

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A conclusion that poor economic conditions do not exist in the market that would advise against proceeding with a hotel project because two other hotel projects have received building permits or are at the building permit stage is not supported by substantial evidence where (1) the applicant submitted regional and national market data for the hotel industry showing severe declines in occupancy, (2) the applicant pointed to comments in the local government’s own budget which recognize the likelihood of a recession and a loss of funding, including from a decrease in transient lodging tax collections, (3) the applicant submitted several letters from lenders as additional evidence of poor economic conditions, (4) the decision-maker does not consider the applicant’s relevant evidence, and (5) the applicant noted the differences between its project and the two other projects. *Hollander Hospitality v. City of Astoria*, LUBA No 2020-088 (Jan 15, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A conclusion that it is not practicable for an applicant to commence development within the time allowed by a decision for reasons that are “beyond the reasonable control of the applicant” is not supported by substantial evidence where the applicant’s delay results merely from the applicant’s financial difficulties and the resulting internal prioritization of investments, considering competing customer needs. *Diephuis v. City of Beaverton*, LUBA No 2020-101 (Jan 25, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The fact that DEQ and DLCDC previously determined that an applicant’s evidence was insufficient to support federal Clean Water Act and Coastal Zone Management Act certification requirements for the installation of a subsurface pipeline via horizontal directional drilling does not necessarily undermine that evidence such that a reasonable person would not rely upon it to conclude that the pipeline will not potentially alter the estuarine ecosystem for purposes of Goal 16. *Citizens for Renewables v. Coos County*, LUBA No 2020-003 (Feb 11, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where DEQ previously denied an applicant’s request for federal Clean Water Act certification, the fact that the DEQ denial was without prejudice and that the applicant might be able to obtain the required approvals in the future does not undermine the DEQ denial to the extent that a reasonable person would instead rely entirely on the applicant’s evidence that the proposed use is unlikely to cause water quality violations to support a conclusion that the applicant will be able to comply with the state and federal environmental quality standards that it must satisfy to build the proposed use. *Citizens for Renewables v. Coos County*, LUBA No 2020-003 (Feb 11, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where opponents testify that they are concerned that a proposed commercial kitchen home occupation will create odors as well as smoke containing hazardous contaminants, the applicant’s testimony that their equipment may be like that used in another local restaurant and a decisionmaker’s comment that they have not personally observed offensive conditions near that other restaurant are not substantial evidence that the proposal “will not create any hazardous conditions.” *Coates v. Columbia County*, LUBA No 2020-084 (Feb 26, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where opponents testify that they are concerned that a proposed commercial kitchen home occupation will create odors as well as smoke containing hazardous contaminants, a condition of approval requiring the home occupation to be conducted inside either an existing house or a detached accessory shop and the facts that the applicant will be required to obtain an Oregon Department of Agriculture license, that on-site signs are prohibited, that sales will be by mail, and that an expansion of the operation to include employees will require additional local approval are not substantial evidence that the proposal will not “unreasonably interfere with other uses permitted in the zone in which the property is located.” *Coates v. Columbia County*, LUBA No 2020-084 (Feb 26, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where opponents testify that they are concerned that a proposed commercial kitchen home occupation will create odors as well as smoke containing hazardous contaminants, the facts that the applicant will have no other employees, signage, or customers on the subject property; will advertise and conduct all business transactions electronically and mail all purchases; will be required to obtain all necessary permits; will develop a Wastewater Management Plan; and will apply for a Lot Authorization Permit from the County Sanitarian to ensure that the residential septic system will not be compromised are not substantial evidence that the proposal will not “alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district.” *Coates v. Columbia County*, LUBA No 2020-084 (Feb 26, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A traffic study demonstrating that a dedicated left-turn lane is not necessary to ensure that an intersection near the subject property operates safely is not substantial evidence that the proposed development will not “create traffic congestion” at the intersection. *Oregon Coast Alliance v. City of Wheeler*, LUBA Nos 2020-064/065 (Mar 9, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Tax filings and a commodities report indicating that 232.24 acres of the 249-acre subject tract were used for grazing during the prior year are substantial evidence that “[t]he subject tract is currently employed for farm use,” for purposes of OAR 660-033-0135(1)(b), even where aerial photos from the prior year do not depict cattle on the subject tract. *Landwatch Lane County v. Lane County*, LUBA No 2020-104 (Mar 19, 2021).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A county’s conclusion that a pesticide or herbicide label requires no setback from recreational areas, and, therefore, that approving a recreational area on EFU land will not force a significant change in accepted farm practices on surrounding lands devoted to farm use for purposes of the farm impacts test at ORS 215.296(1), is not supported by substantial evidence where farmers and the Oregon Department of Agriculture interpret the label as requiring a setback that could preclude application of the herbicide in significant portions of farmland adjacent to the proposed recreational area and where there is no expert testimony supporting the county’s interpretation. *Schrepel v. Yamhill County*, 81 Or LUBA 895 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an applicant for a CUP to host events as a home occupation on land zoned EFU plans to be on-site during events to assist with general coordination, parking, and other activities, and where conditions of approval make the applicant responsible for operational matters such as maintaining the event calendar to comply with limits on the number of events as well as monitoring noise and sign removal, substantial evidence exists to support a conclusion that the applicant will “operate[]” the home occupation, within the meaning of ORS 215.448(1)(a), even where they plan to have no full-time employees and to allow customers to hire their own contractors, as necessary. *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an applicant for a CUP to host events as a home occupation on land zoned EFU explains how events can be conducted with no more than five employees on-site at one time by scheduling activities, preparing food off-site, utilizing buffet-style service, and planning and making arrangements in advance, and where a condition of approval limits the home occupation to no more than five employees on-site, substantial evidence exists to support a conclusion that the applicant will “employ on site no more than five full-time or part-time persons,” within the meaning of ORS 215.448(1)(b), even given the complex planning and implementation that a 300-guest wedding entails. *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an applicant for a CUP to host events as a home occupation on land zoned EFU plans to renovate an existing barn by adding restrooms and “Brides and Grooms rooms” and by eliminating horse stalls, substantial evidence does not exist to support a conclusion that the renovated barn would “otherwise be allowed in the zone,” for purposes of ORS 215.448(3). *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an applicant for a CUP to host events as a home occupation on land zoned EFU plans to construct a new, free-standing restroom building with septic system capacity to serve 300 people per event, substantial evidence does not exist to support a conclusion that the new restroom building would be accessory to or customarily associated with an existing dwelling on EFU land. *1000 Friends of Oregon v. Clackamas County*, 81 Or LUBA 664 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. 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).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Findings concluding that an aggregate quarry would be compatible with an adjacent grazing operation and periodic logging are inadequate and not supported by substantial evidence without an explanation of the manner in which the grazing operation is run—for example,

whether it is seasonal or includes accessory activities such as breeding or calving—and the nature of the periodic logging. *Currie v. Douglas County*, 81 Or LUBA 602 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Findings concluding that an aggregate quarry satisfies the farm impacts test at ORS 215.296(1) are inadequate and not supported by substantial evidence where the county identifies grazing as the only surrounding farm or forest use but does not verify that the grazing operation is in fact limited to grazing, without other uses such as breeding, or establish that logging on the grazing property, government ownership of surrounding forest lands, or maintaining of surrounding forest land as a timber investment do not involve protected forest activity. *Currie v. Douglas County*, 81 Or LUBA 602 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local code provision requires that a “declaration of anticipated noise levels” be attached to certain land use approvals and that applicants incorporate noise abatement strategies where noise levels are anticipated to exceed a certain threshold, the word “declaration” anticipates more than a statement from the applicant’s attorney, without supporting documents or studies, and a reasonable person would not rely on such statements alone to conclude that the noise threshold is not exceeded. *Oregon Shores Conservation Coalition v. City of North Bend*, 81 Or LUBA 534 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local code provision prohibits development, including fill, in certain special flood hazard areas unless the cumulative effect of the development, when combined with all other existing and anticipated development, will not increase the base flood elevation (BFE) more than one foot, a reasonable person would not rely on a letter from a professional engineer, which provides that the “minimal amounts of fill placed below the BFE” would have no measurable effect on the BFE, to conclude that the provision is satisfied, where the letter does not quantify the amount of fill associated with the development or address the cumulative effects of all other existing and anticipated development. *Oregon Shores Conservation Coalition v. City of North Bend*, 81 Or LUBA 534 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A reasonable person would rely on an applicant’s testimony regarding their activities managing a farm and their status as the state license holder for an industrial hemp-growing operation to conclude that the applicant is a farm operator and continues to play the “predominant role” in management and farm use of the farm, for purposes of OAR 660-033-0130(9)(a), even where they have hired another company to prepare the farmland for planting hemp seed and to provide consultation regarding hemp growing. *Wachal v. Linn County*, 81 Or LUBA 561 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the applicable law does not expressly require expert testimony to establish compliance, while a reasonable decision-maker might not be able to rely on lay testimony where the record contains contrary expert testimony, a reasonable decision-maker might be able

to rely on lay testimony where the record contains no contrary expert testimony. *Landwatch Lane County v. Lane County*, 81 Or LUBA 400 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local code provision implementing OAR 660-006-0029 requires the decision-maker “to identify the building site” for a forest template dwelling by “weigh[ing] together” (1) the requirement to minimize the amount of forest lands used and (2) fire-safety development design standards, written testimony previously submitted in a different land use proceeding by lay individuals with personal knowledge that suggests that serious slope issues have prevented improving one alternative access route because of inability or expense of meeting local road design standards is substantial evidence that improving that alternative access route is impracticable where no contrary evidence is introduced into the record in the current proceeding. *Landwatch Lane County v. Lane County*, 81 Or LUBA 400 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Findings and argument that forest uses are “impractical” on the subject property due to existing development and due to fire buffers that would be required along some of the property’s borders and around some of the existing development do not demonstrate that the property is “physically developed to the extent that it is no longer available” for forest uses, as required by ORS 197.732(2)(a) and OAR 660-004-0025(1) for a physically developed exception to Goal 4, and such a conclusion is not supported by substantial evidence where at least 87 percent of the property’s area is available for forestry and where the applicant does not attempt to quantify the amount of buffer that would be required to conduct forest uses or the amount by which that buffer would decrease the property available for forest uses. *Dooley v. Wasco County*, 81 Or LUBA 44 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A negative claim can be proved by negative evidence—that is, evidence that suggests that something is missing—where adequate research or observations have been made so that the negative evidence is evidence upon which a reasonable person would rely. *York v. Clackamas County*, 81 Or LUBA 20 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Evidence of absence (e.g., the record contains affirmative observations that something is missing) may be substantial evidence, but the absence of evidence (e.g., the record contains no evidence that something is not missing) may not. *York v. Clackamas County*, 81 Or LUBA 20 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the record contains evidence that the fire safety measures required for a proposed solar facility exceed those required for an existing Christmas tree farm and extensive observations of fires involving solar panels but no evidence of incidents of injury to fire suppression personnel from electrified solar panels, a conclusion that the solar facility will not “significantly increase risks to fire suppression personnel” for purposes of OAR 660-006-0025(5)(b) is supported by substantial evidence, even though electrical equipment is present on a

solar facility and not present on a Christmas tree farm. *York v. Clackamas County*, 81 Or LUBA 20 (2020).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a decision-maker relies on 40-foot contour maps in the record, sourced from county data, to determine the slopes on the subject property, an argument that the decision-maker erred by disregarding finer-scale, two-foot contour maps that petitioners submitted provides no basis for reversal or remand where the decision-maker reasoned that petitioners’ contour maps were “not reliable, accurate or trustworthy evidence” because they were not signed by a registered professional surveyor and because they contained an incorrect scale, and where the petitioners have not otherwise established that credible evidence weighs overwhelmingly in favor of their description of the slopes on the subject property or that the evidence upon which the decision-maker did rely was not substantial evidence. *Velasquez v. Jackson County*, 80 Or LUBA 1 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local government adopts a post-acknowledgment plan amendment creating a new zone that allows 20-acre lots, an argument that DEQ rules indicate that properties of 10 or more acres in size are generally able to support on-site wastewater systems is not sufficient to establish compliance with Goal 11 with respect to wastewater where those rules appear for the first time in the response brief, where there are no findings or evidence in the record addressing wastewater, and where there is no evidence in the record that the rule is accurate within the portion of the local government’s jurisdiction at issue. Similarly, references to the proximity of the majority of candidate lands to fire districts, to evidence that more demand for funds would not be created in one of the districts, to 10 years of data indicating that less than two percent of fires resulted from residential structures, and to local fire protection standards with which future development would be required to comply are not sufficient to establish compliance with Goal 11 with respect to fire protection where there is no analysis of the likelihood of increased fire as more residences are potentially introduced into the area or discussion of the capacity of the existing fire service organizations to provide more service. *DLCD v. Douglas County*, 80 Or LUBA 98 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a neighbor describes observing, from their living room view, minimal orchard, meadow, and garden-related activity on the property and, other than horses belonging to some of the owners of the property, never seeing any livestock or other animals on the property between 1970 and 2004, and where the neighbor subsequently reiterates that there was no farm use, such as cattle or crops, between 1978 and 1983 and that, during the 1980s, owners of the property kept their show horses on the property, a local government may reasonably conclude that the property was “not managed for three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income” for purposes of *former* ORS 197.247(1)(a) (1991), even where the record includes (1) aerial photos from 1979 and 1982, (2) a 1979 permit for a new barn, (3) a 1987 farm dwelling approval, and (4) testimony from other area residents contradicting the neighbor’s testimony, where the record does not disclose the proximity of the other area residents’ properties to the subject property or whether those area residents had made firsthand observations of the subject property during the relevant statutory period. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. For purposes of designating marginal lands under *former* ORS 197.247 (1991), it is not enough for an applicant to provide a list of the allegedly qualifying lots or parcels; the applicant must provide foundational evidence that the lots or parcels are lawful and that lots or parcels that were in common ownership on July 1, 1983, are not overcounted. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. An attorney-land-use-consultant-prepared ESEE analysis including numerous plans, reports, and other documents supporting the redesignation and rezoning of protected habitat from forest land to marginal land under *former* ORS 197.247 (1991) is not sufficient to rebut expert testimony including (1) a letter authored by an ODFW biologist that generally discusses the cumulative impact of development on habitat and (2) general ODFW guidance related to levels of residential density in areas of peripheral big game habitat absent evidence of the attorney land use consultant’s expertise. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In the context of an application to remove property from a county’s Goal 5 inventory of significant aggregate resources, where the county has previously determined, in two separate final, acknowledged decisions—one based on area-specific soils mapping and the other based on periodic review which resulted in an updated inventory—that the property should not be included on the county’s Goal 3 inventory of agricultural lands; where the county zoned the property for surface mining, a zone that does not implement Goal 3, after one of those previous determinations; and where the ESEE analysis for the property does not specify a post-mining zoning designation or use, a conclusion that the property is not agricultural land is supported by substantial evidence. The county, having previously determined that the property is not agricultural land, is not required to revisit whether the property is agricultural land. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In the context of an application to change the comprehensive plan designation of property to Rural Residential Exception Area, where a comprehensive plan provision provides that “any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating that the property does not meet the definition of agricultural * * * land,” a county correctly determines that an applicant satisfies that provision by producing copies of the county’s adopted and acknowledged agricultural lands inventories, which do not include the property. Even where an opponent submits an NRCS soils map into the record, which the opponent argues shows the property’s soils constitute agricultural lands, where the NRCS website that the opponent used to prepare the soils map includes a disclaimer regarding the large scale of mapping, stating that “[e]nlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement,” a reasonable decision-maker would rely on the inventories to conclude that the property is not agricultural land, and a reasonable decision-maker could

determine that the NRCS soils map is less credible than the inventories. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a city bureau manages the city’s transportation system, including private uses in the city right-of-way, and where bureau staff have special expertise in the safe and efficient use of the right-of-way and various demands on streets, including traffic, parking, and loading, statements from the bureau (1) that studio apartments have lower turnover rates, less need for unloading large furniture, and, thus, less need for a loading space, and (2) that signed, infrequent on-street loading will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way are evidence that would permit a reasonable person to find that an on-street loading space is adequate for a proposed studio apartment building’s loading needs such that the development continues to meet the intended purpose of, and, therefore, qualifies for an adjustment to, an off-street loading space requirement, even where there is testimony in the record from an opponent of the development regarding anticipated negative congestion and safety impacts of off-street loading. *NDNA v. City of Portland*, 80 Or LUBA 269 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a city within Metro’s jurisdiction adopts its portion of an intergovernmental concept plan into its comprehensive plan and applies an industrial zoning designation to a portion of the planning area with slopes greater than 10 percent, that Metro’s previous decision to include the planning area in its UGB stated that land needed for industrial uses should generally have slopes of less than 10 percent and that a previous Metro housing need projection anticipated almost 600 more housing units than the industrial zoning designation would allow provide no basis for reversal or remand where Metro’s previous UGB decision is not evidence, an applicable approval criterion, or a relevant consideration for the city in determining the correct zoning designation for the property and where Metro’s previous housing need projection has been superseded by a later decision to remove the property from its inventory of buildable residential lands. *Watts v. City of Tualatin*, 80 Or LUBA 339 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an approved site plan indicates that a replacement dwelling will be sited on an *adjacent* property, but where the building permit for the replacement dwelling allows a replacement dwelling “in the same footprint as the original home,” and where an ArcGIS map marked with distances and existing development indicate that the footprint of the original dwelling was located on the *subject* property, a conclusion that the subject property does not “include[] a dwelling” for purposes of forest template dwelling approval under ORS 215.750(4)(d) is not supported by substantial evidence. *Bielefeld v. Lane County*, 80 Or LUBA 480 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will not second-guess a decision-maker’s choice between conflicting evidence, including expert testimony, so long as a reasonable person could decide as the decision-maker did. *Fairmount Neighborhood Assoc. v. City of Eugene*, 80 Or LUBA 551 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local code provision provides that issuance of a conditional use permit (CUP) requires a determination that “[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone,” a local government decision granting a CUP is not supported by substantial evidence where it does not identify and describe all of the existing and permitted uses on adjacent properties and where it fails to analyze or measure the extent of the potential impacts of the proposed use and instead proceeds straight to mitigation measures. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Noncompliance with Applicable Law. A county fails to correctly apply the farm impacts test at ORS 215.296(1) where it concludes that there are only a few farm or forest uses in the area but does not identify and discuss each farm or forest use, where it does not describe the operations on each of the surrounding properties devoted to farm or forest use, where it does not identify evidence of the unmitigated impacts of the proposed nonfarm use, and where it concludes that such impacts will be reduced but does not identify evidence that significant impacts are avoided. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a county’s comprehensive plan policy provides that “areas” may be designated rural commercial when the areas (1) have a “historical commitment” to commercial uses, or (2) the “areas” are “located within an Unincorporated Community” and have “direct access to a road of at least collector classification,” petitioner has not demonstrated that the county commissioners’ findings regarding the meaning of “area” are inadequate or that the county’s reliance on a previous interpretation as authority for interpreting the term “areas” as used in rezoning criteria to refer only to the property being considered for rezoning, and not also to include the surrounding area, was in error where petitioner cites to no contextual differences suggesting that the term “areas” should be interpreted differently than the same term used in similar rezoning standards, or authority suggesting the county has an obligation to adopt specific findings regarding the parties’ alternative interpretations. *Stafford Investments, LP v. Clackamas County*, 78 Or LUBA 320 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will uphold a county’s interpretation of its own comprehensive plan policy regarding when a property may be designated rural commercial where the county evaluated the historic uses of the subject property and concluded that those uses did not demonstrate a “historical commitment to commercial uses,” after concluding that (1) temporary commercial uses, (2) incidental or accessory commercial uses to permitted residential or farm uses on the property, and (3) the current unlawful commercial uses on the property were not sufficient to demonstrate “historical commitment” of the property to commercial use, where the county chose to focus on “commitment” which the county understood to require an inquiry into the nature of the historic uses on the property and a determination of whether commercial uses have constrained the scope of the uses on the property such that going forward only commercial uses are feasible, rather than defining commitment in terms of years of commercial use. *Stafford Investments, LP v. Clackamas County*, 78 Or LUBA 320 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Even though an applicant provides evidence of ownership of 200 or more acres in western Oregon after the application is deemed complete, a hearings officer correctly concludes that an application for a forest template dwelling satisfies ORS 215.740(3), where nothing in the statute or local development ordinances requires an applicant for a large tract forest dwelling to prove ownership of the parcel at the time an application is submitted. *Blu Dutch LLC v. Jackson County*, 78 Or LUBA 495 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer’s decision that an applicant has a nonconforming use right to grow up to 18 marijuana plants for medical purposes under the Oregon Medical Marijuana Act is supported by substantial evidence in the record, and LUBA will reject an assignment of error that argues that the hearings officer’s decision is not supported by substantial evidence in the whole record, where (1) the record includes copies of at least twelve cards issued by the Oregon Health Authority (OHA), administrator of the medical marijuana program, some of which are expired, duplicates, or outside of the relevant consideration dates; (2) the hearings officer relied on some of those OHA cards to reach his conclusion about the number of plants allowed; (3) the hearings officer adopted eight pages of findings explaining his decision and his understanding of the evidence; and (4) petitioner fails to challenge those findings or explain why the evidence supports his application. *Feetham v. Jackson County*, 77 Or LUBA 296 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where county code requires a building in which marijuana is grown to be “equipped with an effective odor control system” which must “prevent unreasonable interference of neighbors’ use and enjoyment of their property,” and the odor control system is deemed permitted only after the applicant submits “a report by a [licensed] mechanical engineer * * * demonstrating that the system will control odor so as not to unreasonably interfere with neighbors’ use and enjoyment of their property,” a board of county commissioners’ conclusion that the application satisfies these requirements is supported by substantial evidence where it relies upon an engineers’ report which demonstrates that the applicant’s proposed odor control system “will control” odor as designed. The odor control system need not be actually built prior to the project receiving approval. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will deny a petitioner’s challenges to a county board of commissioners’ conclusion that a project application satisfies the county code requirement that “[s]ustained noise” generated from a building in which marijuana is grown “shall not exceed 30 dB(A),” based upon statements made in the applicant’s engineers’ report where petitioner argues the engineer reports failed to adequately describe the system as built, did not consider site-specific characteristics or address allegations that the odor control systems will generate noise in excess of 30 dB(A), but petitioner failed to point to any evidence in the record that calls into question the engineer’s statements that the operation will not produce “sustained” noise that exceeds permissible levels. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will deny a petitioner’s challenge to a county board of

commissioners' conclusion that a marijuana production project applicant had satisfied the requirement to provide proof that water is available to the property by providing a "statement that water is supplied from a public or private water provider," by providing a letter from a private company stating it would supply water to the property where petitioner argues the letter is insufficient because the private water provider does not hold a water right. Based on its plain language, the county code does not require such a statement, but only requires a statement from a "private water provider" that they will provide water for the operation. *King v. Deschutes County*, 77 Or LUBA 339 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will deny petitioner's challenge that the provider of water must have "an authorized source of water under Oregon Water Law" where county code requires an applicant for marijuana production to provide proof that water is available to the property by providing a statement that "water is supplied from a public or private water provider," the county code does not further define "provider of water," and the county imposed a condition of approval requiring "the use of water from any source for marijuana production shall comply with all applicable state statutes and regulations including ORS 537.545 and OAR 690-340-0010." *King v. Deschutes County*, 77 Or LUBA 339 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A motion to take evidence under OAR 661-010-0045 is warranted only for one or more of the limited bases set out in OAR 661-010-0045(1). If granted, the motion allows new evidence to be admitted into LUBA's record only for those limited purposes; such evidence is not admitted into the local evidentiary record and cannot be cited to support or undermine findings of compliance with applicable approval criteria. *Conte v. City of Eugene*, 77 Or LUBA 547 (2018).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a municipal code requires that the "front lot line" of a corner lot "must" be considered the narrower street frontage "except when [city staff] determine[] topographical or access problems make such a designation impractical," the city's decision was not supported by substantial evidence in the record pursuant to ORS 197.835(9)(a)(C) when it determined that the lack of sidewalks on the narrower frontage, and the absence of a door on the side of the house facing the narrower frontage were "access problems" that made designating the narrower street frontage the front lot line "impractical." *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners seek reversal or remand of the city's decision pursuant to OAR 661-010-0071, and LUBA's decision agrees with petitioners that the city's decision improperly construed the municipal code and was not supported by substantial evidence in the record, but it is possible on remand that the petitioner's proposal could demonstrate compliance with the municipal code without significant changes to the proposed development, remand is the appropriate remedy. *McMonagle v. City of Ashland*, 76 Or LUBA 1 (2017).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A finding that city streets have adequate capacity to accommodate traffic generated on annexed land is not supported by substantial evidence, where the finding cites and relies only upon extra-record street capacity data found in the transportation system plans of three nearby cities, rather than any evidence in the record. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Remand is necessary where a code provision allows a property line adjustment as long as the adjustment does not result in an unbuildable parcel being made buildable, but the record includes no evidence regarding whether the adjusted parcel had one or more buildable sites prior to the adjustment, and the findings on that point are conclusory and not supported by substantial evidence. *Lowell v. Jackson County*, 75 Or LUBA 251 (2017).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A finding that the noise created by wind turbines site on top of a building located next to a bay will be mitigated by ocean noise and noise generated by nearby sewage pumps is not supported by substantial evidence, where the record includes no evidence concerning how loud the ocean and sewage pumps are at the site of the building. *Burgermeister v. Tillamook County*, 75 Or LUBA 350 (2017).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A findings and evidentiary challenge to a county’s decision that wind turbines will not be so noisy as to violate a “substantial impact on the neighborhood” standard will be rejected, where the county found that the wind turbines would be no noisier than a “refrigerator,” an “average home,” a “quiet bedroom,” or a “quiet library,” and petitioner makes no specific challenge to those findings or their evidentiary support. *Burgermeister v. Tillamook County*, 75 Or LUBA 350 (2017).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. City comprehensive plan goals, other adopted city plans and sub-plans, Metro Regional Framework and Regional Transportation Plans, and the Oregon Transportation Plan and Oregon Freight Plan are subject to judicial notice under ORS 40.090(4) or (7). However, LUBA will not consider “adjudicative facts” or facts found within judicially cognizable documents that are asserted for an “adjudicative” purpose, *i.e.*, to provide evidentiary support or countervailing evidence with respect to an applicable approval criterion in an adjudicatory setting. *Columbia Pacific v. City of Portland*, 75 Or LUBA 552 (2017).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Remand is required where the county standards provide that a parcel created by land sale contract is a legal lot of record only if the contract is (1) dated and signed by the parties, (2) includes a separate legal description, and (3) does not include more than one legal description, but the county concluded that a parcel is as a legal lot of record based on an incomplete copy of a land sale contract without signatures that did not provide a separate legal description for the subject parcel. *Grimstad v. Deschutes County*, 74 Or LUBA 360 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. ORS 197.835(11)(b) is a limited vehicle that does not allow LUBA to affirm a decision based on an alternative legal theory not considered below, if that alternative theory requires significant, discretionary legal and evidentiary determinations regarding which instrument created a disputed parcel, and whether the resulting parcel is a legal lot of record. *Grimstad v. Deschutes County*, 74 Or LUBA 360 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA’s standard of review of evidentiary challenges to a limited land use decision under ORS 197.828(2)(a) is arguably less rigorous than the standard of review of a land use decision under ORS 197.835(9)(a)(C). *Reinert v. Clackamas County*, 74 Or LUBA 427 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Remand is necessary where a code provision requires that development with multiple access points take access from the lower classification street, unless “physical conditions preclude” taking access from the lower classification street, and the city approves the development with access to a higher classification street without any evidence or explanation in the record demonstrating the code provision is complied with or that the exception applies. *McCullough v. City of Eugene*, 74 Or LUBA 573 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Remand is necessary where a code standard requires that a percentage of the “frontage” be occupied by buildings, but the city approved development with 50 feet of frontage occupied by no buildings without any explanation in the record or decision why the standard is met. *McCullough v. City of Eugene*, 74 Or LUBA 573 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Remand is required where a city approves development based on a calculation of a lot’s frontage along a cul-de-sac with the frontage measured in a straight line across the cul-de-sac, instead of along the property line, without any explanation in the record or decision for why measuring the frontage in that manner is consistent with code definition of frontage: the portion of the lot abutting a street. *McCullough v. City of Eugene*, 74 Or LUBA 573 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The standard of review that LUBA applies in reviewing substantial evidence challenges to critical findings of fact is not particularly demanding. City findings that a landslide poses a danger to water reservoirs, which are supported by the testimony of two engineers, one of them a geotechnical engineer, are supported by substantial evidence where the contrary evidence is not sufficient to call the testimony of the engineers into question. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A city finding that the reinforcing bars on a nineteenth century reservoir are spaced 10 feet apart is supported by substantial evidence, where a building assessment, a Natural Register Narrative and testimony by an engineer all take the position that the reinforcing bars are spaced 10 feet apart. A petitioner’s substantial evidence challenge, which relies on poor

quality, inconclusive, old black and white photos is not sufficient to call the reliability of the evidence the city relied on into question. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer’s conclusion that the transportation systems are adequate to support a proposed mining use is not supported by substantial evidence in the record where the hearings officer relies on a county road engineer’s statement that is not supported by any estimates or actual measurements of traffic volumes or capacity, and are conclusory statements based on a traffic impact statement that does not address capacity of the public roads to serve the proposed use. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer’s conclusion that proposed mining activities will not increase the risk of fire is not supported by substantial evidence in the record where the hearings officer relies on a letter from the Oregon Department of Forestry that does not evaluate the fire hazard from transporting hot asphalt from the batch plant in trucks on a haul road. *Del Rio Vineyards, LLC v. Jackson County*, 73 Or LUBA 301 (2016).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A reasonable decision maker could rely on planning staff testimony that with zoning ordinance provisions allowing transfer of density, it is not necessary to remove 500,000 cubic yards of rock from a five-acre site to permit the site to be developed residentially. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Evidence in the record consisting of (1) a permit issued in 1992 authorizing an aggregate processing operation on a site that is included on the county’s inventory, and (2) subsequent annual review letters from the county confirming that the conditions of the permit are met and renewing the permit are substantial evidence supporting a county’s conclusion that the aggregate processing operation is “currently approved” within the meaning of OAR 660-023-0180(5)(g). *Pioneer Asphalt, Inc. v. Umatilla County*, 71 Or LUBA 65 (2015).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The difference between substantial evidence review of a limited land use decision under ORS 197.828(2)(a) and the more rigorous substantial evidence review of a land use decision at ORS 197.835(9)(a)(C) is legally irrelevant where LUBA concludes that the evidence in the record is evidence a reasonable decision maker would rely on under the more rigorous ORS 197.835(9)(a)(C) “substantial evidence in the whole record” standard of review. *Truth in Site Coalition v. City of Bend*, 71 Or LUBA 348 (2015).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A reasonable person could find based on the evidence in the record that where only a modest increase in vehicle trips is created by a PUD, the PUD is “reasonably compatible with adjacent and nearby land uses,” particularly given the inherently subjective nature of the criterion. *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132 (2014).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Based on evidence in the record that (1) no level of service deficiencies would occur based on new trips added to the area and (2) the PUD will not generate additional traffic above the threshold required for a TIA, A reasonable person could find, that a PUD will have minimal impact on traffic off-site, particularly given the inherently subjective nature of the criterion. *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132 (2014).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Land use proceedings are not governed by rules of evidence, and a local government may rely in part on a planner’s testimony regarding a phone conversation with the fire district chief, among other evidence, to conclude that the water supply is sufficient for fire suppression, notwithstanding that the fire district chief did not submit direct testimony. *Foland v. Jackson County*, 70 Or LUBA 247 (2014).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will reject an argument that a hearings officer errs in approving a variance from a 22-foot street width standard to allow an 18-foot width because the narrower width does not provide the same level of access as the required width, where the variance criteria do not require the varied road width to provide the same level of access. *Carver v. Washington County*, 70 Or LUBA 278 (2014).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer does not err in concluding that the applicant for a road width variance had exhausted all practical methods to construct the road to code-required width, where the evidence shows that only one of several adjoining landowners was willing to sell the right-of-way necessary for the code-required width. *Carver v. Washington County*, 70 Or LUBA 278 (2014).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A decision that redesignates a proposed new driveway as an industrial use based on “a historical commitment to industrial uses” is not supported by substantial evidence in the record where there is no evidence that the portion of the property on which the new driveway will be located has a “historical commitment to industrial uses.” *Ooten v. Clackamas County*, 70 Or LUBA 338 (2014).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where, based on Natural Resources Conservation Service data, opponents take the position that the water table lies two feet below the surface of a proposed topsoil mining operation, but the local government accepts the applicant’s position that the water table lies 125 feet below the surface, but no party identifies the evidence the applicant and local government relied on for the 125-foot estimate, LUBA will remand the decision so that the county can adopt findings explaining the large discrepancy in the two estimates and why it accepted the 125-foot estimate. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the evidence in the record demonstrates that an applicant for a

destination resort map amendment's consultant compared the entirety of the applicant's ownership of land within the county, based on the county's ownership database, to the properties proposed for inclusion on the map of eligible lands, and disqualified several properties from inclusion on the map that included ineligible lands and did not comply with ORS 197.435(7) (the 30 percent rule), a reasonable person could rely on that evidence to conclude that the remaining properties included on the map comply with ORS 197.435(7) and that the proposed map amendment is supported by an adequate factual base. *Root v. Klamath County*, 68 Or LUBA 124 (2013).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where identifying the intersections that must be included and studied in a transportation impact analysis is governing by the local government's code, and under the code an intersection should have been included and studied, a city decision that the intersection need not be studied because it was not identified at an earlier scoping stage is error. *Oregon Coast Alliance v. City of Newport*, 68 Or LUBA 318 (2013).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Substantial evidence in the record supports a decision that noise from a conditional use airport will have minimal impact on the surrounding neighborhood where the only evidence in the record is a noise study submitted by the applicant that provides an accurate measurement of the airplane noise. *Yih v. Linn County*, 68 Or LUBA 412 (2013).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A city's decision that it has the required majority of consents to annex an area is supported by substantial evidence, where the contract consents have been executed and recorded and there is nothing on the face of the documents that calls their validity into question. Not-yet-litigated contentions of the consenting landowners that the contract consents are invalid because they were obtained through coercion or that the contract consents have been revoked do not so undermine the contract consents that they can no longer be viewed as substantial evidence. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Given the subjectivity of a criterion requiring that the proposed comprehensive plan map amendment be "in the public interest with regard to neighborhood or community concerns," a reasonable person could rely on the testimony of industrial businesses adjacent to the property that a proposed mixed-use apartment building located along a heavily used truck route could create conflicts between the residents and truck traffic to support a finding of that the proposed change is not in the public interest. *Vest v. City of Molalla*, 66 Or LUBA 155 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Unless presented with some evidence to the contrary, a city decision maker could reasonably assume that proposed residential development will generate negligible air and noise pollution. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Substantial evidence in the record supports a city's finding that a proposed

cell tower location is the only feasible location where the evidence demonstrates that (1) alternative sites are located outside of the search area identified by applicant for meeting its coverage objectives, (2) the tower cannot reasonably be located within a right-of-way because there is not sufficient area within the right-of-way to locate all of the necessary equipment, (3) co-location is not feasible because the heights of existing towers are inadequate, and (4) co-location on an existing rooftop facility is not feasible due to inadequate structural integrity of the rooftop. *Hill v. City of Portland*, 66 Or LUBA 250 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where none of the applicable approval criteria require that evidence must be provided by an engineer licensed in Oregon or require the city’s decision to be based solely on the testimony of a licensed engineer, the fact that the engineer is not licensed in Oregon, by itself, is not a basis to reverse or remand the decision. *Hill v. City of Portland*, 66 Or LUBA 250 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A petitioner’s arguments that the local government misconstrued OAR 660-012-0070(5) and (6) and adopted inadequate findings not supported by substantial evidence do not provide a basis for reversal or remand, where OAR 660-012-0070(7) governs the local government’s decision instead of OAR 660-012-0070(5) and (6), and the two sets of rules have different substantive terms, requirements and standards. *Storm v. Yamhill County*, 66 Or LUBA 415 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. It is the local government that determines—either explicitly or implicitly—whether the party with the burden of proof has carried his or her burden of proof. A local government decision must conclude that the governing criteria are satisfied—presumably because the party with the burden of proof carried his or her burden. Once that decision is made, it is subject to LUBA review to determine whether the local government’s decision is supported by substantial evidence. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A county is entitled to rely on a wind turbine operator’s expert’s testimony regarding alleged noise violations where the opponent’s expert’s criticisms of that testimony fall substantially short of demonstrating that a reasonable person would not rely on the operator’s expert’s testimony. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A petitioner’s challenge to a city’s local appeal fee, on the grounds that the record does not include evidence establishing that the fee is consistent with ORS 227.180(1)(c), is not a basis for reversal or remand, where the city’s final decision maker lacks authority under the city code to develop an evidentiary record regarding the appeal fee. *Treadmill Joint Venture v. City of Eugene*, 65 Or LUBA 213 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer’s decision that it is feasible for a proposed kennel operation to comply with DEQ’s applicable noise standard is not supported by substantial evidence

in the record, where an engineer's report concludes that noise from dogs barking in the outdoor kennel play area could exceed the DEQ hourly noise level limits on the property directly to the east and there is nothing in the record that rebuts that conclusion. *Butcher v. Washington County*, 65 Or LUBA 263 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Arguments that a proposed system for controlling odor and leachate will not in fact control odor and leachate generated by the proposed use are insufficient to demonstrate that the decision is not supported by substantial evidence where nothing in the record calls into question the efficacy of the proposed odor and leachate system. *Cottonwood Capital Property Mgmt. LLC v. City of Portland*, 65 Or LUBA 370 (2012).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the critical finding in a hearings officer's decision in a code enforcement proceeding is that petitioner had a longstanding regular practice of mowing grass and blackberry bushes in the riparian zone on his property, the only evidence that supports that finding is the testimony of the code enforcement officer based on field notes regarding conversations he had with petitioner that are not part of the record, petitioner testifies in the hearings before the hearings officer that he mowed in the riparian area on only one occasion, and it is not clear that the hearings officer even recognized that the testimony of petitioner and the code enforcement officer conflicted on the critical issue, remand is required. The hearings officer may be able to explain why he believed the code enforcement officer over petitioner, but without any explanation his decision is not supported by substantial evidence. *Wigen v. Jackson County*, 63 Or LUBA 490 (2011).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearing official's failure to require that the applicant for a group care home show exactly where the proposed home would be located within a proposed 7,700-square-foot footprint, how large the home would be and what it would look like provides no basis for reversal or remand, where the applicable approval standard only requires that the home not have significant adverse impacts, and the hearing official explains that the potential number of residents and other operational characteristics of the home are known and the impacts of the home are more likely to be attributable to the operational characteristics than the design, size and location of the home. *Phillips v. Lane County*, 62 Or LUBA 92 (2010).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Although a hearing official is entitled to rely on the expert opinion of a county sanitarian that a required septic drain-field expansion is feasible, where opponents offer a detailed explanation for why the subject property may not be able to accommodate the required expansion and replacement drain-field, the county sanitarian must supply more than an unexplained expression of belief that the needed expansion is feasible. *Phillips v. Lane County*, 62 Or LUBA 92 (2010).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local government decision that determines that an entire property is located on a foredune and denies an application for a dwelling based on that determination will be

remanded where the findings do not explain why the local government reached the conclusion it reached and the conclusion is not supported by any evidence in the record identified by the local government. *Rudell v. City of Bandon*, 62 Or LUBA 279 (2010).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The lack of evidence in the record regarding depth or location of contaminated groundwater on a mining site and the possibility that groundwater might enter the adjacent river is not a basis to reverse or remand under a code provision requiring consideration of impacts on conflicting uses within 250 feet of the property, where the only conflicting use identified is a city water intake located 3,500 feet upstream of the mining site beyond the head of tide, and the petitioner cites no evidence or argument suggesting how contaminated groundwater from the site could migrate upstream above the head of tide to impact the municipal water intake. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Although a local government land use decision maker is entitled to choose between conflicting believable expert testimony, where the decision maker does not demonstrate that it recognized the conflicting expert testimony and chose to believe one expert’s testimony rather than the other expert’s testimony, remand is required. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Erroneous information, if relied upon by a city council in rendering a land use decision, might result in a decision that is not supported by substantial evidence. But where petitioner fails to identify any erroneous information, petitioner provides no basis for reversal or remand. *Bowers v. City of Eugene*, 58 Or LUBA 51 (2008).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the permission of an adjoining private landowner is necessary to provide access to proposed development, the applicant need not submit evidence that the adjoining landowner has granted permission or that it is feasible for the landowner to grant permission, as long as such permission is not precluded as a matter of law and the local government imposes conditions ensuring that permission will be obtained prior to final development approval. *Holbrook v. City of Rockaway Beach*, 58 Or LUBA 179 (2009).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A county errs in taking “official notice” of evidence that is not in the record where it purports to take official notice of the scenic qualities of an area and the decision relies on those qualities. *Hegele v. Crook County*, 56 Or LUBA 1 (2008).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Arguments that merely cite to opposing testimony and contend that that testimony should be believed over the evidence the local government chose to rely upon are insufficient to demonstrate that the decision is not supported by substantial evidence. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A criterion that requires a county to find that a proposed subdivision is “consistent with the general nature of the area” is very subjective. Where the county’s findings cite the existence of many existing small parcels in the area that are similar in size to the proposed subdivision lots and petitioners merely cite concerns about possible interference with farming operations and a wildlife refuge, the concerns that petitioners cite are not so overwhelming that the county was obligated to acknowledge and expressly address those concerns in its findings. *Hines v. Marion County*, 56 Or LUBA 333 (2008).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where two 25-foot test pits show an aggregate layer that is at least 20 feet deep and shows no sign of diminishing and the decision maker does not seem to have appreciated that the test pits were consistent with the first 25 feet of two deep borings located elsewhere on the site that showed an aggregate layer of far more than the 25-foot width required to qualify as a significant aggregate resource site under OAR 660-023-0180(3)(d)(B)(ii), remand is required so that the county can make it clearer that it understood the significance of the two 25-foot test pits. *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Failure to submit required information in the application materials is not necessarily a basis for remand, if the respondent identifies other evidence in the record that is sufficient to support a finding of compliance with the approval criteria, or at least explains why required information is not necessary to support the decision. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners’ evidence contradicted the applicant’s expert’s assumptions and conclusions regarding the projected volume of sewage and the adequacy of the proposed treatment methods, and nothing in the record responded to or rebutted that evidence, it was not reasonable for the county to rely on intervenor’s evidence in light of petitioners’ contradictory and un rebutted evidence. *Oregon Shores Conservation Coalition v. Coos County*, 55 Or LUBA 545 (2008).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Remand is necessary where the city concludes based on petitioner’s traffic impact analysis that proposed development will cause intersection performance to fall below the minimum standard, but the city misconstrues the analysis, which indicates that the proposed development will not cause the intersection to fall below the minimum performance standard. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. To obtain remand of development approval based on evidentiary grounds, it is insufficient to simply cite the evidence that the hearings officer rejected and argue that the evidence undermines the hearings officer’s ultimate evidentiary choice. The petitioner must also challenge and establish error in the findings in which the hearings officer explained why he found petitioner’s evidence unreliable. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer’s partial reliance on an ambiguous easement to determine that an applicable approval criterion was not met was not unreasonable in light of the easement’s confusing language and other evidence in the record regarding that language. *Adams v. Jackson County*, 54 Or LUBA 103 (2007).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer is not obligated to disregard evidence placed in the record by an applicant that creates a question about whether an applicable approval criterion is met, even if the applicant later repudiates or explains some of that evidence, where other evidence remains unexplained. *Adams v. Jackson County*, 54 Or LUBA 103 (2007).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In resolving an evidentiary challenge, LUBA will not consider evidence supporting the application (1) that was submitted as part of final legal argument after the evidentiary record closed, and (2) that the hearings officer declined to consider for that reason. *Lenox v. Jackson County*, 54 Or LUBA 272 (2007).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. 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).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer does not err in determining that property that is accessed directly from a county road meets a code requirement for access for a home occupation permit, even though adjoining property owners may possess a right to use that access as well. *Merrill v. Clackamas County*, 54 Or LUBA 713 (2007).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A city’s findings that applicable transportation criteria were satisfied based on an applicant’s transportation impact analysis (TIA) is supported by substantial evidence, notwithstanding the TIA’s reliance on some traffic counts that were more than 12 months old, where the requirement that traffic counts be less than 12 months old was not absolute and some of the traffic counts used in the TIA were less than 12 months old. *Lubischer v. City of Hillsboro*, 53 Or LUBA 143 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A broadcast tower approval criterion that requires a decision maker to determine whether identified “public benefits outweigh any impacts which cannot be mitigated” is subjective. In assessing a findings and evidentiary challenge to a decision maker’s weighing of public benefits, the question is whether that weighing is (1) inadequately explained (necessitating a remand for additional findings) or (2) unreasonable (and therefore not supported by substantial evidence). *Belluschi v. City of Portland*, 53 Or LUBA 455 (2007).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a land use approval criterion requires that the applicant demonstrate that a proposed off-road vehicle and bicycle park in a forest zone will not “significantly increase fire hazards,” A local government’s decision that the applicant failed to carry his burden because he failed to accurately identify where proposed fire access roads would be located in relation to park trails is supported by substantial evidence. *Gillette v. Lane County*, 52 Or LUBA 1 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The party who puts forth the larger effort to produce evidence regarding a land use application is not necessarily entitled to prevail under a substantial evidence review solely by virtue of that larger effort. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The critical issue for the local decision maker will generally be whether any expert or lay testimony offered by permit opponents raises questions or issues that undermine or call into question the conclusions or supporting documentation that are presented by the applicant’s experts and, if so, whether any such questions or issues are adequately rebutted by the applicant’s experts. LUBA’s role on review is to determine if a reasonable person would have answered those questions as the local decision maker did, in view of all of the evidence in the record. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local decision maker may assign some additional significance to the testimony of the city engineer or Oregon Department of Transportation engineers regarding transportation system impacts based on their neutrality regarding the merits of the development proposal itself. But that process of assigning any extra weight necessarily calls for a case by case determination by the local decision maker, with LUBA deferring to any such assignments of extra weight that are reasonable, based on the evidence in the whole record. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA’s role on review is not to determine which side’s evidence LUBA believes to be weightier. LUBA is limited to determining whether the local decision maker’s decision to rely on some experts’ testimony rather than others is reasonable, in view of all of the evidence. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA frequently analyzes findings challenges and evidentiary challenges separately and generally analyzes findings challenges first, because LUBA’s resolution of the findings challenge frequently affects its resolution of the evidentiary challenge or makes it unnecessary to decide the evidentiary challenge. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. It is not unreasonable for a local decision maker to cite issues raised

regarding the evidence submitted by an applicant's engineers that were not responded to, and to rely on opponents' experts' testimony to find that the applicant failed to carry its burden of proof. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local government's decision is supported by substantial evidence despite the fact that a wetlands delineation report and a biological assessment that were discussed during the local proceedings are not included in the record, where parts of the wetlands delineation report are quoted in the application and there is a great deal of other evidence in the record that the local government relied on. *Neighbors 4 Responsible Growth v. City of Veneta*, 52 Or LUBA 325 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In an evidentiary challenge to a hearings officer's denial of proposed development, the applicant can prevail only if the applicant demonstrates that no reasonable person could reach the conclusion the hearings officer did, considering the evidence in the whole record. *Ehler v. Washington County*, 52 Or LUBA 663 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In reviewing a petitioner's contention that the evidence submitted by its multi-disciplinary team was such that the county's decision to rely on the testimony of opponent's expert was unreasonable, LUBA must avoid improperly reweighing the evidence and limit its role to determining whether the evidence is such that a reasonable decision maker could have decided as it did. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where there is conflicting expert testimony regarding the location of a river channel migration zone and the probability that the river channel might migrate to capture a proposed floodplain mining site causing river turbidity, the county's decision to believe the larger channel migration zone should apply is supported by substantial evidence. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. If the argument included in support of an assignment of error clearly alleges that findings are not supported by substantial evidence, the fact that an assignment of error that challenges the adequacy of the city's findings does not expressly include a substantial evidence challenge does not preclude LUBA review of the substantial evidence arguments that follow that assignment of error. *Neighbors 4 Responsible Growth v. City of Veneta*, 51 Or LUBA 363 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A county finding that there is "nothing in the record" that would lead the county to believe that a proposed mining operation would cause a risk of traffic accidents does not demonstrate that the county ignored evidence that petitioners submitted to show the mine could cause such a risk, where there are other findings that show the county merely was not persuaded

that petitioners' testimony outweighed the testimony submitted by the applicant. *Lindsey v. Josephine County*, 51 Or LUBA 383 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Largely unchallenged testimony of a county engineer who is a professional engineer, but not a traffic engineer, may constitute substantial evidence concerning the safety of a proposed intersection. *Ghena v. Josephine County*, 51 Or LUBA 681 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Petitioners may not rely on evidence that post-dates the decision on appeal to argue that a board of county commissioners' decision that relies on testimony by the county engineer is not supported by substantial evidence. *Ghena v. Josephine County*, 51 Or LUBA 681 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Even assuming a county correctly interprets local code provisions designed to implement OAR 660-033-0130(4)(c)(B) regarding the general suitability for the production of farm crops to refer to the grapes and not the vines, its determination that the portion of the property is generally unsuitable for growing grapes is not supported by substantial evidence where there is no evidence that the vines on that portion do not produce grapes. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Hearings officer's conclusion that it is feasible to comply with local grading permit review standards is not supported by substantial evidence where the conclusion is based on testimony of county staff, and the staff report provides only that staff will review the grading permit for compliance with those review standards prior to commencement of on-site improvements. *Angius v. Washington County*, 50 Or LUBA 33 (2005).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A city's decision to annex property as an "island" annexation pursuant to ORS 222.750 is supported by substantial evidence although the record does not include ordinances approving previous annexations, or an explanation of how the territories being annexed are "surrounded" under ORS 222.750, where the record includes an annexation map depicting the city limits and the previously annexed properties that create the island. *Costco Wholesale Corporation v. City of Beaverton*, 50 Or LUBA 476 (2005).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the evidentiary record is not clear about whether 1000 dwelling units can be developed on a site without damaging wetlands and jeopardizing endangered western lilies that occupy some of those wetlands, and it appears that a hydrologic assessment is necessary to determine if the wetlands would be damaged in ways that jeopardize continued recovery of the western lily, the city's decision to approve a master plan of development for the 1000 dwelling units without first requiring the hydrologic assessment is error. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an applicant’s expert and the United States Fish and Wildlife Service disagree about the adequacy of the expert’s survey of endangered western lilies on the site of a proposed development, LUBA will defer to the city’s choice to believe the applicant’s expert. While the United States Fish and Wildlife Service may ultimately prevail in future federal permitting proceedings, a city’s choice between conflicting testimony at the city’s master plan of development approval stage presents no basis for reversal or remand. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the decision maker adopts application fee increases but fails to recognize that doing so inadvertently increases local appeal fees, remand is necessary for the local government to take evidence and adopt findings demonstrating that the increased appeal fees are consistent with ORS 227.180(1). *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a petitioner shows that a county’s findings are inadequate, but the quality of the evidentiary record and the findings that could reasonably be adopted based on that record are disputed, remand is the appropriate remedy where (1) petitioner does not show that a county’s decision is “outside the range of discretion allowed the [county] under its comprehensive plan and implementing ordinances,” which would require reversal of the county’s decision and an order to approve the permit under ORS 197.835(10)(a) or (2) that the county’s decision to deny the permit “violates a provision of applicable law and is prohibited as a matter of law,” which would justify a decision by LUBA to reverse the county court’s decision under OAR 661-010-0073(1)(c). *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings official decision that a proposed chiropractic home occupation that would generate eight client trips per day does not constitute “excessive traffic” on a short, dead-end unimproved residential street that serves a relatively small number of existing residences is supported by substantial evidence. *Revoal v. City of Eugene*, 47 Or LUBA 136 (2004).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will reject a challenge to the evidentiary support for a finding that mining traffic will significantly conflict with agricultural practices, within the meaning of OAR 660-023-0180(4)(b)(E), where there is evidence that (1) truck traffic from the mine will cause the level of service for vehicles entering and exiting a nearby farm stand to be reduced from LOS C to LOS D, (2) truck traffic will interfere with the use of the road for the transport of agricultural equipment, and the applicant has not demonstrated that those conflicts will be minimized. *Eugene Sand and Gravel, Inc. v. Lane County*, 46 Or LUBA 254 (2004).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A hearings officer’s decision that a road existed in 1992 is supported by substantial evidence where the record includes conflicting expert and lay testimony regarding the existence of the road in 1992 and the road need not have been improved to any particular standard

and was the kind of primitive road that a reasonable person might or might not have recognized as a road. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. An arborist’s and professional engineer’s testimony is not substantial evidence that it is impracticable to save two groves of mature trees in constructing a discount superstore and parking, where the arborist and professional engineer do not consider the practicability of reducing the building footprint or the area of the site that will be developed with parking. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The lack of evidence supporting findings that the subject property has no physical features that might limit development is not a basis for reversal or remand, where no party contended below that any physical features of the property limit development. *Bruce Packing Company v. City of Silverton*, 45 Or LUBA 334 (2003).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will not remand a county decision for failing to include a sample of light-green visqueen to support a finding that the material is nonreflective, where the challenged decision is not based on such a finding. *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The absence of required information or analysis in an application is not necessarily viewed as a procedural error, and may be a basis for reversal or remand even without a showing of prejudice to petitioner’s substantial rights, where the information or analysis is necessary to determine compliance with approval criteria. *Bauer v. City of Portland*, 44 Or LUBA 210 (2003).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where LUBA cannot determine from the appealed decision or the record whether an approved parkway corridor crosses an inventoried Goal 5 significant vegetation and wildlife area, the decision must be remanded. *Friends of Eugene v. City of Eugene*, 44 Or LUBA 239 (2003).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a decision approving a subdivision that finds it is infeasible to extend a road from the proposed subdivision to an adjoining property and a petitioner at LUBA argues that the finding is not supported by substantial evidence, LUBA will remand where the respondent cites no evidence that supports the finding. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a finding concerning traffic safety is not supported by substantial evidence in the record, but it is clear that traffic safety was at most a peripheral concern and other findings addressing a general “adversely affects neighborhoods” standard make it clear that the county’s focus was on roadway and intersection capacity rather than traffic safety per se, the lack

of evidence supporting the disputed traffic safety finding provides no basis for reversal or remand. *Swyter v. Clackamas County*, 42 Or LUBA 30 (2002).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a petitioner only expressed disagreement with assumptions included in a transportation impact study and repeats evidentiary arguments he made to the city council without attempting to challenge the findings the city adopted to respond to those arguments, petitioner presents no basis for reversal or remand. *Adams v. City of Medford*, 39 Or LUBA 464 (2001).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will reverse a city’s annexation approval where a city fails to establish that the minimum number of informed consents have been received to allow the city to approve an annexation without holding an election. *Johnson v. City of La Grande*, 39 Or LUBA 377 (2001).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A city’s finding that the portion of a dwelling exceeding a code-mandated height limit adversely affects the ocean view of a neighboring property is supported by substantial evidence where the record includes photographs, a videotape and drawings that show the subject dwelling blocking the view of ocean water from the neighboring property, notwithstanding that the photographs, videotape and drawings show that the subject dwelling blocks only a tiny sliver of ocean water view. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A petitioner fails to demonstrate a decision is not supported by substantial evidence where only some of the evidence that the city relied upon is challenged, and the decision is supported by unchallenged documentary and testimonial evidence. *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioner challenges the adequacy and evidentiary basis for a local government’s decision determining that a proposed development “is or will be compatible” with the land use development pattern in the vicinity of the request, LUBA will analyze the findings to determine (1) whether the findings are adequate; (2) whether there is substantial evidence in the record to support a finding that, absent some conditions of approval, the compatibility standard is met; and (3) if conditions of approval are necessary to establish compatibility, whether the local government adopted such conditions. *DLCD v. City of Warrenton*, 37 Or LUBA 933 (2000).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A city’s conclusion that additional parking is needed is supported by substantial evidence notwithstanding contrary evidence contained within a parking study, where the city found the parking study is limited in scope and does not account for certain variables, and there is also evidence that parking is unavailable during peak times and that persons avoid a particular store because of a perceived lack of parking. *Douglas v. City of Lake Oswego*, 37 Or LUBA 826 (2000).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an applicant submits evidence that an intersection will operate at level of service C but later submits evidence showing the intersection will operate at level of service E, a finding that the intersection will operate at level of service C is not supported by substantial evidence. Where the finding concerning the intersection is a necessary part of the decision, the decision must be remanded. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In addressing a substantial evidence challenge, where the response brief provides no transcripts or partial transcripts and provides no assistance in locating the portion of the audio tapes in the record where relevant testimony is located, LUBA will not search for testimony on audio tapes. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA does not independently analyze the evidence, but reviews evidence in the record solely to determine whether it was reasonable for the decision maker to rely on that evidence in making a decision. Where the written evidence is conflicting and a video tape makes it clear that only small remnants of past farming or Christmas tree growing efforts on the subject property remain among the piles of debris that have been scattered over the subject property, it is reasonable for a hearings officer to conclude there is no current farm use of the property. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a land use decision is challenged on evidentiary grounds, LUBA relies on the parties to direct it to relevant evidence in the record so that LUBA can determine whether there is substantial evidence in the record to support the challenged decision. *Johns v. City of Lincoln City*, 35 Or LUBA 421 (1999).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA does not duplicate the role of a local hearings officer. Where the evidence is conflicting such that a reasonable decision maker could reach different conclusions based on that evidence, the choice of which evidence to believe and which conclusion to reach is for the hearings officer. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. 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).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A permit applicant with the burden of demonstrating compliance with an off-site odor standard may not rely on the lack of odor-based complaints in an earlier code enforcement proceeding to establish compliance with the odor standard, where the record includes

testimony about possible off-site odor problems. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A county’s improper reliance on poor past management practices in concluding a property is not suitable for commercial forest use provides no basis for reversal or remand, where there is other evidence in the record that a reasonable person could rely on to reach that conclusion. *Dept. of Transportation v. Coos County*, 35 Or LUBA 285 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local government’s reliance on a traffic study using a method not currently preferred but nonetheless required by the state Department of Transportation (ODOT) does not provide a basis for reversal or remand, where traffic analysis under either of two methods recognized by ODOT supports the conclusion reached by the local government. *Citizens for Florence v. City of Florence*, 35 Or LUBA 255 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a site plan depicting setbacks was before the county decision maker, and was inadvertently not submitted to LUBA, testimony discussing the measurements and setbacks depicted on the site plan is evidence that may support the county’s findings regarding setbacks, notwithstanding that the site plan is itself absent from the record. *Thomas v. Wasco County*, 35 Or LUBA 173 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A condition of approval limiting the hours of operation is supported by substantial evidence where the city council found that loading and unloading of vehicles next to an adjoining residential area during irregular hours would create a nuisance and the Oregon State Police impose a similar limitation on towing of impounded vehicles. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A condition requiring a drainage plan for a towing facility is supported by substantial evidence notwithstanding the owner’s claim that towed vehicles would be drained of fluids, where the record showed the city council questioned the owner’s claim and it was not clear where the drained fluids would be stored. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the city’s decision is based on a well-reasoned analysis that reaches the conclusion that a state road crossing a lot is located on an easement rather than on land owned in fee by the state, the city’s determination that the lot may include the area occupied by the state road in determining whether the lot meets minimum lot size requirements is supported by substantial evidence. *Marshall v. City of Yachats*, 35 Or LUBA 82 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a code criterion requires that a 79-unit residential development must not have adverse impacts on public facilities, the local government cannot make findings of

compliance with that code criterion and its findings cannot be supported by substantial evidence where there is no information in the record concerning potential traffic impacts from the proposal. *Deal v. City of Hermiston*, 35 Or LUBA 16 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a hearings officer interprets an approval criterion to require an explanation of resource practices on the property, the applicant may not rely on a lack of evidence of impacts on resource practices to establish that there will be no such adverse impacts. *Parsley v. Jackson County*, 34 Or LUBA 540 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioner contends that findings are inadequate and not supported by substantial evidence, but fails to identify any particular criterion and only expresses disagreement with the city’s evaluation of the evidence, petitioner provides no basis for reversal or remand. *Kelley v. City of Cascade Locks*, 34 Or LUBA 374 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a county finds that the subject property’s soils constitute “high-value farmland” as that concept is defined by statute, but there is no evidence in the record that supports that ultimate conclusion, the decision must be remanded. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Findings concerning the size and density of a proposal which simply cite to assessor’s records as the basis for the findings are not supported by substantial evidence, where the record does not include the assessor’s records or any other evidence that supports the findings. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners assert that a local government decision is not supported by substantial evidence, and no party cites evidence in the record to support the local government’s decision, LUBA will not search the record to find supporting evidence. *Fjarli v. City of Medford*, 33 Or LUBA 451 (1997).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A two-acre minimum lot size on property located within two miles of a UGB, in combination with the provision of an urban water system and access to public schools, raises valid concerns about the impacts of a proposed subdivision on the UGB, and a finding that consists solely of a city administrator’s opinion that the city has no concerns regarding the impact of the proposed subdivision is not substantial evidence to support the county’s conclusion that the proposed subdivision will not affect the UGB. *Brown v. Jefferson County*, 33 Or LUBA 418 (1997).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Unsupported statements and assurances that a proposed dwelling will

comply with local roof height and pitch standards do not constitute substantial evidence. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Selected portions of an engineer’s letter, cited to support a finding that water supply is adequate, do not constitute substantial evidence where that finding is undermined by the engineer’s letter taken as a whole and by other conflicting evidence. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In reviewing evidence, LUBA may not substitute its judgment for that of the local decision maker, but must consider and weigh all evidence in the record to determine if the local decision maker’s conclusion is supported by substantial evidence. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will defer to a local government’s choice between conflicting evidence if it concludes a reasonable person would have reached the decision the local government made in view of all of the evidence in the record. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will remand the county’s expansion of a nonconforming use where the county fails to make the requisite findings regarding the level of intensity of use that existed when the use became nonconforming, and the level of intensity that has continued, uninterrupted, since that time. *Marquam Farms Corp. v. Multnomah County*, 32 Or LUBA 240 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local government decision approving an irrevocably committed exception under OAR 660-04-028 to Goals 3 and 4 will be remanded where it does not include findings supported by substantial evidence establishing that uses allowed by Goals 3 and 4 are impracticable. *DLCD v. Columbia County*, 32 Or LUBA 221 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local government decision approving a physically developed exception under OAR 660-04-025 to Goals 3 and 4 will be remanded where the findings do not establish that the property is physically developed with non-resource uses. *DLCD v. Columbia County*, 32 Or LUBA 221 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. There is insufficient evidence in the county’s findings to support a conclusion of compatibility with farm use where the findings do not include evidence regarding the surrounding farm uses in the area, and do not explain how the proposed nonfarm dwelling will be compatible with the identified farm uses. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The county’s findings lack evidentiary support for the conclusion that a proposed dwelling will not materially alter the stability of the surrounding area where there is inadequate evidence regarding the surrounding area, inadequate evidence regarding the uses existing in the area, and no evidence regarding how the proposed dwelling will not alter the stability of those uses in the selected area. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the county’s factual findings determine that the subject parcel contains soils that are presumptively suitable for farm use, but then conclude that the proposed dwelling is situated on land that is unsuitable for farm use, the county’s conclusion is not supported by substantial evidence in the record. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A demonstration that a particular tax lot will be ineligible for a nonfarm dwelling for three years is not substantial evidence that supports a finding that the tax lot has no real potential for a nonfarm dwelling. *Lett v. Yamhill County*, 32 Or LUBA 98 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Without information concerning the nature and duration of the lease, the use of a particular tax lot as a leased tax-exempt watershed is not substantial evidence which supports a finding that the lot will remain ineligible for a nonfarm dwelling during a term that is reasonable for purposes of a stability analysis. *Lett v. Yamhill County*, 32 Or LUBA 98 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the resume of a soil scientist does not establish his credentials to determine forest productivity and the only scientific data in the record are the results of soil tests, the soil scientist’s conclusions with respect to forest productivity are not substantial evidence. *DLCD v. Curry County*, 31 Or LUBA 503 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the county’s conclusion that two parcels are not contiguous for purposes of OAR 660-04-028(6)(c)(B) is not factually established in the record and is inconsistent with evidence relied upon by the county regarding nonresource use on adjacent parcels, the county’s finding is not supported by substantial evidence in the record. *Johnson v. Lane County*, 31 Or LUBA 454 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a petitioner challenges percentages relied upon by the county in support of a finding, the petitioner must provide citations to the record where the data upon which it relies to calculate its own percentages can be found. *Helvetia Community Assoc. v. Washington County*, 31 Or LUBA 446 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. There is no general requirement that survey evidence supporting a consultant’s calculation of area be included in the record; instead, LUBA must determine whether,

considering all relevant evidence in the record, a reasonable person could rely on the consultant's calculations. *Squires v. City of Portland*, 31 Or LUBA 335 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In considering the substantiality of evidence supporting a Goal 3 reasons exception for realignment of a highway, LUBA must look at the evidence supporting the challenged decision for the entire four-mile stretch of highway and all the impacted properties, not just the evidence of effects on one of the properties. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Petitioners' challenge of the reliability of an environmental impact statement (EIS) that was relied upon by the county in its decision is insufficient where the challenge is based solely on the age of the EIS, without identification of other evidence in the record that undermines the EIS. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a standard requires a comparison of the traffic or parking generated by a proposed use to the traffic or parking that normally occurs in the district, and the findings contain no such comparison or other factual support to establish the basis upon which the county reached its conclusion that the standard is satisfied, the findings are inadequate and not supported by substantial evidence. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA's review of a local decision is based upon the local record. Where petitioners do not show that they presented evidence during the local hearings process to establish compliance with each factor of an applicable code provision, a recitation in the petition for review of how each factor is satisfied is insufficient to establish such compliance. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will not substitute its judgment for that of the local decision maker. Without references to conflicting evidence in the record that so undermines the evidence upon which the county based its conclusion as to compel a conclusion that a reasonable person could not have reached the county's conclusion, LUBA will not find the county's findings lack substantial evidence. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. When petitioner's objections below were not directed to the relevant criteria, they do not support a claim that the hearings officer's factual conclusions were erroneous. *Martin v. Jackson County*, 30 Or LUBA 317 (1996).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Because the city's decision does not explain, based on evidence in the record, how the city reached its conclusion that a certain ordinance criterion was satisfied, LUBA must remand. *Noble v. City of Fairview*, 30 Or LUBA 180 (1995).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. An unsupported statement in an application is not evidence, and an estimate of a geologist as to resource quantity, made without reference to evidence of any kind, is not substantial evidence. *Palmer v. Lane County*, 29 Or LUBA 436 (1995).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The county’s finding, made as part of its Goal 5 ESEE analysis, that an aggregate site located within a Big Game Habitat Range is not uniquely suited to wildlife must be supported by substantial evidence, not just a statement that the wildlife can “freely relocate” to other parts of the Big Game Habitat Range. *Palmer v. Lane County*, 29 Or LUBA 436 (1995).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. When the evidentiary support for imposition of a condition of approval is challenged, LUBA must determine whether the evidence in the record would lead a reasonable person to conclude there is a need for the condition to further a relevant planning purpose. *Carter v. Umatilla County*, 29 Or LUBA 181 (1995).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where LUBA concludes a reasonable person could reach the decision made by a local government, in view of all the evidence cited in the record, LUBA will defer to the local government’s choice between conflicting evidence. *Carter v. Umatilla County*, 29 Or LUBA 181 (1995).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioner does not challenge the local government’s determination that even if the subject property was not created by a minor land partition, the proposed single family dwelling is permissible, petitioner’s challenge to the evidentiary support for the determination that the subject property was created by minor partition does not provide a basis for reversal or remand. *Sullivan v. City of Ashland*, 28 Or LUBA 699 (1995).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local government adopts finding which, among other things, explain how a proposed road alignment will reduce traffic delay and congestion and thereby minimize air quality impacts as required by a plan policy, and petitioner merely cites testimony that the proposed alignment will increase trips and pollution but does not specifically challenge the local government’s findings, petitioner provides no basis for reversal or remand. *Friends of Cedar Mill v. Washington County*, 28 Or LUBA 477 (1995).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners challenge the evidentiary support for findings addressing an applicable approval standard, and no party cites any evidence in the record to support such findings, the challenged decision must be remanded. *Neuman v. City of Albany*, 28 Or LUBA 337 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a finding that the gravel extraction rate at a proposed site will not change from historic rates is not supported by substantial evidence, and the finding appears to play a significant role in the local government’s finding of compliance with a code “compatibility” requirement, the challenged decision approving a conditional use permit for a gravel operation is not supported by substantial evidence. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Arguments that approval of a fill permit violates local code provisions on fill in drainageways provide no basis for reversal or remand where (1) the local government adopted findings that the disputed fill was not placed in a drainageway, (2) those findings are supported by substantial evidence, and (3) petitioner does not specifically challenge the findings. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a petitioner fails to challenge a local governments’ findings that fill is not located in a drainageway or floodway and that the fill will not endanger adjoining properties, as required by local code and plan standards governing fill, but rather expresses disagreement with the local government based in part on evidence not the record, petitioner’s challenge provides no basis for reversal or remand. *Fechtig v. City of Albany*, 27 Or LUBA 480 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners contend a challenged decision is not supported by substantial evidence in the record, LUBA relies on the parties to provide it with citations to evidence in the record that supports their positions. Where no party cites any evidence in the record supporting findings challenged for lack of supporting evidence, LUBA will sustain the assignment of error. *DLCD v. Polk County*, 27 Or LUBA 345 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners assert that findings supporting a local government determination of compliance with an applicable approval standard lack evidentiary support, and no party cites evidence in the record to support the local government’s determination, LUBA will not search the record to find supporting evidence and will sustain petitioners’ assignment of error. *Doob v. Josephine County*, 27 Or LUBA 293 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. There is no requirement that an expert witness explain the basis for all assumptions underlying the expert’s evidence, or that evidence supporting the expert’s assumptions be included in the record. Under ORS 197.835(7)(a)(C), where petitioners argue an assumption underlying an expert’s conclusions is undermined by other evidence, LUBA must determine whether, considering all relevant evidence in the record, a reasonable person could rely on the expert’s conclusions. *ODOT v. Clackamas County*, 27 Or LUBA 141 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In deciding whether a challenged decision is supported by substantial evidence in the whole record, LUBA is required to consider whether supporting evidence is refuted

or undermined by other evidence in the record, but cannot reweigh the evidence. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local decision maker’s order denying rehearing (1) indicates evidence submitted with the request for rehearing was considered only for the limited purpose of determining whether to grant the request for rehearing, and (2) does not amend or add to the original decision, the evidence submitted with the request for rehearing, although in the local record submitted to LUBA, is not part of the evidentiary record supporting the challenged decision. *Eppich v. Clackamas County*, 26 Or LUBA 498 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. It is reasonable for a local government decision maker to rely upon statements made by representatives of the Oregon Department of Transportation (ODOT) stating that ODOT’s requirements are met, even though the evidence underlying the ODOT representatives’ statements is not included in the local record. *Citizens for Resp. Growth v. City of Seaside*, 26 Or LUBA 458 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A general allegation that a decision is not supported by substantial evidence is insufficient for review by LUBA. *Collins v. Klamath County*, 26 Or LUBA 434 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A petitioner’s assignment of error will be rejected where it simply alleges code violations, without supplying any supporting argument, or alleges inconsistent findings and lack of substantial evidence, without identifying the challenged findings. *Draganowski v. Curry County*, 26 Or LUBA 420 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners contend the challenged decision is not supported by substantial evidence concerning the impacts of the proposed use on nongame wildlife, but do not challenge the local government’s determination that the relevant approval standards do not require consideration of impacts on nongame wildlife, LUBA will deny the assignment of error. *Bottum v. Union County*, 26 Or LUBA 407 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The responsibility for weighing and determining what evidence to believe lies with the local government. LUBA’s scope of review is limited to determining whether the challenged decision is supported by evidence in the record that a reasonable person could rely upon to reach the conclusions in the challenged decision. *City of Barlow v. Clackamas County*, 26 Or LUBA 375 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioner cites evidence that certain approval standards are not satisfied and respondent fails to identify evidence in the record in support of the decision, LUBA

will remand the decision for lack of substantial evidence. LUBA will not independently search the record for supporting evidence. *Lucier v. City of Medford*, 26 Or LUBA 213 (1994).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. It is the parties’ responsibility to identify the evidence in the record that supports their positions. Where parties cite large documents in their entirety, and do not identify where in these documents relevant material is located, LUBA will not search through the documents looking for supporting evidence. *Friends of Bryant Woods Park v. Lake Oswego*, 26 Or LUBA 185 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local government’s decision that a proposed plan map amendment would negatively impact groundwater quantity and violate an applicable plan criterion is supported by substantial evidence where there is conflicting lay and expert testimony, and the expert testimony concedes the uncertainty of the proposal’s impacts. *Ericsson v. Washington County*, 26 Or LUBA 169 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA may not reweigh evidence or substitute its judgment for that of a local government concerning a proposal’s compliance with applicable standards. *Hixson v. Josephine County*, 26 Or LUBA 159 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioner cites evidence in the record that at least some golf ball striking areas are proposed to be closer than 300 yards from nearby properties, and the county cites no evidence to undermine this evidence, findings that the nearest golf ball striking area is more than 300 yards from adjacent properties are not supported by substantial evidence in the whole record. *Moore v. Clackamas County*, 26 Or LUBA 40 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Under ORS 197.830(13)(a), LUBA’s review is limited to the record of the proceedings below. Statements in a local government comprehensive plan background and inventory document, that are not included in the record, cannot constitute substantial evidence in support of a challenged decision. *Fleck v. Marion County*, 25 Or LUBA 745 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Under ORS 197.835(7)(a)(C), LUBA is authorized to reverse or remand a challenged decision on evidentiary grounds only when there is not substantial evidence *in the whole record* to support the decision. Arguments that the application and the applicants’ statements do not provide sufficient evidence to support the decision do not provide a basis for reversal or remand. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a decision is challenged on evidentiary grounds, LUBA relies on the parties to provide it with record citations to the supporting or countervailing evidence on which their argument depends. *Spiering v. Yamhill County*, 25 Or LUBA 695 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Determining compatibility is inherently subjective. Where there is conflicting believable evidence concerning a proposed PUD’s compatibility with the surrounding neighborhood, LUBA will not disturb the local government’s determination that the height of the proposed buildings is compatible with the surrounding neighborhood. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the governing body ratifies an act of another local government official in the challenged decision, that aspect of the challenged decision is itself substantial evidence that the local official possessed authority to accomplish the disputed act. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will defer to a local government’s choice between conflicting believable evidence. *Cemper v. Clackamas County*, 25 Or LUBA 486 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioners challenge the evidentiary support for a finding, but fail to show the finding is critical to the decision, the challenge provides no basis for reversal or remand. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. That a particular finding is not supported by substantial evidence provides a basis for reversing or remanding a challenged decision only if that finding is critical to demonstrating compliance with an applicable approval standard. *Frankton Neigh. Assoc. v. Hood River County*, 25 Or LUBA 386 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the local code includes a broad definition of the term “wetland,” and the local government denies a permit application because it determines evidence in the record establishes that petitioner’s grading activities on the subject property created a “wetland” within the meaning of the local code, LUBA cannot say that the local government’s determination is wrong as a matter of law. *Annett v. Clackamas County*, 25 Or LUBA 111 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where findings state facts relevant to whether a proposed nonfarm use will interfere with accepted farming practices, but do not identify the types of farming occurring in the area, and those findings are challenged as inadequate and not supported by substantial evidence, LUBA will sustain the challenge in the absence of any attempt by respondents to defend the findings or identify evidence supporting the findings. *DLCD v. Crook County*, 25 Or LUBA 98 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Under ORS 197.828(2)(a), when the evidentiary support for a condition of

approval is challenged, LUBA must determine whether the evidence in the record could lead a reasonable person to conclude that considering the impacts of the proposed development, there is a need for the condition to further a legitimate planning purpose. *Sherwood Baptist Church v. City of Sherwood*, 24 Or LUBA 502 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. That a particular finding is not supported by substantial evidence, of itself, provides no basis for remanding a decision, unless the finding is critical to the decision. *Terra v. City of Newport*, 24 Or LUBA 438 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. While LUBA must consider all relevant evidence in the record cited by the parties in reviewing a substantial evidence challenge, including evidence that detracts from the challenged decision as well as evidence that supports it, LUBA may not reweigh the evidence. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where LUBA concludes a reasonable person could reach the decision made by the local government, in view of all the evidence in the record, it defers to the local government's choices between conflicting evidence and of reasonable conclusions to be drawn from the evidence. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where there is conflicting believable evidence, the choice of which evidence to believe belongs to the local government. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Lack of substantial evidence *in an application* does not provide grounds for LUBA to reverse or remand a decision. LUBA is authorized to reverse or remand a land use decision on evidentiary grounds only if it is not supported by substantial evidence *in the whole record*. *Tylka v. Clackamas County*, 24 Or LUBA 296 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In reviewing an evidentiary challenge, LUBA relies on the parties to identify the evidence in the record that supports their positions. *Todd v. Columbia County*, 24 Or LUBA 289 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a golf course adjoining an orchard will force alterations in accepted farming practices and increase the costs associated with such practices, the relevant question under ORS 215.296(1) is whether such alterations and increased costs will be *significant*. Where there is evidence in the whole record that would allow a local government decision maker to answer that question either way, LUBA is required by ORS 197.835(7)(a)(C) to defer to the local government's judgment. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA will not consider a challenge to the adequacy of or evidentiary support for particular findings supporting a land use decision, where petitioner fails to include sufficient argument explaining why those findings are critical to the challenged decision. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where findings are not essential to the challenged decision, it is not necessary for LUBA to determine whether those findings are supported by substantial evidence in the record. *Thatcher v. Clackamas County*, 24 Or LUBA 207 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Lack of evidentiary support for a finding provides a basis for reversal or remand only if the finding is essential to the decision. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a reasonable person would not conclude, based on the evidence cited in the record, that the proposed use will comply with an applicable approval standard, the local government's determination of compliance with that approval standard is not supported by substantial evidence. *Reynolds v. Clackamas County*, 24 Or LUBA 14 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The choice between different reasonable conclusions, based on the evidence in the record, belongs to the local government decision maker. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local government finds that approval criteria will be met if certain conditions are imposed, and those conditions are requirements to obtain state agency permits, a decision approving the subject application simply requires that there be substantial evidence in the record that the applicant is not precluded from obtaining such state agency permits as a matter of law. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local government's determination of compliance with a code standard requiring that adequate water service be provided to a proposed development is based entirely on the use of surface water, whether there are sufficient findings and evidence to demonstrate the adequacy of ground water to serve the proposed resort does not provide a basis for reversal or remand of the local government's decision. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA is authorized to reverse or remand a challenged local government decision on evidentiary grounds only if the local government made a *decision* not supported by

substantial evidence in the whole record. ORS 197.835(7)(a)(C). *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. That findings are not supported by substantial evidence provides a basis for reversal or remand only if the findings are essential to the challenged decision. *Larson v. Wallowa County*, 23 Or LUBA 527 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Allegations that local government decision makers gave testimony by certain persons undue credibility provide no basis for reversal or remand. *Reed v. Benton County*, 23 Or LUBA 486 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the record does not contain information on the quality of the aggregate resource at other aggregate sites already on the county plan's inventory, the county cannot perform the comparison of relative value of Goal 5 resource sites required by OAR 660-16-000(3) in making its required determination of resource quality. *Calhoun v. Jefferson County*, 23 Or LUBA 436 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the relevant facts are not in dispute, the choice between different reasonable conclusions based on the undisputed evidence in the record belongs to the local government. *Dority v. Clackamas County*, 23 Or LUBA 384 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA's review is limited by ORS 197.830(13)(a) to the record of the proceeding below, except in instances where an evidentiary hearing is authorized by ORS 197.830(13)(b). Therefore, local government enactments of which LUBA takes official notice under OEC 202 do not thereby become part of the local record which may provide evidentiary support for the challenged decision. *Ramsey v. City of Portland*, 23 Or LUBA 291 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. ORS 197.835(7)(a)(C) does not require a legislative land use decision to be supported by substantial evidence. Where petitioners cite no independent basis for a requirement that the challenged legislative land use decision be supported by substantial evidence, petitioners provide no basis for reversal or remand. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA may take official notice of state legislative or administrative history to aid in interpretation of state statutes or administrative rules. However, where such documents are not part of the local record, statements of fact in the documents cannot constitute evidentiary support for the challenged decision. *Adkins v. Heceta Water District*, 23 Or LUBA 207 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where conflicting evidence does not so undermine the evidence relied upon by the local decision maker that it is unreasonable for the decision maker to rely upon it, the choice between such conflicting believable evidence belongs to the local government decision maker and LUBA will not disturb that choice. *Harwood v. Lane County*, 23 Or LUBA 191 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Substantial evidence challenges directed at findings which are not critical to the challenged decision, provide no basis for reversal or remand. *Neste Resins Corp. v. City of Eugene*, 23 Or LUBA 55 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. ORS 197.835(7)(a)(C) does not impose a substantive requirement that legislative land use decisions be supported by substantial evidence in the whole record. *Alexiou v. Curry County*, 22 Or LUBA 639 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Substantial evidence is evidence a reasonable person would rely on in reaching a decision. Where a reasonable person could reach the decision made by the local government, in view of all the evidence in the record, LUBA defers to the local government's choice between conflicting evidence. *Angel v. City of Portland*, 22 Or LUBA 649 (1992).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. That a finding is impermissibly conclusory, or is without evidentiary support in the record, is a basis for reversal or remand only if that finding is essential to the challenged decision. Therefore, where petitioners challenge the adequacy of or evidentiary support for a specific finding, they must also explain why that finding is essential to demonstrating compliance with an applicable approval standard. *Brandt v. Marion County*, 22 Or LUBA 473 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. 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).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. No purpose would be served by determining whether inadequate findings are supported by substantial evidence in the record. *Forster v. Polk County*, 22 Or LUBA 380 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Findings that transportation systems are adequate to serve proposed housing for elderly persons who walk with the assistance of canes or walkers, are not supported by substantial evidence where the evidence establishes that the only access to public transportation

is by walking down a road dangerous to pedestrians. *Murray v. Clackamas County*, 22 Or LUBA 247 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where there is no applicable standard requiring a demonstration that there is a need for the proposed use, that findings stating there is a need for the proposed use are inadequate or not supported by substantial evidence provides no basis for reversal or remand. *Murray v. Clackamas County*, 22 Or LUBA 247 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. When the evidentiary support for imposition of a condition of approval is challenged, what LUBA must determine is whether the evidence in the record would lead a reasonable person to conclude that there is a need for the condition to further a relevant planning purpose. *Wastewood Recyclers v. Clackamas County*, 22 Or LUBA 258 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. If the challenged decision does not explain the purpose of a condition, it is more difficult for LUBA to conclude imposition of the condition is supported by substantial evidence in the record. *Wastewood Recyclers v. Clackamas County*, 22 Or LUBA 258 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Substantial evidence is evidence a reasonable person would rely upon in reaching a decision. In determining whether a decision is supported by substantial evidence, LUBA considers all the evidence in the record to which it is cited, including evidence that refutes or detracts from that relied on by the local government decision maker. *Eckis v. Linn County*, 22 Or LUBA 27 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A petitioner's substantial evidence challenge will be rejected where only one type of evidence relied upon by a local government decision maker is challenged and there are other types of unchallenged believable evidence in the record which support the decision. *Wentland v. City of Portland*, 22 Or LUBA 15 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the local government's findings are inadequate, no purpose would be served by determining whether they are supported by substantial evidence. *Schellenberg v. Polk County*, 21 Or LUBA 425 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local code requires that a conditional use not substantially limit or impair use of petitioner's property, and the local government concedes that the proposed use will cause negative impacts on the use of petitioner's property, but cites no evidence in the record that (1) these impacts will not substantially limit or impair use of petitioner's property, or (2) required mitigation measures will sufficiently reduce these impacts, LUBA will uphold petitioner's evidentiary challenge. *Reynolds v. Clackamas County*, 21 Or LUBA 412 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. While a local government cannot rely upon evidence of changed circumstances since adoption of its comprehensive plan to justify *noncompliance* with plan approval criteria for plan and zone map amendments, it may be able to rely upon evidence of changed circumstances as a basis for finding *compliance* with applicable plan and zone map amendment approval criteria. *Brown & Cole, Inc. v. City of Estacada*, 21 Or LUBA 392 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the applicant for a nonconforming use determination presents evidence which is inconsistent and vague, such evidence is not substantial evidence to establish the existence of a nonconforming use. *Smith v. Lane County*, 21 Or LUBA 228 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where findings are not essential to the challenged decision, it is unnecessary for LUBA to determine whether those findings are supported by substantial evidence in the record. *Lung v. Marion County*, 21 Or LUBA 302 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a U.S. Census Bureau form was not placed before the local decision maker before it adopted the appealed decision, the form has no bearing on the issue raised in the petition for review of whether there is sufficient evidence in the local record to support the challenged decision. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where findings are not essential to the challenged decision, it is not necessary for LUBA to determine whether those findings are supported by substantial evidence in the record. *Schatz v. City of Jacksonville*, 21 Or LUBA 149 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. That a board of county commissioners' findings are inconsistent with findings previously adopted by the county hearings officer provides no basis for reversal or remand so long as the board of county commissioners' findings are supported by substantial evidence. *Carsey v. Deschutes County*, 21 Or LUBA 118 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where there is evidence in the record to “clearly support” the challenged decision, there is also necessarily “substantial evidence” in the record to support the decision. *Smith v. City of Portland*, 21 Or LUBA 111 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Although a local government is not legally obligated to identify or discuss in its findings evidence it chooses not to believe, it may be that without such an explanation LUBA will be unable to determine that the findings the city does adopt are supported by substantial evidence. *Wethers v. City of Portland*, 21 Or LUBA 78 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. No purpose is served by LUBA reviewing the evidentiary support for inadequate findings. *Washington Co. Farm Bureau v. Washington Co.*, 21 Or LUBA 51 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where conflicting evidence in the record does not so undermine the evidence relied upon by the local government as to make it unreasonable for the local government to rely upon that evidence, the choice between such conflicting believable evidence belongs to the local government and will not be disturbed by LUBA. *Stefan v. Yamhill County*, 21 Or LUBA 18 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. If a decision which relies on evidence from site observations by local decision makers is appealed to LUBA and challenged on substantial evidence grounds, LUBA will review the evidentiary support for that decision, including evidence from such site observations and rebuttal evidence, to determine whether it would be reasonable to rely upon it. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioner makes an evidentiary challenge, but LUBA must in any case remand the appealed decision for further local proceedings which will include the submittal of additional evidence, LUBA will not determine whether there is substantial evidence in the existing record to support the appealed decision. *Angel v. City of Portland*, 21 Or LUBA 1 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. 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).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. The choice between different reasonable conclusions, based on the evidence in the whole record, belongs to the local government. *West v. Clackamas County*, 20 Or LUBA 433 (1991).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where the findings are inadequate, no purpose would be served by determining whether the findings are supported by substantial evidence. *Benjamin v. City of Ashland*, 20 Or LUBA 265 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. If a plan policy is not an approval standard for the challenged decision, it is of no consequence that there is not substantial evidence in the record to support a determination of compliance with that policy. *Benjamin v. City of Ashland*, 20 Or LUBA 265 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a purpose statement in the local code’s conditional use provisions states general objectives only, and does not purport to act as an independent approval standard, petitioners’ contention that evidence in the record establishes the proposed use is not in compliance with that purpose statement provides no basis for reversal or remand of the challenged decision approving a conditional use permit. *Beck v. City of Tillamook*, 20 Or LUBA 178 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Whether statements in the county’s decision which are not findings of fact, but rather are recitations of evidence and argument submitted by the applicant, are supported by substantial evidence in the record is of no consequence. *Shirley v. Washington County*, 20 Or LUBA 127 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where LUBA determines the local government’s findings are inadequate to establish compliance with relevant approval standards, no purpose is served by determining whether those findings are supported by substantial evidence. *Schryver v. City of Hillsboro*, 20 Or LUBA 90 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where a local code provision is not an approval standard for the appealed zone change, inadequacy of the evidence supporting local government findings addressing that provision provides no basis for reversal or remand. *Bridges v. City of Salem*, 19 Or LUBA 373 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In addition to demonstrating that a challenged finding is inadequate or unsupported by substantial evidence, a petitioner must demonstrate the challenged finding is necessary to support the challenged decision. *Griffith v. City of Milwaukie*, 19 Or LUBA 300 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A challenge to the adequacy of and evidentiary support for a finding that a modification of a previously imposed condition of land use approval is justified based on changed circumstances provides no basis for reversal or remand, where none of the applicable criteria require that modifications of conditions of approval be based on changed circumstances. *Griffith v. City of Milwaukie*, 19 Or LUBA 300 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where an ordinance requires that site plans be prepared by persons with designated credentials and the planning director is delegated responsibility for determining the qualifications of a person to prepare a site plan, a party wishing to challenge the planning director’s decision to accept a site plan must offer some explanation, to the local government or to LUBA, why the person preparing the site plan is not qualified. If a party fails to do so, LUBA will not find the local government committed error because the record lacks substantial evidence that the person preparing the site plan was qualified to do so. *Headley v. Jackson County*, 19 Or LUBA 109 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A city decision to require, as a condition of approval, dedication of a right-of-way to improve street system efficiency and to provide future access to interior developable parcels is supported by adequate findings and substantial evidence in the record where the city’s findings and the evidentiary record are sufficient to show a legitimate planning purpose is furthered by requiring the right-of-way dedication. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where LUBA concludes a reasonable person could reach the decision adopted by the local government, in view of all the evidence in the record, LUBA defers to the local government’s choice between conflicting evidence. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Where petitioner’s traffic engineer and the city engineer present conflicting testimony concerning which sight distance standards apply and the correct method of calculating sight distances, the city may properly rely on its engineer’s testimony. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In determining whether there is substantial evidence in the record to support a local government decision, LUBA considers all relevant evidence in the record cited by the parties, including both that which supports the local government decision and that which detracts from it. *Eckis v. Linn County*, 19 Or LUBA 15 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Just as the choice between reasonable conflicting evidence belongs to the local decision maker, the choice between different reasonable conclusions, based on undisputed evidence in the whole record, also belongs to the local decision maker. Where the decision maker’s conclusions are among the reasonable conclusions which could be drawn from the evidence in the record, LUBA will conclude the decision is supported by substantial evidence. *Stefan v. Yamhill County*, 18 Or LUBA 820 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. Although city findings concerning the percentage effect of up to two hours of shading on solar heating effectiveness are not supported by substantial evidence, LUBA will affirm the city’s decision that a standard requiring mitigation of adverse affects through design treatment is met where other findings and evidence are adequate to show the shading impacts are mitigated. *Sunburst II Homeowners v. City of West Linn*, 18 Or LUBA 695 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. In determining whether evidence is substantial, LUBA must consider the evidence in the *whole* record, both evidence which supports and evidence which detracts from the

challenged decision. ORS 197.837(7)(a)(C); *Younger v. City of Portland*, 305 Or 346, 356, 752 P2d 262 (1988). *Weist v. Jackson County*, 18 Or LUBA 627 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA does not substitute its judgment for that of a local government where the evidence in the record is conflicting, and reasonable persons could adopt different findings or reach conflicting conclusions. In such circumstances, LUBA will affirm a local government’s choice between conflicting, but supported, findings or conclusions, even though a reasonable person could also have adopted different findings or conclusions based on the evidence in the record. *Douglas v. Multnomah County*, 18 Or LUBA 607 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. A local government is not required to explain in its findings why it chose not to rely on certain evidence, as long as LUBA can conclude a reasonable decision maker could decide as the local government did, in view of all the evidence in the record. *Douglas v. Multnomah County*, 18 Or LUBA 607 (1990).

28.8.7 LUBA Scope of Review – Grounds for Reversal/Remand – Unsupported by Substantial Evidence. LUBA need not review the evidentiary support for findings which are not essential to the decision below. *Beck v. City of Tillamook*, 18 Or LUBA 587 (1990).