

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. A condition of approval requiring that an applicant construct a proposed fence between a proposed trail and adjoining farms; specifying only that the proposed fence must be “capable of preventing dogs and people from entering adjacent farm fields”; punting all determinations regarding fence design, materials, construction, etc. to a subsequent master planning process that offers no opportunity for a public hearing or other public input; and allowing adjacent landowners to opt out of installing a fence on their property line is inadequate where the county relies on the proposed fence to address a wide variety of different potential impacts, which might require different fence designs, materials, construction techniques, and maintenance routines in order to ensure that the trail will not cause significant impacts on farm practices for purposes of the farm impacts test at ORS 215.296(1). Such a condition is also not clear and objective for purposes of ORS 215.296(2). *Van Dyke v. Yamhill County*, 80 Or LUBA 348 (2019).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Where a county determines that a property qualifies for a forest template dwelling under ORS 215.750 because at least three dwellings existed on surrounding lots or parcels on January 1, 1993, based on a statement of the applicant, a recollection of the prior owner of one of the surrounding dwellings, an email from a contractor who worked on one of the surrounding dwellings, and a statement by the tax assessor that its records showed a dwelling in place on January 1, 1993, but where LUBA concludes that the county erred in accepting the email, where LUBA cannot determine whether the county would have reached the same conclusion without the email, and where the county’s findings failed to address evidence that the tax rolls indicate existence of the dwelling as of July 1993 rather than January 1993, LUBA will remand for the county to adopt adequate findings. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Absent a legal definition for how the center point of a property must be established for purposes of determining whether it qualifies for a forest template dwelling under ORS 215.750, a county errs by not explaining the basis for its conclusion that its chosen method is the most appropriate and by not addressing opponents’ arguments challenging that method. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

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whether it qualifies for a forest template dwelling under ORS 215.750, a county errs by not explaining the basis for its conclusion that its chosen method is the most appropriate and by not addressing opponents' arguments challenging that method. *Eng v. Wallowa County*, 79 Or LUBA 421 (2019).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. 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).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. When a county has evaluated facts, evidence, and argument in the record in reaching its decision and adopted findings in support of its decision, it is not necessary for the county to incorporate specific documents as findings. *Wachal v. Linn County*, 78 Or LUBA 227 (2018).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. When comprehensive plan policies are not mandatory approval standards for a land use application, but the application must be evaluated for consistency with applicable plan policies, the evaluation may require some weighing and balancing of competing policy directions embodied in the applicable plan provisions. The local government's evaluation, weighing and balancing of competing interests as well as ambiguous comprehensive plan provisions are entitled to a deferential standard of review under ORS 197.829(1)(a)–(c) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 245 (2018).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. When the decision maker has determined that the application must be denied based on findings of noncompliance with one or more approval standards, the decision maker is not obligated to adopt findings of compliance or noncompliance with all approval standards. LUBA has no reason to remand a decision it would otherwise affirm to require the decision maker to adopt such findings. *Yamhill Creek Solar, LLC v. Yamhill County*, 78 Or LUBA 245 (2018).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. When a city modifies a condition of approval in lieu of citing specific evidence and findings, the decision will be remanded for the city to adopt more adequate findings based on substantial evidence regarding compliance with local code. If the city cannot determine based on substantial evidence in the record that local codes are complied with, and the city chooses to defer that issue to a subsequent proceeding, that subsequent proceeding must provide notice and opportunity for public participation. *Dreyer v. City of Eugene*, 78 Or LUBA 391 (2018).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. LUBA will reject a petitioner's challenges to a local government's conclusion that evidence of mere intent and capability to provide training or issue certifications is sufficient to demonstrate that the facility qualifies as a "firearms training facility" under ORS 197.770, where the petitioner does not acknowledge or challenge the local government's alternative findings that the facility had in fact

provided training and issued certification sufficient to demonstrate that the facility qualifies as a “firearms training facility.” *H.T. Rea Farming Corp. v. Umatilla County*, 71 Or LUBA 125 (2015).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Where the final decision consists of a single page stating that the application is “approved with conditions” and an attached staff report, which includes findings of compliance with approval standards and recommended conditions of approval, LUBA will conclude that the final decision adopts the staff report as incorporated findings and conditions. *Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Remand is necessary where the decision fails to adopt any findings addressing an applicable standard that limits fill to 20 feet of the “edge of the shoulder of driveways,” even if the city implicitly adopted the applicant’s position that the edge of a parking lot constitutes the edge of the shoulder of a “driveway,” where the site plan appears to show fill placement more than 20 feet from the edge of the parking lot. *Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. ORS 197.610(2) provides that a local government need not provide notice of hearing to DLCD if the local government concludes that no statewide planning goals apply. However, the failure to adopt in the final decision *express* findings that no goals apply is not a basis for remand, where no statute requires express findings that the goals do not apply and the petitioner fails to demonstrate that any goals in fact do apply. *Conte v. City of Eugene*, 65 Or LUBA 326 (2012).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Remand is necessary where a traffic manual requires that “local data” should be used to generate traffic counts when a proposed large format store falls outside the size range for that type of use, but the local government does not require that traffic counts be derived from local data, or adopt reviewable findings or an interpretation that explain why that requirement can be ignored. *Keep Keizer Livable v. City of Keizer*, 64 Or LUBA 53 (2011).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. A permit decision consisting of a checklist with marginal notations that approval criteria are “Satisfied” or “Conditionally Satisfied” falls short of providing the findings and explanation why the evidence shows that the criteria are satisfied that is required by ORS 215.416(9). *Olstedt v. Clatsop County*, 62 Or LUBA 131 (2010).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. A county errs in failing to address whether a mitigation plan for a destination resort is consistent with applicable comprehensive plan policies governing wildlife protection, and instead finding that issues raised regarding compliance with those policies will be addressed by requiring the applicant to obtain approval of the plan from the Oregon Department of Fish and Wildlife. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Arguments that in approving a tentative subdivision plat a city is required to adopt findings addressing ORS

195.250 to 197.260 do not provide a basis for reversal or remand, where the statutes simply authorize local governments to require a geotechnical report before issuing a building permit for properties located in landslide hazard “further review areas,” and the challenged decision does not approve a building permit for property located in a “further review area.” *Papadopoulos v. City of Corvallis*, 59 Or LUBA 384 (2009).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Because ORS 197.763(6)(e) allows an applicant the opportunity to submit final written argument, which may include proposed findings, it is consistent with the statutory scheme to allow an applicant to submit revised proposed findings or conditions of approval and arguments in favor of those revised findings or conditions of approval after the decision maker’s tentative oral decision in circumstances where planning staff has objected to some proposed findings or conditions and suggested modified findings or conditions. *Columbia Riverkeeper v. Clatsop County*, 58 Or LUBA 190 (2009).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. ORS 197.763 does not require local governments to treat staff-generated proposed findings that are submitted to the final decision maker for review and adoption at the final meeting as a “staff report” that must be made available to the public seven days prior to the meeting. Absent local provisions to the contrary, there is no right for parties to review or rebut proposed findings prior to their adoption. *Frewing v. City of Tigard*, 52 Or LUBA 518 (2006).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. A local government may not avoid the obligation to adopt findings addressing whether a proposed plan amendment complies with the Transportation Planning Rule (TPR) by relying on subsequent permit approvals to address traffic impacts of uses allowed by the amendment, where the criteria governing permit approvals do not require compliance with the TPR or include standards similar to TPR standards. *Staus v. City of Corvallis*, 48 Or LUBA 254 (2004).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Because ORS 227.175(10) specifies that a *de novo* hearing on a permit application is not limited to the issues raised in the local notice of appeal, a city errs in failing to address an issue raised before the local appeal body on the grounds that the issue was not raised in the notice of local appeal. *Cotter v. City of Portland*, 46 Or LUBA 612 (2004).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. An ordinance that allows an up-or-down vote by the county electorate on permit approval decisions is incompatible with, and therefore preempted by, ORS 215.402, which requires that approval or denial of permit applications be governed by standards and criteria set forth in the county’s code and findings explaining why the proposal complies or fails to comply with those standards. *Sievers v. Hood River County*, 46 Or LUBA 635 (2004).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. ORS 836.623(1) requires explanatory findings addressing evidence that public safety requires a higher level of protection than the minimum set forth under the Airport Transportation Planning rule, even if the

local government rejects that evidence and concludes that existing standards are sufficient to protect public safety. *Graham Oil Co. v. City of North Bend*, 44 Or LUBA 18 (2003).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. It is inconsistent with a county’s findings obligation under ORS 215.416(9) for the county to simply declare, without explanation, that it prefers the staff count of existing dwellings in the area and is not persuaded by petitioners’ evidence of fewer dwellings, where petitioners provided specific, direct evidence supporting their dwelling count, and the staff figure is conclusory and based on evidence not in the record. *Matiaco v. Columbia County*, 42 Or LUBA 277 (2002).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. A local government may find compliance with approval criteria by finding that the proposed means to achieve compliance is feasible, and imposing conditions of approval to ensure that the criteria are met. In the alternative, a local government may defer finding compliance with the criteria, but only by observing statutory notice and hearing requirements when making the deferred finding of compliance. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. A city’s finding that it is feasible to comply with an approval standard requiring that public facilities can accommodate the proposed use is supported by substantial evidence, where the city conditions approval on the applicant making improvements to an intersection, including improvements that ODOT had imposed on a previous application for a more traffic-intensive use on the subject property. *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. The practice of incorporating other documents as findings runs the risk of adopting inconsistent findings. However, where a decision expressly incorporates other documents as findings, such an express incorporation is sufficient to adopt the other document as findings. *Hannah v. City of Eugene*, 35 Or LUBA 1 (1998).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Under ORS 215.296(1), a local government must identify farm and forest uses on land surrounding the subject parcel and examine the practices necessary to continue those uses. The absence of findings sufficient to demonstrate compliance with ORS 215.296(1) undermines the conclusion that there will be no conflicts with surrounding farm or forest uses under Goal 5. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. A local government misconstrues the meaning of “intensively developed recreational uses” under OAR 660-06-025(4)(e) when it assesses intensity as a product of the relative density of the proposed use with respect to the undeveloped portions of the parcel. *Donnelly v. Curry County*, 33 Or LUBA 624 (1997).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. For purposes of determining whether an RV camp is “intensively developed” and hence inappropriate “for a forest environment” under the Goal 4 Rule, a local government must compare the proposed use to other

campgrounds on forest lands, or establish why it is appropriate to compare the proposed use with RV parks on nonresource lands. *Donnelly v. Curry County*, 33 Or LUBA 624 (1997).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. To comply with OAR 660-06-025(5)(a), a local government’s findings must describe the farm or forest practices on adjacent and nearby forest lands, as well as explain why the proposed use does not significantly affect those practices. Findings that do not address all nearby lands and that simply refer to an adjacent property as a “woodlot” where a “small flock of sheep” is raised are inadequate. *Donnelly v. Curry County*, 33 Or LUBA 624 (1997).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Comments made by city council members during the course of their deliberations that are not reflected in the county’s final written findings are not relevant in determining whether the county complied with ORS 227.173(2). *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Absent local code provisions extending such a right, parties have no right to rebut proposed findings. *Sorte v. City of Newport*, 26 Or LUBA 236 (1993).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. 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).

25.3.6 Local Government Procedures – Compliance with Statutes – Findings. Where a local government concludes a permit applicant has submitted insufficient evidence to demonstrate it is feasible to comply with an applicable approval criterion, it may defer the required determination of compliance with that standard to a later stage in the approval process, but must assure that statutory notice and hearing requirements are observed in that later stage of approval. *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992).