

1.3.3 Administrative Law – Findings Generally – Form of. A city council decision that states “[t]he findings of fact in this matter are located in the staff report, incorporated herein as Exhibit A” is sufficient to satisfy the *Gonzalez v. Lane County*, 24 Or LUBA 251, 259 (1992), requirement to indicate an intent to incorporate another document as findings. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

1.3.3 Administrative Law – Findings Generally – Form of. Where a city council decision adopts “a staff report, incorporated herein as Exhibit A,” as findings, but there is no staff report labeled Exhibit A and there are two staff reports the city council could have been referring to, the decision is not sufficient to satisfy the *Gonzalez v. Lane County*, 24 Or LUBA 251, 259 (1992), requirement to identify the document that is incorporated as findings. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

1.3.3 Administrative Law – Findings Generally – Form of. LUBA will not assume the planning commission intended to adopt a subdivision opponent’s letter opposing the application as findings in support of the planning commission’s decision to approve the subdivision application, simply because that letter was included as an attachment to the planning staff report that was adopted as findings. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

1.3.3 Administrative Law – Findings Generally – Form of. Where it is possible to read a city council’s findings as incorporating only the conditions of approval proposed in an attached staff report but it is also possible to read the city council’s findings as incorporating the entire staff report as part of the city council’s decision, but it is clear the city intended the latter, LUBA will reject petitioner’s contention that the more limited reading of the city council’s decision is required. *Frewing v. City of Tigard*, 50 Or LUBA 226 (2005).

1.3.3 Administrative Law – Findings Generally – Form of. A local government’s failure to adequately identify documents it intends to incorporate by reference as findings, and its adoption of testimony as findings, are not by themselves a basis for reversal or remand. Instead, the attempted incorporation fails and the city may not rely on such documents or testimony to provide “findings” in support of the decision. If the city has adopted other findings that adequately support the decision, the failed incorporation and improper attempt to adopt testimony as findings are harmless error. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

1.3.3 Administrative Law – Findings Generally – Form of. An attempt to incorporate documents in the record as findings of compliance with the Transportation Planning Rule fails, where the decision purports to incorporate hundreds of pages of minutes and written testimony without adequately identifying those documents, and the incorporation is qualified in a manner that makes it difficult or impossible to understand the facts relied upon and the justification for the decision. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

1.3.3 Administrative Law – Findings Generally – Form of. A decision maker may rely on environmental assessments and technical reports prepared and used by the decision maker in making its decision to demonstrate compliance with findings requirements, notwithstanding that the documents were not formally adopted as findings, where a reasonable person would understand

that the decision maker intended to rely on the documents to support its decision. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435 (2002).

1.3.3 Administrative Law – Findings Generally – Form of. That the local government’s Goal 14 findings incorporate other findings by reference does not demonstrate inadequacy in the county’s Goal 14 findings, absent a showing that the county’s findings as a whole, including the incorporated findings, are inadequate. *Alliance for Responsible Land Use v. Deschutes Cty.*, 40 Or LUBA 304 (2001).

1.3.3 Administrative Law – Findings Generally – Form of. LUBA will deny an assignment of error that challenges a decision for failing to make findings regarding applicable criteria when the decision properly incorporates additional findings that do address the applicable approval criteria, and the incorporated findings are not inadequate on their face. *McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

1.3.3 Administrative Law – Findings Generally – Form of. A statement by a governing body in its decision that it is incorporating as findings a separate document that it has specifically identified in its findings is effective in doing so, even if the title of the separate document is misstated in the decision. *Winkler v. City of Cottage Grove*, 33 Or LUBA 543 (1997).

1.3.3 Administrative Law – Findings Generally – Form of. Where a decision expressly incorporates an entire document by reference into its findings and quotes specific findings from the incorporated document, the scope of the incorporation is not limited to the quoted findings. *Winkler v. City of Cottage Grove*, 33 Or LUBA 543 (1997).

1.3.3 Administrative Law – Findings Generally – Form of. Final decisions may incorporate findings in other documents prepared by staff or an applicant, but may not do so in a way that leaves the parties and LUBA guessing which documents are made part of the decision or where the necessary findings may be located in the record. *DLCD v. Tillamook County*, 33 Or LUBA 323 (1997).

1.3.3 Administrative Law – Findings Generally – Form of. Where the county commissioners’ final decision purports to adopt unspecified portions of the planning director’s and hearings officer’s decisions, but LUBA cannot determine from the final decision which portions of the lower decisions the commissioners intended to adopt, LUBA will rely solely on the commissioners’ decision and those portions of the lower decisions that are specifically identified in the final decision. *Spencer Creek Neighbors v. Lane County*, 32 Or LUBA 349 (1997).

1.3.3 Administrative Law – Findings Generally – Form of. Where the county’s findings regarding parcel size and ownership patterns on lands adjacent to a proposed exception area contain no reference to the analysis required by OAR 660-04-028(6)(c)(A), and do not suggest that the county is relying upon separate incorporated documents to provide that analysis, the county’s incorporation of the entire application does not provide a sufficient reference to the specific documents relied upon by the county to satisfy the applicable criteria. *Johnson v. Lane County*, 31 Or LUBA 454 (1996).

1.3.3 Administrative Law – Findings Generally – Form of. If a local government wishes to incorporate all or portions of another document by reference into its findings, it must (1) clearly indicate its intent to do so; and (2) clearly identify the document or portions of the document so incorporated. A local government decision will satisfy these requirements if a reasonable person reading the decision would realize that another document is incorporated into the findings and, based on the decision itself, would be able both to identify and to request the opportunity to review the specific document thus incorporated. *Johnson v. Lane County*, 31 Or LUBA 454 (1996).

1.3.3 Administrative Law – Findings Generally – Form of. The attachment as an exhibit to the city’s decision of a plot plan showing 3.95 acres of “open space” does not impose an unstated condition of approval requiring dedication of the open space, when the text of the decision makes clear it does not rely on that aspect of the plot plan. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.3.3 Administrative Law – Findings Generally – Form of. Where LUBA cannot determine which portions of a lower level local decision maker’s decision are incorporated into the challenged governing body decision, the governing body’s decision must be remanded. *Ellis v. City of Bend*, 28 Or LUBA 332 (1994).

1.3.3 Administrative Law – Findings Generally – Form of. A local government decision maker may adopt staff-prepared findings as its own. That the planner who prepared the findings later advised the decision maker the findings are erroneous does not establish that the findings in fact are erroneous. *Gettman v. City of Bay City*, 28 Or LUBA 116 (1994).

1.3.3 Administrative Law – Findings Generally – Form of. Where the challenged decision states the decision maker “adopts” a certain document and “makes it part of” the findings, that document is incorporated by reference into the findings and, under OAR 661-10-025(1)(a), is part of the local record, as findings. *Bates v. Josephine County*, 27 Or LUBA 673 (1994).

1.3.3 Administrative Law – Findings Generally – Form of. A statement in a local government’s findings that it “accepts and relies on” the contents of a specific exhibit in the record “to establish” certain facts required by an applicable approval standard, indicates the local government’s intent to adopt the contents of that exhibit as a statement of what the local government believes to be the relevant facts and, therefore, is adequate to incorporate the exhibit into the findings. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

1.3.3 Administrative Law – Findings Generally – Form of. Where the challenged decision refers to a staff report and the applicant’s proposed findings and explicitly incorporates those documents by reference, and those documents are attached as exhibits to the decision, the decision adequately adopts those documents as findings in support of the decision. *Lucier v. City of Medford*, 26 Or LUBA 213 (1994).

1.3.3 Administrative Law – Findings Generally – Form of. Where a governing body’s decision includes a statement that the governing body affirms the planning commission decision expressed in specific findings, such statement indicates the governing body either adopted the planning commission findings and determinations by reference or let the planning commission’s decision

become final and subject to review as part of the governing body's decision. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

1.3.3 Administrative Law – Findings Generally – Form of. The findings supporting a challenged decision may consist of several different documents, so long as the local government adequately identifies and specifically adopts those documents as findings. *Neuharth v. City of Salem*, 25 Or LUBA 267 (1993).

1.3.3 Administrative Law – Findings Generally – Form of. A party's submission of proposed findings to a local decision maker does not constitute an *ex parte* contact warranting reversal or remand. In the absence of a local code provision to the contrary, there is no error in a local government's utilization of such a process. *Caine v. Tillamook County*, 25 Or LUBA 209 (1993).

1.3.3 Administrative Law – Findings Generally – Form of. A statements in a local government's findings that "substantial evidence in the record shows * * *" is not a recitation of evidence, but rather an expression of what the decision maker believes the evidence in the record demonstrates; and is, therefore, proper as a finding of fact. *DLCD v. Coos County*, 25 Or LUBA 158 (1993).

1.3.3 Administrative Law – Findings Generally – Form of. Where a challenged decision incorporates other documents by reference as findings, the decision must clearly indicate its intent to incorporate the documents, and (2) identify the documents or portions of them. *DLCD v. Crook County*, 24 Or LUBA 393 (1993).

1.3.3 Administrative Law – Findings Generally – Form of. If a local government decision maker incorporates all or portions of a separate document by reference into its findings, it must clearly (1) indicate its intent to do so, and (2) identify the document or portions of the document so incorporated. *Gonzalez v. Lane County*, 24 Or LUBA 251 (1992).

1.3.3 Administrative Law – Findings Generally – Form of. Where a decision maker does not clearly identify in its decision the portions of a document that it adopts by reference as findings, it runs a risk that LUBA will not be able to identify and review any portion of such document as findings of the decision maker. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

1.3.3 Administrative Law – Findings Generally – Form of. In the absence of a specific provision in the local code to the contrary, there is no general requirement that a party have an opportunity to object to proposed findings submitted to the local decision maker by the prevailing party in a local land use proceeding. *Adler v. City of Portland*, 24 Or LUBA 1 (1992).