1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. While applying pesticides and herbicides in a manner that causes overspray or drift onto adjoining properties is not an accepted farm practice for purposes of the farm impacts test at ORS 215.296(1), where the labels for some pesticides and herbicides effectively require a setback from certain sensitive uses regardless of whether drift or overspray occurs, a county will likely have to make specific factual findings about the specific setbacks required by particular chemicals on particular farming operations on surrounding farmlands, based on application methods, and whether the operation of each setback would force a significant change in farm practices. *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where an applicant proposes a planned development, and where a local code provision requires the local government to "seek to determine that the development * * * will not create a drainage or pollution problem outside the planned area," the local government errs by not adopting findings determining whether the construction of a road extension that is proposed as part of and that would provide access to the planned development will create a drainage or pollution problem outside the planned area. *Lundeen v. City of Waldport*, 80 Or LUBA 450 (2019).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. According to the "law of the case" pursuant to *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992), matters conclusively resolved before LUBA cannot be relitigated in subsequent appeals of subsequent decisions on the same matter. However, that principle is not violated where (1) LUBA remands to the county to adopt new findings, based on substantial evidence, and (2) on remand, the county accepts new evidence and adopts new findings, as LUBA directed. Where LUBA's original decision discussed certain requirements to provide guidance and framework on remand, and some of the county's findings are still insufficient on remand does not mean that the county violated the "law of the case." *Richards v. Jefferson County*, 79 Or 171 (2019).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. On remand, where LUBA instructed the county to resolve whether the project applicant's farm operation qualifies as a "commercial farming operation" for purposes of applying for an accessory farm dwelling for a relative, LUBA established that certain findings and evidence are necessary to establish compliance with OAR 660-033-0130(9). The county's findings fall short of establishing that the applicant's farm operation qualifies as a "commercial farming operation," because it is an undefined term, and it is the county's obligation to attempt to articulate the thresholds that separate a "commercial" from a non-commercial farming operation, and to determine those thresholds in the first instance. Although the county has some discretion to determine the thresholds, that determination will necessarily constitute a mixed question of fact and law, subject to LUBA's review for legal error and evidentiary sufficiency. *Richards v. Jefferson County*, 79 Or 171 (2019).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The focus of OAR 660-033-0130(9) and county code that implements it regarding whether the "farm operator * * * continue[s] to play the predominant role in the management and farm use of the farm," is on the farm operator's involvement in farm operations *on the subject property*, not on off-farm businesses that may relate to the farm operation. The commercial farm operator's involvement in off-farm businesses do not help establish any element of OAR 660-033-0130(9). The commercial farm operator's involvement in off-farm businesses are relevant to establishing the elements of OAR

660-033-0130(9) only in so much as the time spent on those businesses and away from the farm operation might undermine the claim that the farm operator will continue to play the "predominant role" in the farm operation and requires assistance in running the farm operation. *Richards v. Jefferson County*, 79 Or 171 (2019).

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

1.4.3 Administrative Law – Adequacy of Findings – Applicable Standards. When and if a board of county commissioners adopts a revised staff report as its findings, it must identify the applicable standards, the facts used to meet those standards and explain how those facts led to the conclusion that the applicable criteria has been met. Simply adopting the report or incorporating the applicant's burden of proof statement is not sufficient to serve as support for adequate findings. *VanSickle v. Klamath County*, 78 Or LUBA 56 (2018).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. In considering whether property is generally unsuitable for farm use, it is not appropriate to disregard adjoining parcels as "nonfarm" parcels, simply because there is a nonfarm dwelling on the properties, where there is evidence those adjoining parcels have been planted in winter wheat. Without some findings addressing that evidence of farm use, findings that the property is generally unsuitable for farm use are not supported by substantial evidence. *Central Oregon Landwatch v. Crook County*, 77 Or LUBA 202 (2018).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings regarding the adequacy of urban services to serve annexed property are inadequate, where the findings cite only hearsay statements from providers, and fail to address issues raised below regarding delayed response times to service the subject property and an engineer's testimony that the electrical system cannot serve the property without impacting other portions of the city. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied Upon. A county's finding that a site adjoining a golf fairway was "developed as a golf course" in 2001 is supported by substantial evidence, where the record includes evidence that the site was landscaped in a mix of rough and smooth terrain, and was considered a playable area, notwithstanding that the golf course later designated the site as outside the playable area. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. There is no general requirement that a city council discuss the evidence it chooses not to rely on and a city council's failure to discuss opposing evidence does not necessarily mean the city council did not consider that opposing evidence. *Evans v. City of Bandon*, 74 Or LUBA 418 (2016).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Imprecision in a hearings officer's findings regarding the distance between a proposed asphalt batch plant and a greenway and trail and neighboring mobile home park provides no basis for reversal or remand, where there is evidence in the record showing those proximities and the imprecision in the findings do not establish that the hearings officer was under any misapprehension about how close the asphalt batch plant would be to the mobile home park or greenway and trail. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that efforts over the last 100 years to address landslide danger to water reservoirs have been "Herculean," is an expression of opinion, rather than a necessary finding of fact, and need not be supported by substantial evidence. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where findings identify an applicable conditional use standard that requires that conditional uses must not impair permitted uses on surrounding property, but the decision includes no findings of fact or findings explaining why the decision maker believed proposed wind turbines satisfied that standard, remand is required for adequate findings. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. It will rarely be the case that an approval standard and the facts are such that it will suffice to quote the standard and conclude that the standard is met, without any further explanation. Where a use that is not listed as a permitted or conditional use in a zone may be approved if it is of the same character or has similar impacts as uses that are listed as permitted or conditional uses in the zone, and a proposed wind turbine has external moving parts that the listed uses do not, findings that simply quote the "same character or similar impacts" standard and conclude without any explanation that the standard is met, are inadequate. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Remand for more adequate findings is required where a historic design standard requires a finding that the relationship of new construction to the street and open space between buildings is compatible with the adjacent historic buildings and the historic character of the surrounding area, but the findings address only compliance with code setback requirements, and fail to identify or address compatibility with adjacent historic buildings and the historic character of the surrounding area. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that the height of new construction is "similar" to dwellings within a historic district is insufficient to establish compliance with a standard requiring that new construction not exceed the height of historic buildings in the surrounding area, where the surrounding area includes both historic and non-historic buildings, and the findings do not identify what buildings the height is compared to, or find that the height of new construction does not exceed the height of the tallest historic building in the surrounding area. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding of compliance with a zone change standard requiring consistency with a comprehensive plan policy requiring that higher density residential uses be sited "near employment" is inadequate, where the finding does

not address proximity to employment at all, other than state that the property is adjacent to a small convenience commercial node. *Kine v. City of Bend*, 72 Or LUBA 423 (2015).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding of consistency with a comprehensive plan policy requiring that higher density residential use be sited in locations with "good access" to arterials is inadequate, where the finding states only that the site is located near an arterial, but without attempting to evaluate whether the site has or will in fact have good access to the arterial. *Kine v. City of Bend*, 72 Or LUBA 423 (2015).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that a proposed truck maintenance home occupation will comply with a 600-square-foot floor area limitation is inadequate and not supported by substantial evidence, where the findings do not address how much floor area employees will use in performing maintenance tasks, and there is no evidence in the record supporting a finding that the physical area occupied by trucks, tools, storage, and the area needed to perform maintenance tasks will occupy no more than 600 square feet. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A hearings official's failure to specifically refer in his findings to a letter submitted in support of an application during a prior phase of the local proceedings does not mean the hearings official's decision is not supported by substantial evidence. *Teen Challenge v. Lane County*, 67 Or LUBA 300 (2013).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. In denying a permit application, a hearings official need not specifically refer to a letter that was submitted in support of an application, where that letter was submitted after the evidentiary record closed and was specifically rejected by the hearings official because it was submitted late. *Teen Challenge v. Lane County*, 67 Or LUBA 300 (2013).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A hearings officer's finding that a proposed kennel operation is compatible with surrounding uses is inadequate and is not based on substantial evidence in the record, where the findings do not explain the basis for assuming that impacts from the noise and traffic associated with the kennel operation will be limited to the kennel's historic operating levels, and no condition of approval limits the operation to its historic levels. *Butcher v. Washington County*, 65 Or LUBA 263 (2012).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where the local government denies an application based on its conclusion that an applicant did not provide sufficient information, and the applicant submitted detailed information and studies regarding impacts to water quality, water flow, land stability and erosion, the findings are inadequate where they do not explain why the information that was submitted was not "sufficient." *Tidewater Contractors v. Curry County*, 65 Or LUBA 424 (2012).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Under a code variance standard that requires identification of exceptional or extraordinary circumstances applicable to the subject property that do not generally apply to other properties in the same zone, the decision-maker must conduct some fact-finding regarding circumstances on other properties in the same

zone and compare those circumstances to those affecting the subject property. *JCK Enterprises LLC v. City of Cottage Grove*, 64 Or LUBA 142 (2011).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings that the "location, size, design and operating characteristics" of a mixed-use development in a commercial zone will be compatible with surrounding properties are inadequate, where the findings do not describe any of the "operating characteristics" of the mixed-use development or evaluate whether those operating characteristics will be compatible with surrounding properties. *Poe v. City of Warrenton*, 64 Or LUBA 377 (2011).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that public facilities are adequate to accommodate the proposed conditional use, based on review of statements from the public works department and fire chief, is not supported by substantial evidence, where the record includes no statements from the public works department, and the fire chief's letter states that it is unknown whether the city water supply can accommodate the proposed use. *Poe v. City of Warrenton*, 64 Or LUBA 377 (2011).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings are inadequate to explain how a proposed waste water treatment facility on EFU land would either "force a significant change in" the adjacent farming practices or "significantly increase the cost of" an adjacent organic farming operation under ORS 215.296(1) where the findings do not explain what the "significant impacts" to the organic farming operation would be or explain how the potential for spray drift from the proposed facility would either "force a significant change in" the organic farm practices or "significantly increase the cost of" the operation. *Falcon Heights WSD v. Klamath County*, 64 Or LUBA 390 (2011).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where the evidence the county appears to rely on appears to show that state noise standards are violated by a wind energy facility at four residences, but the county only finds that the noise standards are violated at one residence, the decision must be remanded for additional findings. *Mingo v. Morrow County*, 63 Or LUBA 357 (2011).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. LUBA will remand for more adequate findings regarding a code requirement for "guaranteed access," where the local government relies upon a roadway easement on adjoining land that is not in the record and that arguably does not serve the subject property. *Devin Oil Co., Inc. v. Morrow County*, 60 Or LUBA 336 (2010).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where a county hearings officer's findings show she was persuaded that additional mitigation measures were necessary to address thermal impacts of destination resort groundwater use on a nearby cool water creek, the hearings officer's decision to accept the applicant's proposal to provide additional mitigation by reducing surface withdrawal from that cool water creek is inadequate where there was opposition testimony that the proposed mitigation would not mitigate the thermal impact. While there may be a simple answer to the opposition testimony, where that answer is missing in the record and the hearings officer's decision does not address that opposition testimony, the decision must be remanded. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A county's findings that rely on a single statement of a legislator that is a generalized statement about a large land use bill and not a statement directed at the meaning of the particular statute at issue is unpersuasive. *Friends of Yamhill County v. Yamhill County*, 58 Or LUBA 315 (2009).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings that describe the only forest practice that adjoining timber operators identified as impacted by proposed mining on forest land are adequate for purposes of a code significant change/increase standard, where the code standard does not implement the statutory significant change/increase standard, and the petitioners do not explain why the code standard requires an exhaustive description of all forest practices on nearby lands. *Comden v. Coos County*, 56 Or LUBA 214 (2008).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. While a county's failure to describe accepted farming practices on nearby lands would likely require remand under the ORS 215.296(1) significant change/increase standard or a code provision implementing that standard, such a failure is not necessarily reversible error under a similar code significant change/increase standard that does not implement the statute. Any failure to describe accepted farming practices under the code standard is harmless, where the county adopted unchallenged findings, supported by substantial evidence, that the proposed mining will not significantly affect any farm or forest practices. *Comden v. Coos County*, 56 Or LUBA 214 (2008).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that simply states that an approval standard is satisfied "as shown in" the application and oral testimony, without any attempt to state the facts relied upon or explain why the facts demonstrate compliance with the standard, is inadequate. *O'Rourke v. Union County*, 54 Or LUBA 614 (2007).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Because ORS 215.422(1)(c) explicitly limits the appeal fee that counties can charge for certain land use appeals, evidence that total annual revenues produced by over 200 county fees fall short of total planning department annual expenses is not sufficient to demonstrate that the fees collected for three types of appeals comply with ORS 215.422(1)(c). A more particularized evidentiary effort to focus on the costs and expenses associated with the three types of appeals subject to ORS 215.422(1)(c) is required. *Landwatch Lane County v. Lane County*, 52 Or LUBA 140 (2006).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where a county interprets its code to require submittal of expert studies to more precisely establish the boundary of a significant natural resource area, a hearings officer may consider expert studies from the applicant and opponents, accept and reject parts of both studies, and require protection of a natural resource area that is smaller than proposed by opponents and larger than proposed by the applicant. *Kyle v. Washington County*, 52 Or LUBA 399 (2006).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The fact that a local government could have reached the decision it did without considering and relying on improperly received evidence does not make that error harmless. When a local government relies on evidence not properly before it to render a decision, it violates the parties' substantial rights. *Wal-Mart Stores, Inc. v. City of Oregon City*, 50 Or LUBA 87 (2005).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where the relevant legal standards mandate a regimented step-by-step analysis, and the findings adopted in support of a decision to deny a permit under those legal standards are brief and do not come close to providing the level of detail that is required to address the legal standards, remand is required. *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that lands within a UGB are "unavailable" for a proposed public storage facility is inadequate, where the county fails to address evidence that there is a large surplus of vacant industrial and commercial lands within the UGB that allow public storage facilities, and there is no basis to conclude that such lands are not "available." *Friends of Yamhill County v. Yamhill County*, 49 Or LUBA 529 (2005).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings are inadequate where they simply disagree with a hearings officer's interpretation of what an approval standard requires, without explaining what the decision maker believes the standard to require or why the evidence satisfies the standard. *Knutson Family LLC v. City of Eugene*, 48 Or LUBA 399 (2005).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings that briefly describe existing parks within the city are inadequate to demonstrate that a proposed new park complies with a standard requiring that other properly zoned land is not available in sufficient quantity to meet current and projected needs. *Nielson v. City of Stayton*, 47 Or LUBA 52 (2004).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings that proposed residential development is consistent with permitted uses in the zone are inadequate to demonstrate that the proposed development is compatible with the "existing land use pattern in the area." *Doob v. Josephine County*, 47 Or LUBA 147 (2004).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Conclusory findings that proposed development is consistent with the current development pattern in the area are inadequate to demonstrate that the proposed development is "consistent with the character of the surrounding area," particularly when the local code calls for a "detailed review." *Seaton v. Josephine County*, 47 Or LUBA 178 (2004).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. That lot-of-record dwellings are allowed in the EFU zone is an insufficient basis to demonstrate compliance with a code standard requiring that a proposed lot-of-record dwelling will not materially alter the stability of the land use pattern in the area. *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. That lot-of-record dwellings are allowed in the EFU zone is an insufficient basis to demonstrate compliance with a code standard requiring a finding that the proposed dwelling will not create conditions or circumstances "contrary to the purposes or intent" of the county comprehensive plan and code. *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings that recite lengthy efforts by the city historic preservation board to encourage an applicant to preserve an historic building are adequate to show that the city met its obligations under a plan policy requiring the city to "encourage" preservation of historic structures. *Chin v. City of Corvallis*, 46 Or LUBA 1 (2003).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where a parking standard requires that parking "supply, operations and demand" be managed "to encourage economic vitality, traffic safety and livability of residential neighborhoods," a finding that additional parking that will be generated by a proposed rezoning is "negligible" is inadequate, where the finding does not explain what the local government means by the word "negligible" or why that increase will encourage economic vitality, traffic safety and livability, in the face of testimony that those attributes will be negatively affected by the proposal. *Fay v. City of Portland*, 46 Or LUBA 39 (2003).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The failure of a decision maker to list all of the evidence relied upon in making a decision is not necessarily fatal as long as the response brief directs LUBA to evidence in the record that supports the critical findings in the decision. *Lawrence v. Clackamas County*, 46 Or LUBA 101 (2003).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A city's findings are adequate where they address each of the applicable criteria in its tree removal ordinance and explain why the certified arborist's report submitted by the subdivision applicant satisfies each of those criteria. *Miller v. City of Tigard*, 46 Or LUBA 536 (2004).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where an approval standard requires a finding that a proposed use will have a "minimal adverse impact on property values," a finding that relies on a letter stating that the impact of a proposed use cannot be evaluated until the use has been established is not adequate to demonstrate that the standard is met. *Gumtow-Farrior v. Crook County*, 45 Or LUBA 612 (2003).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where an applicable approval criterion requires that a proposed use be considered to determine whether adequate public facilities are available to serve a property, a city's conclusion that the criterion is met is not adequate, where that conclusion is based on (1) prior less intensive use of the two parcels; and (2) system-wide capacity of the city's sewer and water facilities. *Robinson v. City of Silverton*, 44 Or LUBA 308 (2003).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. LUBA will remand a decision where petitioner identifies a discrepancy between the county zoning map and the map the county relied upon to approve a rezoning application, where the discrepancy may affect the county's determination that coastal shorelands are not affected by the rezoning, and the county's findings do not explain why the county did not rely on the county zoning map to establish the zoning boundary. *Doty v. Coos County*, 44 Or LUBA 448 (2003).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that a proposed destination resort is located in a setting with "high natural amenities" as required by ORS 197.445

is inadequate and not supported by substantial evidence, where neither the county's decision nor the record identifies or describes any high natural amenities near the proposed resort. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A city's finding that a proposed use will place an "excessive burden on traffic" based on a conclusion that the applicant failed to provide a traffic study that estimated the number of vehicles that would use local streets is inadequate, where there is a trip generation study in the record that provides the evidence the finding states is missing. *Oregon Child Devel. Coalition v. City of Madras,* 43 Or LUBA 184 (2002).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A county's findings regarding the infeasibility of locating a radio transmission tower on either of two city-owned lots are adequate where the findings parallel an earlier memorandum in the record regarding one of the tax lots, and that earlier memorandum addresses the infeasibility of the other tax lot, notwithstanding the county's failure to recite specific aspects of the memorandum addressing the second tax lot. *Van Nalts v. Benton County*, 42 Or LUBA 497 (2002).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings that a proposed underground shooting range cannot be detected by sight, smell or sound from adjacent residential property are adequate to explain why the proposed shooting range is compatible with adjacent property. *Chilla v. City of North Bend,* 41 Or LUBA 539 (2002).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where a petitioner does not explain why approval criteria for fill in a floodplain and coastal shoreland necessitated precise delineation of the floodplain boundaries and precise knowledge about the location, amount and nature of the fill, the local government's failure to precisely delineate and describe the floodplain and fill provides no basis for remand. *Willhoft v. City of Gold Beach,* 41 Or LUBA 130 (2001).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where a city code requires that alternative local access designs be examined and that the design chosen "best balances needs for economy, safety, efficiency and environmental compatibility," and the city's decision includes findings addressing specific environmental, traffic and safety impacts of the alternative access designs and explains why the chosen design avoids those impacts, the findings are adequate to address the criterion. *Costanzo v. City of Grants Pass,* 40 Or LUBA 471 (2001).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Failure to specifically describe the grazing practices on surrounding properties does not render a finding of compliance with the noninterference standard inadequate where the proposed nonfarm dwelling is one-half mile from the nearest grazing operation and buffered by a number of vacant lots, and no conceivable interference is identified. *Wolverton v. Crook County*, 39 Or LUBA 256 (2000).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The mere presence of residential uses on EFU-zoned properties adjacent to a proposed exception area does not demonstrate that the subject property is irrevocably committed to nonfarm uses. In considering residential uses on adjacent properties, the county must identify in its findings the conflicts or other impacts between the residential uses and the subject property that make farm use of the subject

property impracticable. *Jackson County Citizens League v. Jackson County*, 38 Or LUBA 357 (2000).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A local government's findings that a proposed development is of a greater size, scale and intensity of development than was envisioned by the developer and nearby residents are inadequate to support denial of an application where those considerations are not based on any code standards or criteria. *Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Although a decision maker is required to adopt findings that respond to relevant issues that are raised in quasi-judicial land use hearings, the decision maker is not necessarily required to adopt findings addressing particular items of evidence, provided LUBA is able to conclude that a reasonable decision maker could reach the disputed decision based on all the evidence. *Schwerdt v. City of Corvallis*, 38 Or LUBA 174 (2000).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings are inadequate, where they simply acknowledge statements that are made in a permit application and do not explain what the decision maker believes to be the relevant facts or explain why those facts lead to a conclusion that approval criteria are met. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where the local government's findings are based entirely on a faulty analysis of the evidence, LUBA will remand the decision to permit the local government to reweigh and review the evidence and adopt findings consistent with a correct analysis. *Johnson v. Clackamas County*, 37 Or LUBA 73 (1999).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A city's findings of compliance with conditional use criteria requiring that a "proposed use is consistent with the overall development character of the neighborhood with regard to building size, height, color, material and form" are conclusory and inadequate, where the city's findings do not describe either the boundaries or characteristics of the relevant neighborhood, but instead compare the proposed use to development in geographically distant parts of the city without explaining why those areas are part of the relevant neighborhood. *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A hearings officer's findings which rely on the absence of business records and the testimony of a neighbor to conclude that a nonconforming use was discontinued are supported by substantial evidence, where the findings address the conflicting evidence submitted by the applicant and explain why that evidence did not establish the continued existence of the nonconforming use. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The record in one proceeding does not include the record and hearing officer's decision of a previous conditional use application for a separate but similar use at a different location when the two determinations stem from independent requests, different parties and the decision maker did not rely on that previous

decision in approving the current application. *Buckman Community Assoc. v. City of Portland*, 35 Or LUBA 800 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The failure of findings to identify the evidence that supports the findings is not necessarily fatal, so long as the response brief or the briefs filed by other parties direct LUBA's attention to evidence in the record that supports those findings. *Johns v. City of Lincoln City*, 35 Or LUBA 421 (1999).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A county's finding of compliance with a standard requiring that a nonforest dwelling not interfere with forest practices is inadequate, where the county merely finds that the proposed dwelling presents no greater risk of fire than posed by existing residential development, and fails to address evidence that the cumulative risk of fire from the proposed dwelling and existing development will require the owner of an adjacent forestry operation to change forestry practices and incur additional costs. *Thomas v. Wasco County*, 35 Or LUBA 173 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Adequate findings of compliance with a local standard requiring that proposed nonresource uses not significantly increase the cost of accepted farm and forest practices must identify the farm and forest practices in the area, even if the local standard does not implement and thus need not be consistent with the similar statutory standard. *Thomas v. Wasco County*, 35 Or LUBA 173 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. An applicant does not carry his burden to demonstrate compliance with transportation-related criteria, where the findings supporting denial identify a flaw in the applicant's evidence resulting from conducting a traffic study in the summer when school trips would not be reflected in the study. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Petitioner's disagreement with the reasons specified by a local government for rejecting the evidence he submitted in support of a land use application provides no basis for reversal or remand. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings that the applicant has testified that applicable criteria will be met are conclusory and inadequate because they fail to identify the review standards, set out the facts relied upon or explain how those facts led to the decision. *Turrell v. Harney County*, 34 Or LUBA 423 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. For a local government to properly evaluate the quality and quantity of aggregate resources on a parcel, test holes or borings must be "representative." To be representative, a reasonable person must conclude that the local government's findings as to the quantity and quality of the resource *throughout* the subject property are supported by substantial evidence. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. County and ODOT traffic engineers' testimony and commentary is not less credible simply because it is based on the

applicant's data rather than the traffic engineers' own study. *ODOT v. City of Oregon City*, 34 Or LUBA 57 (1998).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. When a challenged decision fails to incorporate a staff report or council minutes as findings, LUBA's review of the challenged decision for adequate findings is limited to the decision itself. *Hackler v. City of Hermiston*, 33 Or LUBA 755 (1997).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The county's findings of compliance with applicable criteria are inadequate where they do not identify the relevant approval standards, set out the facts relied upon, or explain how the facts lead to the conclusion that applicable standards are satisfied. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. There is no legal requirement that a local government address in its findings conflicting evidence upon which it chooses not to rely. Where a petitioner presents conflicting evidence to the city during a local appeal, but does not raise new issues, the city may rely on findings prepared prior to the local appeal. *Tandem Development Corp. v. City of Hillsboro*, 33 Or LUBA 335 (1997).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that an unlawful partition occurred prior to the date the variance applicant took title to the property is not adequate to demonstrate that the hardship is not "self-created," where the county provides no interpretation of the term "self-created hardship" and the variance applicant knew the property had been unlawfully partitioned. *Elder v. Douglas County*, 33 Or LUBA 276 (1997).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A hearings officer's finding that other residentially zoned property "may not be developable" does not factually justify the conclusion that "there are no non-agricultural lands" with priority for development. *Alliance for Responsible Land Use v. Deschutes County*, 33 Or LUBA 12 (1997).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where petitioners challenge the county's reliance on a traffic impact study that is three years old, but petitioners do not point to evidence in the record that undermines the conclusions of that study, petitioners fail to establish that the county's decision is not based on substantial evidence. *Richards-Kreitzberg v. Marion County*, 32 Or LUBA 76 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The county's reliance on the existence of adjacent non-resource parcels in justifying a committed exception is impermissible under OAR 660-04-028(6)(c)(A) where the findings do not adequately establish how or when the adjacent parcels were created. *Johnson v. Lane County*, 31 Or LUBA 454 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings are inadequate when they rely on a consultant's summary conclusions which are not based on evidence in the record. *Friends of Metolius v. Jefferson County*, 31 Or LUBA 160 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. County findings are inadequate when they fail to interpret an applicable local regulation, and fail to identify facts upon

which the county relied in reaching its conclusions. LUBA will not overlook such inadequacies in the findings when no party cites evidence in the record that compels the interpretation and conclusion made by the county. *DLCD v. Clatsop County*, 31 Or LUBA 90 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A finding that water for a proposed dwelling will come from a neighbor's property is not supported by substantial evidence when it has not been shown that the water can be legally provided through the appropriate grant of water rights. *Furler v. Curry County*, 31 Or LUBA 1 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. OAR 660-33-030(6) requires that the "more detailed data" upon which the county may rely in determining soil capability for forest uses be related to the SCS soils classification system and, therefore, before the county can rely on more detailed data, the county must establish that the source of the data has the requisite knowledge of the classification system, including the qualifications and expertise to classify soils under the system. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. When the county relies on a 1979 conditional use permit to find that a proposed partition satisfies the county's approval criteria, the county must make affirmative findings that the conditional use permit is valid. *Tognoli v. Crook County*, 30 Or LUBA 272 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A 1B designation on the county's Goal 5 inventory means that inadequate information exists on the site to determine its nature and, therefore, a county cannot rely on a site being listed as a 1B site to conclude that aggregate uses are allowed outright. *Tognoli v. Crook County*, 30 Or LUBA 272 (1996).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. 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).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. So long as the local government relies on evidence in the record in making its findings, the evidence upon which it relies can be either oral or written. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. When a challenged decision justifies amendments to the city's comprehensive plan and zoning maps by relying on a particular development proposal, approval of the amendments must be conditioned on implementation of that proposal. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where the county identifies Big Game Habitat Range as a Goal 5 resource that conflicts with a proposed aggregate operation, it must identify the evidence upon which it relies to support its finding that the proposed quarry will have insignificant impacts on big game more than one-quarter mile away. *Palmer v. Lane County*, 29 Or LUBA 436 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. 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).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. While a local government is required to identify in its findings the facts it relies upon in reaching its decision, it is not required to explain why it chose to balance conflicting evidence in a particular way, or to identify evidence it chose not to rely on. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A local government's conclusion that required netting will have limited visual impacts on adjacent properties is unacceptably conclusory when unsupported by findings concerning how much netting is required or how high the netting must be. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. When the evidence in the record is conflicting, and the local government's findings fail to explain the basis for its conclusion or state which evidence it finds persuasive, LUBA must remand the decision for additional findings. *Moore v. Clackamas County*, 29 Or LUBA 372 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings supporting a local government determination that an existing use is lawful are inadequate if they do not interpret or apply relevant provisions of the local code and do not state the facts relied on by the local government. *Penland v. Josephine County*, 29 Or LUBA 213 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings which do not identify the ways a destination resort preliminary development plan is different from the previously approved conceptual site plan, the magnitude of such differences or why the local government believes the differences are minor, are not adequate to establish compliance with a code standard requiring the preliminary development plan to conform to the conceptual site plan and alterations, if any, to be minor in nature. *Skrepetos v. Jackson County*, 29 Or LUBA 193 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Where the local code requires the proposal have only minimal impacts on adjacent properties, considering the operating characteristics of the proposed use, the decision must identify what the operating characteristics of the proposed use are. *Friends of the Metolius v. Jefferson County*, 28 Or LUBA 591 (1995).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Local government findings of compliance with an applicable approval standard must state the facts the local government relies on and explain why those facts lead to the conclusion that the standard is satisfied. *Reeves v. Yamhill County*, 28 Or LUBA 123 (1994).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. While a local government is required to identify in its findings the facts it relied upon in reaching its decision, it is not required

to explain why it chose to balance conflicting evidence in a particular way, or to identify evidence it chose not to rely on. *Melton v. City of Cottage Grove*, 28 Or LUBA 1 (1994).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A local government decision granting design review plan approval must identify the design review plan approved. *McKenzie v. Multnomah County*, 27 Or LUBA 523 (1994).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings which identify a lack of evidence concerning road capacity and evidence concerning traffic congestion during weekend events at existing uses and a proposed agricultural/horticultural school complex are adequate to explain why a decision maker concluded the applicant failed to carry its burden concerning a code "minimal adverse impact" standard. *Brentmar v. Jackson County*, 27 Or LUBA 453 (1994).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A local government is under no obligation to specifically discuss in a challenged decision all of the evidence in the record or to explain its reasons for choosing to rely upon particular evidence over other evidence. *City of Barlow v. Clackamas County*, 26 Or LUBA 375 (1994).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. It is erroneous for a county to determine a farm and forest zoned area has a residential character based on the existence of former homesites in the area. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. The alleged failure of the minutes of a local government's proceedings to specifically identify documents the local government relied upon provides no basis for striking those documents from the record. The function of findings of fact is to identify the evidence relied upon, there is no legal requirement that the minutes perform that function. *McPeek v. Coos County*, 25 Or LUBA 805 (1993).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. A local government decision approving a permit will be remanded to the local government if the decision fails to (1) identify the relevant approval standards, (2) set out the facts believed and relied upon by the local decision maker, and (3) explain how those facts lead to a decision that the proposal complies with the approval standards. *Lathrop v. Wallowa County*, 25 Or LUBA 693 (1993).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Although a local government is not required to discuss in its findings the evidence it does *not* rely on to support its decision, doing so may improve its chances of success on appeal to LUBA. LUBA will not read such findings as improperly shifting the burden of proof, where the findings read as a whole show the local government was only trying to demonstrate that it considered all relevant evidence. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Findings explaining how the existing limited rural industrial uses near a proposed aggregate processing facility have not affected the historical stability of an EFU-zoned area, and that the existing and proposed industrial uses may discourage intrusion of rural residential development, are adequate to demonstrate

compliance with an EFU zone "stability" standard. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

1.4.3 Administrative Law – Adequacy of Findings – Facts Relied on. Statements which merely summarize the evidence in the record, and do not state what the decision maker believes to be true, are not adequate findings of fact. *Heiller v. Josephine County*, 23 Or LUBA 551 (1992).