

1.7 Administrative Law – Evidence Which Clearly Supports. The “clearly supports” standard at ORS 197.835(11)(b) does not authorize LUBA to affirm a decision notwithstanding inadequate findings, where the lack of adequate findings concern a subjective approval standard under Goal 16 requiring that the local government, in approving development in an estuary, identify the “public need [for] and gain” from the project warrant any modification or loss to estuarine values that would result from the development, and evaluate and minimize the adverse impacts of development. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

1.7 Administrative Law – Evidence Which Clearly Supports. 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).

1.7 Administrative Law – Evidence Which Clearly Supports. A finding that is ambiguous regarding whether a restaurant and meeting area in a destination resort each provide 100 seats, as required by local code, is not a basis for reversal or remand, where all the evidence in the record indicates that the two facilities each provide 100 seats, and the petitioner cites no contrary evidence. Under these circumstances, LUBA will affirm that portion of the decision notwithstanding inadequate findings, because the evidence in the record “clearly supports” a finding that the 100-seat requirement is met. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 540 (2016).

1.7 Administrative Law – Evidence Which Clearly Supports. Where there is conflicting evidence regarding a subjective code standard requiring a finding that a destination resort expansion is “integral” to the remainder of the resort, LUBA will decline to use its authority under ORS 197.835(11)(b) to affirm a decision notwithstanding inadequate findings, based on evidence that “clearly supports” the decision. *Central Oregon Landwatch v. Deschutes County*, 74 Or LUBA 540 (2016).

1.7 Administrative Law – Evidence Which Clearly Supports. Although ORS 197.835(11)(b) authorizes LUBA to overlook defective findings where evidence in the record “clearly supports the decision,” ORS 197.835(11)(b) does not authorize a local government’s total failure to identify any supporting findings in a case that is factually and legally complex. *Pinnacle Alliance Group, LLC v. City of Sisters*, 73 Or LUBA 169 (2016).

1.7 Administrative Law – Evidence Which Clearly Supports. Under ORS 197.835(11)(b), LUBA may overlook inadequate findings where the evidence makes a finding of compliance with the criteria obvious or inevitable. But ORS 197.835(11)(b) generally will not apply where the criteria are subjective and does not apply in a case where an applicant for approval of wind turbines relies on one kind of evidence, opponents rely heavily on a different kind of evidence, and the decision makes no attempt to identify which evidence the decision maker found persuasive or why. *Burgermeister v. Tillamook County*, 73 Or LUBA 291 (2016).

1.7 Administrative Law – Evidence Which Clearly Supports. ORS 197.835(11)(b) authorizes LUBA to overlook “defective” findings regarding a relevant legal standard, if a party can identify

evidence that “clearly supports” a decision that the standard is met. But where the legal standard requires completion of a condition within a “reasonable time,” there are no findings addressing the “reasonable time” standard, and the evidence falls far short of clearly supporting a decision that a 10-year delay in completing the condition was a “reasonable time,” ORS 197.835(11)(b) does not apply. *Space Age Fuel, Inc. v. Umatilla County*, 72 Or LUBA 92 (2015).

1.7 Administrative Law – Evidence Which Clearly Supports. The ORS 197.835(11)(b) “clearly supports” standard is considerably more demanding than the substantial evidence standard, and is generally only appropriately applied to approval standards that are objective or do not require interpretation or much discretionary judgment. *Del Rio Vineyards, LLC v. Jackson County*, 70 Or LUBA 368 (2014).

1.7 Administrative Law – Evidence Which Clearly Supports. The ORS 197.835(11)(b) “clearly supports” standard is not met where LUBA must weigh conflicting evidence or resolve disputes over the credibility of experts. *STOP Tigard Oswego Project, LLC v. City of West Linn*, 68 Or LUBA 360 (2013).

1.7 Administrative Law – Evidence Which Clearly Supports. Notwithstanding that a city erroneously determined that a particular section of the development code exempted a permit applicant from development code buffer requirements, where another section of the development code cited by the petitioner clearly does exempt the permit applicant from the buffer requirements, LUBA will affirm the city’s decision. ORS 197.835(11)(b). *Nielsen v. City of Gresham*, 66 Or LUBA 24 (2012).

1.7 Administrative Law – Evidence Which Clearly Supports. Under ORS 215.283(2)(k), buildings “necessary” for the operation of a waste disposal facility are permitted. Where the findings are insufficient, but the record includes evidence which clearly establishes that proposed buildings are “necessary,” and no contrary evidence in the record is cited, LUBA will affirm the conclusion that the proposed buildings are “necessary.” *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

1.7 Administrative Law – Evidence Which Clearly Supports. LUBA will decline to address arguments under ORS 197.835(11)(b) that the record “clearly supports” a finding that use of land for two recreational vehicle pads is “accessory” to a dwelling on an adjacent lot, where the critical unresolved issue is not evidentiary but rather interpretative. *Fessler v. City of Fossil*, 55 Or LUBA 1 (2007).

1.7 Administrative Law – Evidence Which Clearly Supports. LUBA will not affirm a decision under the harmless error doctrine or ORS 197.835(11)(b) notwithstanding failure to adopt findings applicable to conditional uses allowed in the zone, based on findings adopted to address similar site review standards, where it is not clear that the zoning district provides for the proposed use at all. *Central Oregon Landwatch v. Deschutes County*, 52 Or LUBA 582 (2006).

1.7 Administrative Law – Evidence Which Clearly Supports. Where the record clearly reflects that a local government adopted a condition of approval that limited full development until completion of a direct connection from the proposed development to a nearby street because it was

not convinced that other alternatives proposed by the applicant would solve the anticipated traffic congestion problem, any failure to adopt findings explaining the city's rejection of the applicant's alternatives does not provide a basis for reversal or remand. *Premier Development v. City of McMinnville*, 50 Or LUBA 666 (2005).

1.7 Administrative Law – Evidence Which Clearly Supports. Where a county concludes that conflicts with adjoining rural residential development commit a property to nonresource uses, the county's findings addressing OAR 660-004-0018(2)(b)(B) must explain why residential development of the subject property will not present the same risk of committing other adjacent resource lands to nonresource uses. Given the complex nature of that explanation, evidence of conflicts with rural residential uses do not "clearly support" a finding that residential zoning of the subject property will not commit adjacent resource lands, for purposes of ORS 197.835(11)(b). *Friends of Douglas County v. Douglas County*, 46 Or LUBA 757 (2004).

1.7 Administrative Law – Evidence Which Clearly Supports. The record does not "clearly support" a finding that petitioner's property is undevelopable, relieving a subdivision applicant of the obligation to provide access to petitioner's property, where the record includes conflicting expert testimony on that point, and the city's decision can be read to agree with petitioner's evidence that his property is developable petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

1.7 Administrative Law – Evidence Which Clearly Supports. LUBA will remand a county decision that alternatives to siting a radio transmission tower on EFU-zoned land are infeasible where the county did not adopt findings explaining why six of the identified sites are infeasible and the parties do not cite to evidence in the record that "clearly supports" the county's decision that the six sites are infeasible. *Van Nalts v. Benton County*, 42 Or LUBA 497 (2002).

1.7 Administrative Law – Evidence Which Clearly Supports. Evidence that a proposed cellular communications tower on EFU land is within an optimal area for telecommunication coverage is insufficient to allow LUBA to conclude, under ORS 197.835(11)(b), that the record "clearly supports" a finding of compliance with ORS 215.275, which requires that the local government consider reasonable alternatives to siting the tower on EFU-zoned land. *Central Klamath County CAT v. Klamath County*, 40 Or LUBA 129 (2001).

1.7 Administrative Law – Evidence Which Clearly Supports. Although LUBA may overlook a city's failure to adopt findings addressing an approval criterion for signs under ORS 197.835(11)(b) where the record clearly supports the decision, where the record provides only an idea of what the signs will look like and the criterion requires a highly subjective judgment, application of ORS 197.835(11)(b) is not appropriate. *Hubenthal v. City of Woodburn*, 39 Or LUBA 20 (2000).

1.7 Administrative Law – Evidence Which Clearly Supports. Evidence that certain potential sites for a water reservoir inside the urban growth boundary are too small or would be technically difficult and costly to develop and that locating water treatment facilities on rural EFU-zoned land next to wells would have cost advantages and certain technical advantages is not sufficient to "clearly support" a decision that it is not feasible to locate the reservoir and treatment facilities on

urban land rather than on rural EFU-zoned land. *Dayton Prairie Water Assoc. v. Yamhill County*, 38 Or LUBA 14 (2000).

1.7 Administrative Law – Evidence Which Clearly Supports. LUBA will not affirm a decision notwithstanding inadequate findings of compliance with approval criteria pursuant to ORS 197.835(11)(b), where the criterion at issue requires a subjective judgment regarding the consistency of the proposed use with the development character of the neighborhood, and the parties fail to identify evidence in the record demonstrating that compliance with the criterion is “obvious” or “inevitable.” *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

1.7 Administrative Law – Evidence Which Clearly Supports. Evidence that a proposed asphalt plant will comply with DEQ requirements and that its emissions do not pose human health risks does not “clearly support” a finding of compliance with a plan provision requiring that the local government consider the proximity of proposed industrial uses “likely to pose a threat to air quality” with residential uses, particularly where it is not clear that the provision is limited to emissions regulated by DEQ and those that pose human health risks. *City of Newberg v. Yamhill County*, 36 Or LUBA 473 (1999).

1.7 Administrative Law – Evidence Which Clearly Supports. LUBA will not exercise its authority under ORS 197.835(11)(b) to affirm a decision notwithstanding inadequate findings, where the local government fails to adopt findings of compliance with a criterion requiring that planned unit development be designed to minimize the number and size of cuts and fills, and it is not obvious from evidence in the record that the PUD design minimizes cuts and fills. *Salo v. City of Oregon City*, 36 Or LUBA 415 (1999).

1.7 Administrative Law – Evidence Which Clearly Supports. A city cannot find it is feasible to comply with all approval criteria based on a site plan for only four of the total 15 lots and defer submission of a complete site plan, and the record does not clearly support a determination of compliance with the approval criteria where the complete site plan is not included in the record. *Deal v. City of Hermiston*, 35 Or LUBA 16 (1998).

1.7 Administrative Law – Evidence Which Clearly Supports. LUBA cannot determine whether inadequate findings are “clearly supported” by the record under ORS 197.835(11)(b) where the local provision to which the findings are directed is subject to numerous interpretations and the decision does not contain an adequate interpretation of that local provision. LUBA will not both fashion an interpretation of a local provision and then review the record for evidence clearly supporting findings of compliance with that provision, as interpreted. *Doob v. City of Grants Pass*, 34 Or LUBA 480 (1998).

1.7 Administrative Law – Evidence Which Clearly Supports. Evidence in the record that may support an intended future conditional use application, but does not address the approval criteria of the present decision, changing the designation and zoning of property, does not clearly support a conclusion that a decision approving the designation and zone change complies with applicable criteria. *Larvik v. City of La Grande*, 34 Or LUBA 467 (1998).

1.7 Administrative Law – Evidence Which Clearly Supports. Where local standards require that there be a “demonstrated public need” for a proposed subdivision of five-acre lots, letters from real estate agents describing the lack of listings for five-acre parcels do not “clearly support” a finding of demonstrated public need for the subdivision absent evidence relating the lack of listings to an identified need. *Turrell v. Harney County*, 34 Or LUBA 423 (1998).

1.7 Administrative Law – Evidence Which Clearly Supports. A city’s error in not including findings addressing certain conditions of preliminary subdivision and PUD plan approval provides no basis for reversal or remand where the parties identify evidence in the record that clearly shows compliance with the conditions. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

1.7 Administrative Law – Evidence Which Clearly Supports. Where the evidence supporting an alternative plan amendment that was not selected also supports the alternative plan amendment that was selected in a legislative future streets plan amendment, the decision is supported by an adequate factual base. *Fogarty v. City of Gresham*, 34 Or LUBA 309 (1998).

1.7 Administrative Law – Evidence Which Clearly Supports. ORS 197.835(11)(b) allows LUBA to overlook minor defects in local government findings when substantiating evidence makes the local government’s decision obvious or inevitable; it does not authorize LUBA to disregard the local government’s actual findings or to read into those findings language that is not stated. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

1.7 Administrative Law – Evidence Which Clearly Supports. Under ORS 197.835(11)(b), LUBA is authorized to review the findings and conclusions made by the governing body and correct minor oversights or omissions; however, the county’s unexplained and unsupported determination of compliance with applicable criteria is not a minor oversight, and LUBA will not analyze the record and substantiate the county’s conclusions. *Harcourt v. Marion County*, 33 Or LUBA 400 (1997).

1.7 Administrative Law – Evidence Which Clearly Supports. Where there is conflicting evidence in the record regarding whether intervenor’s application proposes development within a flood plain, LUBA cannot affirm the city’s decision under ORS 197.835(11)(b) because the evidence does not “clearly support” a decision that the application does not propose development in the flood plain. *Venable v. City of Albany*, 33 Or LUBA 1 (1997).

1.7 Administrative Law – Evidence Which Clearly Supports. 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).

1.7 Administrative Law – Evidence Which Clearly Supports. While ORS 197.835(9) requires LUBA to affirm a local government decision in the absence of adequate findings if the parties identify evidence that “clearly supports” the decision, “clearly supports” will be interpreted narrowly to mean “makes obvious” or “makes inevitable.” *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.7 Administrative Law – Evidence Which Clearly Supports. ORS 197.835(9)(b) and 197.829(2) authorize LUBA to remedy minor oversights and imperfections in local government land use decisions, but do not permit or require LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence, the preparation of adequate findings and the interpretation of comprehensive plans and local land use regulations. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101 (1995).

1.7 Administrative Law – Evidence Which Clearly Supports. Evidence which establishes there are markets for farm products from the subject property, but does not address whether products of the proposed farm will “contribute substantially” to those markets, agricultural processors and the local agricultural economy does not “clearly support” a determination that the proposed farm use satisfies a code standard requiring that “products from the farm unit contribute substantially to the agricultural economy, to agricultural processors and [to] farm markets.” *Kunze v. Clackamas County*, 27 Or LUBA 130 (1994).

1.7 Administrative Law – Evidence Which Clearly Supports. Where there is conflicting expert testimony in the record, such evidence does not “clearly support” the challenged decision pursuant to ORS 197.835(9)(b). *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

1.7 Administrative Law – Evidence Which Clearly Supports. Where evidence in the record is conflicting, or provides a reasonable basis for different conclusions, such evidence does not “clearly support” the challenged decision under ORS 197.835(9)(b). *Waugh v. Coos County*, 26 Or LUBA 300 (1993).

1.7 Administrative Law – Evidence Which Clearly Supports. Where the relevant approval standards are subjective, it is less likely evidence will “clearly support” a decision that the approval standards are met under ORS 197.835(9)(b). *Waugh v. Coos County*, 26 Or LUBA 300 (1993).

1.7 Administrative Law – Evidence Which Clearly Supports. Where a county code provision requires that there be no other “feasible location” for a proposed use, county findings that do not explain *why* identified alternative sites are not “feasible locations” for the proposed use are impermissibly conclusory, and LUBA will remand the challenged decision unless “the parties identify relevant evidence in the record which clearly supports” the county’s decision in this regard. *Simmons v. Marion County*, 25 Or LUBA 647 (1993).

1.7 Administrative Law – Evidence Which Clearly Supports. Where the challenged decision lacks adequate findings of compliance with a relevant approval standard, LUBA will not reverse or remand if the parties cite evidence in the record that “clearly supports” a determination of compliance with the standard. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

1.7 Administrative Law – Evidence Which Clearly Supports. Where the challenged decision does not include interpretations of relevant approval standards, and the provisions in question are ambiguous and capable of more than one sustainable interpretation, it is not possible for LUBA to determine, pursuant to ORS 197.830(9)(b), whether the evidence in the record “clearly supports”

the challenged decision. *Murphy Citizens Advisory Comm. v. Josephine County*, 25 Or LUBA 312 (1993).

1.7 Administrative Law – Evidence Which Clearly Supports. The evidence cited by the parties does not “clearly support” a challenged local government decision where it is not clear what the relevant standards are or whether the proposed use is one allowed in the underlying zoning district. *Ruff v. Harney County*, 23 Or LUBA 521 (1992).

1.7 Administrative Law – Evidence Which Clearly Supports. Evidence that (1) people had expressed support for the proposed business, (2) there is no similar use in the particular community, and (3) some people want to utilize the services of the proposed use, does not “clearly support” a determination that there is a “public need” for the proposed use. *Ruff v. Harney County*, 23 Or LUBA 521 (1992).

1.7 Administrative Law – Evidence Which Clearly Supports. Evidence that soils on a particular parcel are not particularly good for farming does not clearly support a determination that a proposed nonresource dwelling will not materially alter the stability of the land use pattern of the area, or be incompatible or interfere with adjacent farm or forest uses. *Veach v. Wasco County*, 23 Or LUBA 492 (1992).

1.7 Administrative Law – Evidence Which Clearly Supports. The “evidence * * * which clearly supports the decision” standard of ORS 197.835(9)(b) imposes a higher evidentiary standard than the “substantial evidence” standard of ORS 197.835(7)(a)(C). *Friedman v. Yamhill County*, 23 Or LUBA 306 (1992).

1.7 Administrative Law – Evidence Which Clearly Supports. Testimony concerning a lack of land zoned for rural residential development does not “clearly support” a decision that there is a demonstrable need or market demand for land zoned for rural residential development, where the findings do not explain or justify the nature of the need to be served by the rezoning or the area used in analyzing need and market demand, and the record includes evidence of a significant amount of vacant land in the general area of the property to be rezoned that is already zoned for rural residential development. *Friedman v. Yamhill County*, 23 Or LUBA 306 (1992).