wanted those  
8 plans to be provided, the city council is the final decision maker and decided not  
9 to require such plans. While the city council did not specifically interpret SLPO  
10 10, 43, and 44, it implicitly interpreted the SLPO not to require submission of  
11 sanitary sewer and stormwater plans. As the Court of Appeals explained in *Green*  
12 *v. Douglas County*:

13 “An implicit interpretation of an ordinance provision that is eligible  
14 for ORS 197.829(1) deference is one where ‘[t]he practical effect of  
15 the findings is to give definition to the term’ and where the ‘county’s  
16 understanding of [the term] is inherent in the way that it applied the  
17 standard.’ *Alliance for Responsible Land Use[v. Deschutes Cty.]*,  
18 149 Or App[ 259,] 267, 942 P2d 836 [(1997), *rev. dismissed as*  
19 *improvidently allowed*, 327 Or. 555, 971 P2d 411 (1998)]. That is,  
20 a local government’s implicit interpretation of an ordinance must  
21 carry with it only one possible meaning of the ordinance provision  
22 and an easily inferred explanation of that meaning.” 245 Or App  
23 430, 439, 263 P3d 355 (2011).

24 The practical effect of the city’s decision is that the city’s understanding  
25 of the SLPO is that it does not require submission of sanitary sewer or stormwater  
26 plans at the tentative subdivision plan stage – but rather that the requirement for

1 such plans are discretionary. By including conditions of approval requiring those  
2 plans to be provided before the improvements can be constructed, the city clearly  
3 indicated that it was not exercising its discretion to require those plans at the  
4 tentative subdivision plan stage. The city’s implicit interpretation carries only one  
5 possible and easily inferred meaning of the SLPO.

6 While the SLPO is somewhat unusual in that it does not require a  
7 demonstration of adequacy for public utilities at the tentative subdivision plan  
8 approval stage, the SLPO makes the requirement for submission of such utility  
9 plans discretionary. In the present case, the city exercised its discretion not to  
10 require a sanitary sewer or stormwater plan at tentative subdivision approval  
11 stage and instead imposed conditions of approval to require such plans before  
12 development could occur. We agree with intervenor that such an interpretation  
13 of the SLPO is plausible and thus entitled to deference.

14 The first subassignment of error is denied.

15 **B. Stormwater Plan**

16 As quoted earlier, SLPO 44 provides that “[stormwater] sewers, of design,  
17 layout and locations approved by the City, shall be installed.” Petitioners argue  
18 that the city did not find that it was feasible to install a stormwater system and  
19 impermissibly deferred consideration of the stormwater system until a later  
20 process without the required notice and opportunity for a hearing required by  
21 *Rhyme*.

22 The city’s findings state:

1 “[Intervenor’s] stormwater drainage system is not sufficient for this  
2 proposal. [Intervenor] is proposing the roof drains from the  
3 proposed buildings to drain to the newly created street. The street  
4 does not currently plan for a storm sewer and storm water would run  
5 on the surface to a catch basin in the cul-de-sac. [intervenor] will  
6 need to submit an alternate storm system plan for approval by Public  
7 Works.

8 “\* \* \* \* \*

9 “[Intervenor] will need to submit a stormwater drainage plan that  
10 can be approved by Public Works. The submitted plan does not  
11 include storm drainage in the street except a catch basin at the end  
12 of the cul-de-sac. Additional drainage will be necessary.” Record  
13 15-16.

14 The city imposed condition of approval three to satisfy this requirement:

15 “An engineered stormwater plan, detailing the storm system within  
16 the proposed development will need to be submitted and approved  
17 by the City’s Public Works Department. The plan will need to  
18 propose connecting into the existing storm system in the intersection  
19 of Aldercrest St. and Hemlock Ct.” Record 2.

20 As with sanitary sewer, the city did not find that there was a feasible  
21 stormwater system for the proposed subdivision, but instead deferred that  
22 determination until a later date with review by the public works department, with  
23 no further public process. As with sanitary sewer, the question is whether the city  
24 was required under the SLPO to find that there was a feasible stormwater plan.  
25 Intervenor again relies on the provision in SLPO 43 that “[t]o the extent necessary  
26 for the evaluation of the proposal, the plans may be required before approval of  
27 the tentative plan of a subdivision or partition.” According to intervenor, it was  
28 up to the city council to decide whether a stormwater plan would be required as

1 part of the subdivision application. Intervenor argues that because the city council  
2 did not require a stormwater plan as part of the subdivision application, the city  
3 implicitly concluded that no such plan was required.

4 The analysis under this subassignment of error is essentially the same as  
5 under the first subassignment of error. The city's implicit interpretation is that a  
6 demonstration of adequacy is not necessary at the tentative subdivision plan  
7 approval stage and that the city has the discretion whether to require submission  
8 of a stormwater plan as part of the tentative plan subdivision application. In the  
9 present case, the city exercised its discretion not to require a stormwater plan at  
10 tentative subdivision plan approval stage and imposed a condition of approval to  
11 require a plan be approved by public works before development could occur. As  
12 with sanitary sewer, the city's implicit interpretation is plausible, because under  
13 SLPO 10 and 43 the city clearly has the discretion to not require such a plan at  
14 tentative subdivision approval stage.

15 The second subsassignment of error is denied.

16 **C. Adequacy of Findings**

17 Petitioners also argue that the city's findings are inadequate to satisfy  
18 SLPO 43 and 44. Petitioners' findings challenges, however, are based on the  
19 premise that intervenor was required to submit and the city was required to  
20 approve sanitary sewer and stormwater plans. As explained, the city exercised its  
21 discretion not to require sanitary sewer or stormwater plans. Therefore, the

1 findings are not inadequate for failing to require adequate plans at the tentative  
2 subdivision plan approval stage.

3 The second assignment of error is denied.

4 **THIRD ASSIGNMENT OF ERROR**

5 Petitioners argue that the city misconstrued the applicable law and made a  
6 decision with inadequate findings by granting subdivision approval for a  
7 subdivision that does not meet the standards applicable to geologic hazard areas.

8 Seaside Zoning Ordinance (SZO) 4.140 provides Standards Applying to  
9 Geologic Hazard Areas. SZO 4.141 provides the purpose of the standards:

10 “To establish special criteria and procedures for *development,*  
11 *subdivisions and partitions* in potential geologic hazard areas so as  
12 to reduce the potential for property damage and personal injury.”  
13 (Emphasis added.)

14 SZO 4.142 prescribes where the standards apply:

15 “The Standards in this section *shall apply to all proposed*  
16 *development and subdivisions and partitions* in the following areas:

17 “1. Sites that are composed of areas with slopes of 15% or  
18 greater, sites that are situated adjacent to slopes of 15% or  
19 greater, or other sites as determined by the City Council,  
20 Planning Commission or Planning Director[.]

21 “2. Areas upland from the Seaside cove shown as landslide  
22 topography underlain by tertiary sedimentary rocks (TOMS)  
23 as shown in the maps accompanying the report  
24 ‘Environmental Geology of the Coastal Region of Tillamook  
25 and Clatsop County’, by [Oregon Department of Geology and  
26 Mineral Industries].” (Emphasis added.)

1           There is no dispute that the property falls within the areas where the  
2 standards apply. SZO 4.143 provides the standards:

3           “1. The applicant shall submit a Hazard Mitigation Plan (HMP)  
4 which describes the extent and severity of the Geologic and  
5 Erosion hazard(s), the capability of the site and adjacent  
6 affected areas to support the proposed development, and the  
7 recommended techniques/safeguards that could be used to  
8 adequately protect life, property and environment on and  
9 adjacent to the site. The HMP shall be prepared and certified  
10 by a Certified Engineering Geologist registered in the State of  
11 Oregon, or a Civil Engineer registered in the State of Oregon  
12 specializing in the area of Geotechnical Engineering, and  
13 submitted by the applicant.

14           “2. The applicant shall submit a Grading and Erosion Control  
15 Plan (GECP) for the proposed development. The GECP shall  
16 comply with the requirements of Section 4.200 of the Zoning  
17 Ordinance. The GECP shall be submitted in conjunction with  
18 a HMP.

19           “3. The HMP shall, at a minimum, consider the following:

20           “A. Cut and fill methods of leveling lots shall be discouraged.  
21 Structures should be planned to preserve natural slopes as  
22 much as possible.

23           “B. Access roads and driveways shall follow the slope contour  
24 whenever possible to reduce the need for grading and fillings.

25           “C. Removal of vegetation shall occur only for those areas to be  
26 improved by the proposed development.

27           “D. No development shall be allowed to block stream drainage-  
28 ways in any area or to increase the water level on adjacent  
29 property.

30           “4. Approval of a proposed development, subdivision, or

1 partition shall be conditioned on the applicants' agreement to  
2 provide the safeguards and construction techniques  
3 recommended in the HMP.

4 "Where necessary, the Building Official may require an  
5 engineer's stamp on the building plans in addition to a  
6 geotechnical report.

7 "5. Standards in this section for proposed subdivisions shall be  
8 applied through the applicable review and approval  
9 procedures of the City's Subdivision and Land Partitioning  
10 Ordinance 74-36."

11 Petitioners argue that the HMP submitted by intervenor was inadequate to  
12 satisfy the requirements of SZO 4.143(3) and that intervenor did not submit a  
13 GECP. According to petitioners, those requirements were not met so the decision  
14 must be remanded.

15 The city's findings do not address this issue. The only response to this issue  
16 is in intervenor's attorney's February 21, 2025 memorandum, which the city  
17 council incorporated by reference into its decision.<sup>6</sup> Record 20 (incorporating  
18 Record 493-511). The memorandum contains alternative bases to approve the  
19 decision. First, intervenor argues that the HMP and GECP are not required at the  
20 tentative plan stage of subdivision approval – only prior to development. Second,  
21 intervenor argues that the HMP meets the requirements of SZO 4.143(3).

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<sup>6</sup> Indiscriminate incorporation of advocacy documents in the record as "findings" supporting consistency or inconsistency with applicable approval criteria complicates our appellate review, particularly when the incorporated text is not drafted, submitted, or intended to function as proposed findings.

1 SZO 4.142 clearly provides that the standards of SZO 4.143 apply to “all  
2 proposed development and subdivisions and partitions” in geologic hazard areas.  
3 Intervenor argues that while the HMP and GECP requirements apply to the  
4 subdivision, they do not apply at the tentative plan stage, but rather after tentative  
5 plan approval and before development. Intervenor points to SLPO Section 10 –  
6 Supplemental Proposals With Tentative Plan – which provides in pertinent part:

7 “Any of the following *may be required* by the City to supplement  
8 the tentative plan.

9 “\* \* \* \* \*

10 “A Hazard Mitigation Plan is required by the Hazards Overlay Zone  
11 provisions of the Zoning Ordinance. Approval of a tentative plat  
12 shall be conditioned on the applicants’ agreement to provide the  
13 safeguards and construction techniques provided in the approved  
14 HMP.” (Emphasis added.)

15 Although intervenor submitted an HMP, intervenor argues that under  
16 SLPO section 10 whether the city requires an HMP at the tentative plan approval  
17 stage is discretionary. Intervenor’s attorney’s memorandum states that while the  
18 city could have required the HMP and GECP under SLPO section 10, in the  
19 present case it did not require the HMP or GECP. According to the memorandum,  
20 all that is required is that an applicant be conditioned to provide the safeguards  
21 and construction techniques provided in the eventual HMP. The memorandum

1 states that condition of approval seven satisfies this requirement.<sup>7</sup> The  
2 memorandum further states that the HMP and GECP are not required until after  
3 approval of the tentative plan by the language of SZO 4.143. SZO 4.143(1)  
4 provides that the applicant “shall submit” an HMP “to support the proposed  
5 development.” SZO 4.143(2) provides that the applicant “shall submit” a GECP  
6 “for the proposed development.” SZO 4.143(3) describes the minimum  
7 requirements for an HMP and refers to “areas to be improved by the proposed  
8 development” and states “[n]o development shall be allowed to block stream  
9 drainage-ways” in certain areas. SZO 4.143(3)(C)-(D). SZO 4.143(4) provides  
10 that “[a]pproval of a proposed development, subdivision, or partition shall be  
11 conditioned on” complying with the recommendations of the HMP. SZO  
12 4.143(5) states “[s]tandards in this section for proposed subdivisions shall be  
13 applied” under the SLPO. Intervenor’s attorney’s memorandum states:

14 “Section 4.143 distinguishes between ‘development’ on the one  
15 hand and ‘subdivisions and partitions’ on the other hand.  
16 Subsections 1, 2, and 3 refer only to ‘development’ and not to  
17 ‘subdivision and partitions.’ Subsection 4 refers to ‘development,

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<sup>7</sup> Condition of approval seven was adopted as condition of approval eight in the city’s final decision and states:

“Before the City issues initial construction permits for the subdivision, [intervenor] must agree to provide the safeguards and construction techniques recommended in the [HMP] that [intervenor] submitted with the subdivision application, or with any [HMP] that the city may approve in the course of issuing development permits.” Record 2.

1 subdivision, or partition.’ Subsection 5 refers only to ‘subdivisions’  
2 and not to partitions and development. The city could reasonably  
3 interpret its own ordinance to say that ‘development’ means  
4 something other than ‘subdivisions and partitions’ as, for example,  
5 actually building something. [Intervenor] agrees that when it applies  
6 to **develop** the subdivision (i.e., to grade lots, install utilities, and  
7 build streets) it will have to submit an HMP and Grading Plan. As  
8 that requirement applies only to development and not to  
9 subdivisions and partitions, [intervenor] does not have to submit an  
10 HMP and Grading plan now.” Record 510 (boldface in original).

11 As noted earlier, incorporating advocacy documents as “findings”  
12 complicates our review because the documents were not drafted as findings. The  
13 quoted memorandum suggests that the city “could reasonably interpret” the  
14 ordinance in the way intervenor desires. Record 510. However, there is no actual  
15 interpretation from the city. We agree with petitioners that the city’s findings are  
16 inadequate to support an interpretation that an HMP and GECP are not required  
17 at the tentative subdivision plan stage. We believe that it is proper to allow the  
18 city to interpret the ordinance itself in the first instance.

19 The third assignment of error is sustained.

#### 20 **FOURTH ASSIGNMENT OF ERROR**

21 Petitioners argue that the city misconstrued the applicable law and made a  
22 decision with inadequate findings by failing to require the subdivision to provide  
23 access to the property to the north. The subject property was originally part of a  
24 larger property that included Vista Ridge subdivision to the north. When the  
25 parent parcel was divided in the 1980s it created Vista Ridge subdivision, the  
26 subject property (which was named Tract G), and a remainder parcel (Tract E)

1 between the existing Vista Ridge subdivision and the subject property that was  
2 reserved for future road dedication to connect to the subject property when it was  
3 developed in the future. The challenged decision approves a subdivision that  
4 terminates in a cul-de-sac and does not connect to Vista Ridge subdivision.

5 SLPO 33 – Principle of Acceptability – provides:

6 “A land division whether by [subdivision], creation of a street, or a  
7 partitioning, *shall conform to any development plans*, shall take into  
8 consideration any preliminary plans made in anticipation thereof,  
9 and shall conform to the design standards established by this  
10 ordinance.” (Emphasis added.)

11 Petitioners argue that the final subdivision plat for Vista Ridge subdivision,  
12 which contemplates a road connection between the subject property and the  
13 existing Vista Ridge subdivision, is a “development plan” that the current  
14 application must “conform to.” The city’s decision does not address this issue,  
15 but the decision incorporates intervenor’s attorney’s February 21, 2025  
16 memorandum which does address the issue. The memorandum recounts the  
17 history of development in the area and argues for the following interpretation of  
18 “development plan”:

19 “The code does not define ‘development plan.’ I suggest that in this  
20 context, ‘development plan’ means the plans of others that directly  
21 affect the parcel. For example, if the city plans to build a road  
22 through a large tract and has identified where it will place the road,  
23 it can require subdividers of tracts through which the road will run  
24 to lay out their streets and lots to be compatible with the road.

25 “‘Development plan’ in Section 33 can also mean what Section 34  
26 describes as ‘a plan for the neighborhood approved or adopted by

1 the Planning Commission to meet a particular situation where  
2 topographical or other conditions make continuance of conformance  
3 to existing streets impractical.’ Section 34 contemplates that the  
4 planning commission might as part of approving a subdivision also  
5 adopt a future street plan to show how adjoining properties will  
6 eventually connect to the street network. Owners of land to be  
7 subdivided would then comply with that future street plan.

8 “In this case, however, [intervenor] does not own the area through  
9 which [petitioners] want it to build a street, a situation that in the  
10 words of Section 34 does ‘make a continuance or conformance to  
11 existing streets impractical’ And because the plat of Sunset Ridge is  
12 neither a preliminary plan nor a development plan, Section 33 does  
13 not require the applicant to conform to it.” Record 506.

14 As with the third assignment of error, the “interpretation” that intervenor  
15 argues the city made is merely the incorporation of intervenor’s advocacy  
16 document. Intervenor suggests “development plan” means the “plans of others  
17 that directly affect the parcel,” but the city does not specifically adopt this  
18 interpretation. Furthermore, intervenor’s memorandum does not address  
19 petitioners’ argument that the prior subdivision plat is a “plan[] of others that  
20 directly affects the \* \* \* parcel.” Petition for Review 35. As with the third  
21 assignment of error, the city’s findings are inadequate to support an interpretation  
22 that the prior subdivision plat is not an applicable development plan that the  
23 subdivision must conform to. Again, we believe that it is proper to allow the city  
24 to interpret the ordinance itself in the first instance.

25 The fourth assignment of error is sustained.

1 **FIFTH ASSIGNMENT OF ERROR**

2 Petitioners argue that the city misconstrued the applicable law and made a  
3 decision with inadequate findings in granting a variance to allow an overlenght  
4 cul-de-sac.

5 SLPO 34 – Streets – provides in pertinent part:

6 “Cul-de-Sac: A cul-de-sac shall be as short as possible and shall  
7 have a maximum length of four hundred feet (400’) and serve not  
8 more than eighteen (18) dwelling units. A cul-de-sac shall terminate  
9 with a circular turnaround.”

10 The decision grants a variance to allow an approximately 650-foot-long  
11 cul-de-sac. SLPO 48 – Variance Criteria – provides the approval criteria for  
12 variances:

13 “Exceptional or extraordinary circumstances apply to the property  
14 which do not apply generally to other properties in the same vicinity,  
15 and result from tract size or shape, topography or other  
16 circumstances over which the owners of property since enactment  
17 of this ordinance have had no control.

18 “The variance is necessary for preservation of a property right of the  
19 applicant substantially the same as owners of other property in the  
20 same vicinity possess.

21 “The variance would not be materially detrimental to the purposes  
22 of this ordinance, or to property in the same vicinity in which the  
23 property is located or other conflict with the objectives of any City  
24 plan or policy.

25 “The variance requested is the minimum variance which would  
26 alleviate the hardship.”

1           Petitioners challenge the city’s findings regarding the first, second, and  
2 fourth approval criteria. Under the first approval criterion, petitioners argue that  
3 intervenor’s “proposed overlength cul-de-sac is not an exceptional or  
4 extraordinary circumstance of the land[.]” Petition for Review 38. As intervenor  
5 explains, however, the city did not find that the proposed overlength cul-de-sac  
6 was the exceptional or extraordinary circumstance. Instead, the city found that  
7 the topography of the property was the exceptional or extraordinary  
8 circumstance.

9           “The topography prevents the proposed [cul-de-sac] from  
10 connecting with [Vista Ridge subdivision]. [Intervenor] could  
11 terminate the cul-de-sac closer to Aldercrest St. however, the  
12 northernmost lots would require lengthy driveways to access  
13 buildable areas. Extending the cul-de-sac provides a better access to  
14 those proposed lots.” Record 18.

15           While the latter portion of the finding does not particularly address the  
16 approval criterion, the incorporated response provided by intervenor further  
17 expands on the topographical constraints on the property.

18           “[Intervenor] proposes to build a long dead-end road that will  
19 terminate in a cul-de-sac. The road is slightly longer than 400 feet.  
20 The topography also constrains the road from being continued down  
21 the steep slope at the northwest end to connect to [Vista Ridge  
22 subdivision] so that it would not be a cul-de-sac, and the ravine near  
23 the west of the property prevents the site from being developed with  
24 a loop road. The owners don’t control the topography.” *Id.*

25           The city interpreted this approval criterion to mean that topographical  
26 constraints were exceptional or extraordinary circumstances which apply to the

1 land that do not apply to other properties in the vicinity. Petitioners do not  
2 challenge that interpretation, but instead argue that the city interpreted the  
3 exceptional or extraordinary circumstance to be an overlength cul-de-sac. In the  
4 absence of a developed argument establishing that the city's interpretation is not  
5 plausible, we conclude that the city's interpretation is plausible. *Siporen*, 349 Or  
6 at 259; *Deschutes Development v. Deschutes County*, 5 Or LUBA 218, 220  
7 (1982) (LUBA declines to review insufficiently developed arguments).

8 Petitioners cite *Patzkowsky v. Klamath County*, 8 Or LUBA 64, 70 (1983)  
9 for the proposition that the extraordinary circumstances “must arise out of the  
10 land itself, not the applicant's desire for a particular lot configuration or number  
11 of lots.” While that is true, in the present case, unlike *Patzkowsky*, the city  
12 adequately explained what is exceptional or extraordinary about the land itself.

13 Under the second approval criterion, petitioners argue that the overlength  
14 cul-de-sac is not necessary for the preservation of a property right substantially  
15 the same as others in the vicinity. Intervenor and the city concede that intervenor  
16 could construct a conforming 400-foot cul-de-sac and use shared driveways to  
17 access the lots that would be individually served by the overlength cul-de-sac.

18 “As an alternate, [intervenor] could build a shorter road with a cul-  
19 de-sac further southeast, and then provide shared driveways to the  
20 northwest lots running from the cul-de-sac.” Record 18.

21 The city's findings under this approval criterion do not particularly address  
22 the requirement:

23 “[Intervenor's] property does not have a connection to [Vista Ridge

1 subdivision]. The only access to this property is from Aldercrest St.  
2 [Intervenor] states this variance is needed to ‘provide reasonable  
3 street access to each property.’ The SLPO requires each lot to have  
4 25 [feet] of frontage on a street. The long cul-de-sac allows frontage  
5 on most of the buildable lots without extraordinarily long  
6 driveways.” *Id.*

7 Intervenor’s incorporated response further states:

8 “For this request, the ‘property right’ is the right to build to the city’s  
9 planned density and to provide reasonable street access to each  
10 property. The property is long and (relative to its length) narrow.  
11 Past development decisions left this parcel with only one potential  
12 street access, to Aldercrest. (The parcel has no actual frontage on  
13 [Vista Ridge subdivision].” *Id.*

14 Even if a “property right” might include the right to build to the city’s  
15 density and provide reasonable street access, the city and intervenor concede that  
16 the same number of lots could be built with street access with a conforming length  
17 cul-de-sac with longer shared driveways. Although the driveways might be  
18 longer than intervenor would prefer, they would be allowed under city ordinances  
19 and therefore provide reasonable street access. The city’s interpretation that the  
20 variance is necessary for the preservation of a property right substantially the  
21 same as others in the vicinity is not plausible. *Siporen*, 349 Or at 259.

22 Under the fourth approval criterion, petitioners argue that the variance  
23 requested is not the minimum variance that would alleviate the hardship. The  
24 city’s findings state that the “proposed street is the minimum length necessary to  
25 serve the northwest end of the property.” Record 19. The city’s findings do not  
26 explicitly explain what the “hardship” is, but presumably it is the burden of

1 providing access to some of the lots with long shared driveways. While  
2 “hardship” is not defined in the SLPO, its plain meaning is “suffering, privation  
3 \* \* \* a particular instance of or type of suffering or privation.” *Webster’s Third*  
4 *New Int’l Dictionary* 1033 (unabridged ed 2002); *see also Moore v. Columbia*  
5 *County*, 57 Or LUBA 105, 108 (2008). Intervenor can redesign the subdivision  
6 to comply with the cul-de-sac length requirement by lengthening a few  
7 driveways. The city’s interpretation that the requested variance is the minimum  
8 necessary to alleviate the hardship is not plausible. *Siporen*, 349 Or at 259.

9 The fifth assignment of error is sustained.

#### 10 **DISPOSITION**

11 Under OAR 661-010-0071(1)(c), we will reverse a land use decision if it  
12 “violates a provision of applicable law and is prohibited as a matter of law.”  
13 While we find that some of the city’s findings are inadequate and its  
14 interpretations are not plausible, we cannot say that the city’s decision is  
15 prohibited as a matter of law. Therefore, remand is the proper disposition. OAR  
16 661-010-0071(2)(d).

17 The city’s decision is remanded.