

1 “(b) All written testimony and all exhibits, maps, documents or other written
2 materials incorporated into the record or placed before, and not rejected
3 by, the final decision maker, during the course of the proceedings before the
4 final decision maker.”

5 Petitioners contend that the disputed items were placed before the city council during the
6 course of the proceedings. The city has not argued otherwise, and the city council considered the
7 draft findings, suggested changes, voted on changes, and eventually adopted amended findings and
8 minutes. Record 25-29. We are directed to nothing in the record indicating that the city council
9 ever rejected the draft findings and minutes. The city argues that by adopting different findings and
10 minutes, the city necessarily rejected the draft findings and minutes, and therefore they are properly
11 excluded from the record.

12 We do not agree with the city that the mere fact that the drafts were not adopted as the final
13 decision and minutes of the city means that they were rejected for purposes of the record. When a
14 local government rejects materials and excludes those materials from the record, the local
15 government may not consider or rely on those materials in making its decision. In the present case,
16 it is clear that the drafts were not rejected, but were carefully considered and extensively debated.
17 The fact that they were not adopted verbatim in no way operates to reject the drafts as part of the
18 record. Applicants and opponents often submit proposed findings for the final decision maker to
19 consider. Local governments rarely adopt those findings without making some changes. Those
20 proposed findings, however, are properly part of the record. That is what happened in the present
21 case. The draft findings and
22 minutes were placed before the city council, and they were not rejected. They are therefore part of
23 the record and must be included in a supplemental record.

1 Petitioners' second and third record objections are sustained. The city shall have 14 days
2 from the date of this order to submit a second supplemental record.

3 Dated this 5th day of May, 2004.
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11 Michael A. Holstun
 Board Chair