

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could infer from photographs that show the front and two sides of a dwelling that the pictured dwelling has “intact exterior walls and roof structure,” as required by ORS 215.283(1)(s)(A) for approval of a replacement dwelling in an exclusive farm use zone. *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the evidence shows that a house had a kitchen sink, toilet and bathing facilities that were connected to a pipe that exited the house and traveled underground to a holding and disposal tank of some sort, that evidence is sufficient to establish that the dwelling had indoor plumbing that was connected to “a sanitary waste disposal system,” as required by ORS 215.283(1)(s)(B) for approval of a replacement dwelling in an exclusive farm use zone. ORS 215.283(1)(s)(B) does not require that the applicant establish that the required “sanitary waste disposal system” qualifies as a “subsurface sewage disposal system,” as defined by ORS 454.605(13). *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will affirm a county’s finding that fire protection measures that typically apply to logging operations are sufficient to ensure that a proposed mining operation in a forest zone will not significantly increase fire hazards, notwithstanding that a permanent mining operation will have greater duration and intensity than a seasonal logging operation, where the petitioners cite to no evidence substantiating their assertion that the nature and intensity of the mining operation require more stringent fire protection measures than logging operations. *Comden v. Coos County*, 56 Or LUBA 214 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. A conclusion that the 374-foot elevation corresponds to the top of high bank, characterized by “an abrupt or noticeable change from a steeper grade to a less steep grade,” is not supported by substantial evidence, where evidence in the record indicates that the 374-foot elevation is one point on a barely perceptible slope with no perceptible change in grade. *The Piculell Group v. City of Eugene*, 56 Or LUBA 298 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an applicant seeking to establish that a proposed mining site qualifies as a significant aggregate resource site does not argue to the county that opponents’ data from off-site wells is consistent with data from the applicant’s on-site wells or that the data from the off-site wells is unreliable because it was not collected under the supervision of a geologist, it is not unreasonable for the county to rely on the opponents’ evidence to conclude that the two on-site borings were not sufficient to establish that a 117-acre mining site qualifies as a significant aggregate resource site. *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where two 25-foot test pits show an aggregate layer that is at least 20 feet deep and shows no sign of diminishing and the decision maker does not seem to have appreciated that the test pits were consistent with the first 25 feet of two deep borings located elsewhere on the site that showed an

aggregate layer of far more than the 25-foot width required to qualify as a significant aggregate resource site under OAR 660-023-0180(3)(d)(B)(ii), remand is required so that the county can make it clearer that it understood the significance of the two 25-foot test pits. *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that rural residential development will have “minimal impact” on wildlife habitat is not supported by substantial evidence, where the only evidence relied upon is a study that addressed a different proposal under which one-fifth of the property would have been placed in a conservation easement, and the county fails to impose or require such a condition or easement, or explain why the proposed development satisfies the minimal impact standard without such a condition. *Lofgren v. Jackson County*, 55 Or LUBA 126 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city finding that the “top of the bank” is located entirely within 50 horizontal feet of the high water line is not supported by substantial evidence, where the applicant submitted a survey showing that at two points the top of the bank is further than 50 horizontal feet, and the city cites no specific evidence to the contrary. *Kingsley v. City of Portland*, 55 Or LUBA 256 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning staff report that takes the position that a proposed development is not in a fire hazard area can constitute substantial evidence that the development is not located in a fire hazard area, where the position in the planning staff report is unchallenged. *Pete’s Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer’s conclusion that a fence between a public park and grazing land is sufficient to ensure compliance with ORS 215.296(1) is supported by substantial evidence, notwithstanding the possibility that dogs may exit the park through an unfenced boundary and travel across intervening parcels to harass cattle, where there are no reported incidents of trespass across the unfenced boundaries and only speculation to support the possibility. *Rural Thurston Inc. v. Lane County*, 55 Or LUBA 382 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. Remand is necessary where the city concludes based on petitioner’s traffic impact analysis that proposed development will cause intersection performance to fall below the minimum standard, but the city misconstrues the analysis, which indicates that the proposed development will not cause the intersection to fall below the minimum performance standard. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. An applicant’s experience as a geologist does not necessarily qualify her to testify as an expert on the feasibility of constructing driveway access that complies with maximum finished grade requirements. *Lenox v. Jackson County*, 54 Or LUBA 272 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. That a conditional use permit application is deemed complete under ORS 227.178 does not necessarily mean that the application is supported by substantial evidence that demonstrates compliance with all applicable approval criteria. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A two-year old traffic study determining that the local transportation system will continue to operate within acceptable limits after full build-out of property in the area is substantial evidence that a particular proposed commercial use will not impose an undue burden on the transportation system, where there is evidence that the assumptions that the study was based upon are still valid. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county’s finding that land is not suitable for grazing is not supported by substantial evidence, where the land has a history of grazing, and is bordered by similarly sized parcels currently used for grazing that have the same soils and conditions. *Wetherell v. Douglas County*, 54 Or LUBA 678 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. An adjoining farmer’s testimony that a parcel need not remain in farm zoning to allow their farm operations to continue, combined with the absence of any history of combined farm use, is substantial evidence supporting a county’s finding that the parcel is not “agricultural land” under the OAR 660-033-0020(1)(a)(C) definition. *Wetherell v. Douglas County*, 54 Or LUBA 678 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could rely on evidence that there are 25 on-street parking spaces in the area that are only partially occupied during peak hours, to conclude that parking in the area is adequate, and thus that a variance to off-street parking requirements will not be “materially detrimental” to the purpose of the off-street parking requirement. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A substantial evidence challenge may not be based on evidence that is not in the local record and was not before the final decision maker. *Lissner v. Washington County*, 53 Or LUBA 357 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county’s conclusion that the property is not suitable for commercial forest uses is supported by substantial evidence where the property owner prepared a study of the forestland productivity of the subject property, which was reviewed by a forester from the Department of Forestry (DOF), that indicated that the property is capable of producing only 1.8 cubic feet per acre per year of wood fiber, and the record includes letters from the DOF stating that any attempts to produce commercial stands on the property would be futile. *Hecker v. Lane County*, 52 Or LUBA 91 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. 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).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the record reflects that 10 acres of irrigation rights were removed from two 20-acre parcels because (1) irrigating with that water was extremely inefficient, (2) the nonfarm parcels consist of 85 percent bare ground, and (3) moving the irrigation rights back would provide no benefit, county’s findings that returning irrigation rights to the property would not render the nonfarm parcels generally suitable for the production of farm crops or livestock is supported by substantial evidence. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. Under substantial evidence review, petitioners must do more than identify conflicting evidence the local government could have relied upon; they must explain why it was unreasonable for the local government to make the challenged the decision. *Burlison v. Marion County*, 52 Or LUBA 216 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. Under *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 752 P2d 312 (1988), the substantial evidence standard is not satisfied when “the credible evidence apparently weighs overwhelmingly in favor of one finding and the [decision maker] finds the other without giving a persuasive explanation.” *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. The party who puts forth the larger effort to produce evidence regarding a land use application is not necessarily entitled to prevail under a substantial evidence review solely by virtue of that larger effort. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. The critical issue for the local decision maker will generally be whether any expert or lay testimony offered by permit opponents raises questions or issues that undermine or call into question the conclusions or supporting documentation that are presented by the applicant’s experts and, if so, whether any such questions or issues are adequately rebutted by the applicant’s experts. LUBA’s role on review is to determine if a reasonable person would have answered those questions as the local decision maker did, in view of all of the evidence in the record. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. A local decision maker may assign some additional significance to the testimony of the city engineer or Oregon Department of Transportation engineers regarding transportation system impacts based

on their neutrality regarding the merits of the development proposal itself. But that process of assigning any extra weight necessarily calls for a case by case determination by the local decision maker, with LUBA deferring to any such assignments of extra weight that are reasonable, based on the evidence in the whole record. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. LUBA frequently analyzes findings challenges and evidentiary challenges separately and generally analyzes findings challenges first, because LUBA's resolution of the findings challenge frequently affects its resolution of the evidentiary challenge or makes it unnecessary to decide the evidentiary challenge. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will affirm a hearings officer's finding that it is feasible to expand an existing stormwater facility without infringing on the neighboring petitioner's rights to the existing capacity of that facility, where there is no evidence that the expansion will affect the capacity of the existing pond, and the hearings officer imposed conditions sufficient to ensure that the expansion will not infringe on the existing capacity. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. A local government could reasonably accept as true an expert's testimony about the findings in a biological assessment, even though the biological assessment itself is not in the record. *Neighbors 4 Responsible Growth v. City of Veneta*, 52 Or LUBA 325 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. A local government's decision is supported by substantial evidence despite the fact that a wetlands delineation report and a biological assessment that were discussed during the local proceedings are not included in the record, where parts of the wetlands delineation report are quoted in the application and there is a great deal of other evidence in the record that the local government relied on. *Neighbors 4 Responsible Growth v. City of Veneta*, 52 Or LUBA 325 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county hearings officer's identification of the "ordinary high water" line for purposes of determining a riparian setback area is supported by substantial evidence even though specific elevations were not identified on the property and then transferred to a map, where the planning staff and hearings officer conducted site visits to confirm the accuracy of the applicant's map indicating the location of the high water mark. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's determination that it is feasible for a proposed home occupation to comply with local code criteria prohibiting the creation of vibration, glare, fumes or odors detectable to normal sensory perception off the subject property with a condition relocating the parking

area for diesel vehicles away from abutting properties and limiting idling time of diesel vehicles to 10 minutes is not supported by substantial evidence, where the evidence relied upon is a conclusory statement in a planning staff memorandum that fumes and odors could be eliminated by limiting idling time and providing a sufficient buffer. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. A local government reasonably viewed an engineer as a qualified expert, where the person had a degree in agricultural engineering and several engineering certifications, participated actively in the local proceedings regarding a mineral and aggregate overlay and presented models to predict performance of mining plans, and challenged assumptions of the applicant's experts. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will affirm a hearings officer's conclusion that a standard requiring that development not "seriously interfere" with sensitive riparian habitat is not met, notwithstanding that the only evidence on that point is the testimony of the applicant's consultant, where that testimony is based on an assertion that the proposed campground and parking areas "stay well clear" of sensitive riparian habitat, but the site plan clearly shows that the proposed campground and parking area are located adjacent to the riparian habitat. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. An acoustic engineer's statement that the procedures followed in conducting a noise study for an aggregate mine were "generally consistent" with procedures required by state administrative rule is sufficient to demonstrate compliance with the rule, particularly where the petitioners do not identify any material difference between the procedures followed and those required the rule. *Ray v. Josephine County*, 51 Or LUBA 443 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's findings that chemicals are required in the future in order to make forest practices on a property practicable are not supported by substantial evidence where the record does not indicate whether chemicals were already applied to the property or that whatever applications might be necessary have not already occurred. *Anderson v. Coos County*, 51 Or LUBA 454 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's finding that aerial spraying of chemicals is necessary in order to make forest practices on a 20-acre property practicable is not supported by substantial evidence where the evidence in the record supports a conclusion that manual application is the preferred method of application for properties 40 acres or smaller and the findings do not provide other reasons that manual spraying is not practicable. *Anderson v. Coos County*, 51 Or LUBA 454 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. In order to prevail on a substantial evidence challenge, a petitioner must identify the challenged findings and

explain why a reasonable person could not reach the same conclusion based on all the evidence in the record. *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. Where a development code requires that a city find that transportation facilities will be available prior to or at the time of development of annexed property, testimony by an applicant's traffic engineer and the city engineer that traffic facilities needed to serve annexed property will be available prior to or at the time of development is substantial evidence supporting a city's finding that the development code requirement is satisfied. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

1.6.1 Administrative Law - Substantial Evidence - Generally. A city finding that an existing residential zone may be amended in ways that will reduce the development potential of that zone because development in that zone has historically been at the high end of 5 to 10 units per acre density allowed in the zone is not supported by substantial evidence, where the only relevant evidence in the record shows that development has averaged 5.6 units per acre in that zone. *4-J Land Co., LLC v. City of Sandy*, 50 Or LUBA 525 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer errs in approving a cul-de-sac under subdivision criteria that allow a cul-de-sac only where existing development on adjacent property prevents a street connection and a connected street pattern is not possible, where (1) the “existing development” is on the same property being subdivided, (2) there is evidence that a street connection is possible, and (3) there are no findings explaining why a street connection is not possible. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's conclusion that a proposed nonfarm dwellings will not alter the stability of the land use pattern in the area is not supported by substantial evidence where that conclusion is based on an estimate that 4 or 5 additional nonfarm dwellings could be approved, and that estimate is not supported by any evidence in the record. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. Absent any contravening evidence or need for more detailed analysis, staff testimony that proposed application fee increases accurately reflect increased costs and are less than the maximum amount that cities may charge under ORS 227.175(1) is substantial evidence supporting a finding of compliance with the statute. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the decision maker adopts application fee increases but fails to recognize that doing so inadvertently increases local appeal fees, remand is necessary for the local government to take evidence and adopt findings demonstrating that the increased appeal fees are consistent with ORS 227.180(1). *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. When the local record clearly shows and adequately describes the location of a proposed road project, a decision approving that project is supported by substantial evidence regarding the location of the proposed road even if the specific name for the project in the decision was not used in the local record. *1000 Friends of Oregon v. City of Dayton*, 49 Or LUBA 622 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. That cattle grazing occurs at some level on large tracts of BLM land with the same Class VII soils and vegetative characteristics as the subject property is some evidence that the much smaller subject property could also support some level of grazing. However, that indirect evidence does not compel a conclusion that the property is suitable for grazing, given countervailing evidence that the property is not suitable for farm use under the factors considered in OAR 660-033-0020(1)(a)(B). *Wood v. Crook County*, 49 Or LUBA 682 (2005).

1.6.1 Administrative Law - Substantial Evidence - Generally. A hearing official decision that a proposed chiropractic home occupation that would generate eight client trips per day does not constitute “excessive traffic” on a short, dead-end unimproved residential street that serves a relatively small number of existing residences is supported by substantial evidence. *Revoal v. City of Eugene*, 47 Or LUBA 136 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that conclude access is available to an adjoining road, but do not explain how the road may be accessed, are not supported by substantial evidence where all of the evidence cited to LUBA indicates that access is not possible. *Seaton v. Josephine County*, 47 Or LUBA 178 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A code standard that requires preliminary staff approval of the location, design and capacity of a proposed subdivision sewage disposal system does not require independent determination of adequacy of the city’s sewer facilities. *Bauer v. City of Portland*, 47 Or LUBA 459 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. Testimony from a person who is unwilling to identify himself is suspect and absent any corroboration is not evidence a reasonable person would rely upon. *Lawrence v. Clackamas County*, 46 Or LUBA 101 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will reject a challenge to the evidentiary support for a finding that mining traffic will significantly conflict with agricultural practices, within the meaning of OAR 660-023-0180(4)(b)(E), where there is evidence that (1) truck traffic from the mine will cause the level of service for vehicles entering and exiting a nearby farm stand to be reduced from LOS C to LOS D, (2) truck traffic will interfere with the use of the road for the transport of agricultural equipment, and the applicant has not demonstrated that those conflicts will be minimized. *Eugene Sand and Gravel, Inc. v. Lane County*, 46 Or LUBA 254 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer’s finding that aerial photographs neither established the existence nor non-existence of a road in 1992 is supported by substantial evidence where the road was primitive and only used intermittently over the years. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer’s decision that a road existed in 1992 is supported by substantial evidence where the record includes conflicting expert and lay testimony regarding the existence of the road in 1992 and the road need not have been improved to any particular standard and was the kind of primitive road that a reasonable person might or might not have recognized as a road. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

1.6.1 Administrative Law - Substantial Evidence - Generally. An arborist’s and professional engineer’s testimony is not substantial evidence that it is impracticable to save two groves of mature trees in constructing a discount superstore and parking, where the arborist and professional engineer do not consider the practicability of reducing the building footprint or the area of the site that will be developed with parking. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. Expert testimony that is not in the record and that appears only as reported by the applicant to staff is not sufficient to establish the capacity of the subject property for farm and forest uses. *Friends of Douglas County v. Douglas County*, 46 Or LUBA 757 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government does not misconstrue a local ordinance requiring permanent legal access to a parcel by relying on easements entered into by prior landowners with government agencies providing reciprocal rights for access. *Sisters Forest Planning Comm. v. Deschutes County*, 45 Or LUBA 145 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is evidence that the subject property was separated from a larger parcel by virtue of a 1976 conveyance of an intervening parcel, a county’s conclusion that the subject property was also created in 1976 is supported by substantial evidence. *Frazee v. Jackson County*, 45 Or LUBA 263 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Testimony by the city administrator that anticipated local appeal costs are likely to be similar to the cost of appeals from the city to LUBA is substantial evidence supporting imposition of a \$500 local appeal fee, for purposes of establishing that the fee is not more than the average or actual cost of such appeals under ORS 227.180(1)(c), in the absence of contradictory evidence. *Friends of Linn County*, 45 Or LUBA 408 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where county code requires that “all owners” sign a subdivision application, a conclusion that that standard is met is supported by substantial evidence where there record includes a certificate signed by

the applicant certifying that the applicant owns the property and other documents in the record name the applicant as the grantee or as a representative of the owner. *Neketin v. Washington County*, 45 Or LUBA 495 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision verifying the scope and intensity of a nonconforming racetrack operation is not supported by substantial evidence, where no party identifies supporting evidence in the record, and the decision’s recitation of facts indicates that the use as verified exceeds the scope and intensity of the racetrack on the date it became nonconforming in at least some particulars. *Leach v. Lane County*, 45 Or LUBA 580 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will not remand a county decision for failing to include a sample of light-green visqueen to support a finding that the material is nonreflective, where the challenged decision is not based on such a finding. *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. The lack of specific evidence on whether aggregate samples tested by a laboratory were “representative,” as required by OAR 660-023-0180(3)(a), does not provide a basis for reversal or remand, where the samples came from an existing quarry and there is no suggestion in the record that the sample was not representative or that the quality of rock in the existing quarry was not uniform. *Bryant v. Umatilla County*, 45 Or LUBA 653 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the evidence concerning whether a dwelling had been abandoned or interrupted before 1995 is conflicting and the hearings officer relies heavily on photographs of the dwelling that he mistakenly believed were taken in 1995 rather than years later to conclude that use of the dwelling was abandoned or interrupted for more than one-year before 1995, the hearings officer’s decision is not supported by substantial evidence and must be remanded so that the hearings officer can render a decision with a correct understanding of the date the photographs were taken. *Bradley v. Washington County*, 44 Or LUBA 36 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city’s finding that buried concrete reservoirs will not cause “significant detrimental impact” to the environment is supported by substantial evidence, where the city’s code defines that term to mean development that disrupts or destroys ecological systems, and evidence in the record shows that the surface over the buried reservoirs will be restored and replanted and the reservoirs will not significantly affect underground hydrology. *Bauer v. City of Portland*, 44 Or LUBA 210 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioner’s evidentiary challenge to a city’s conclusion that an applicable criterion is satisfied provides no basis for reversal or remand, where the challenge is based on petitioner’s interpretation of what the criterion requires, and that interpretation was not presented during the local proceedings. *Slepack v. City of Manzanita*, 44 Or LUBA 301 (2003).

1.6.1 Administrative Law - Substantial Evidence - Generally. Where a decision approving a subdivision that finds it is infeasible to extend a road from the proposed subdivision to an adjoining property and a petitioner at LUBA argues that the finding is not supported by substantial evidence, LUBA will remand where the respondent cites no evidence that supports the finding. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that an EFU parcel would contribute no productive farm acreage to any neighboring farm, and thus is generally unsuitable for farm use even if used in conjunction with neighboring dairy farms, is not supported by substantial evidence, where two neighboring dairy farmers offered to buy the parcel to use in conjunction with their farms. A property’s usefulness as farmland, considered on its own, is not necessarily indicative of its usefulness when combined with an existing farm or ranch. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county decision establishing an one-half mile radius impact area around proposed dwellings within a Goal 5 wildlife habitat area is supported by substantial evidence, where the county relies on studies that human impacts extend one-half mile from dwellings and elk prefer to be at least one-half mile from humans. *Doty v. Jackson County*, 43 Or LUBA 34 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence that a livestock operation is conducted on a parcel for part of the year is sufficient to establish that the property contains an “existing” livestock operation, for purposes of the requirements for siting a guest ranch on EFU-zoned land, where the record shows that rotation of cattle from the property during the wet months, to allow pasture to rest, is a matter of good animal husbandry. *Durdan v. Deschutes County*, 43 Or LUBA 248 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. In determining that an applicant failed to carry his burden to demonstrate that a proposed home occupation would be carried out inside a building and in a manner that would not unreasonably interfere with other uses, the county did not err by considering existing and past conditions on the property. *Hick v. Marion County*, 43 Or LUBA 483 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A memorandum explaining why one tax lot is not a feasible alternative to siting a radio transmission tower on EFU-zoned land and also addressing criticisms of an earlier memorandum explaining why another tax lot is infeasible is evidence a reasonable person could rely on to conclude that the second tax lot is not a feasible alternative. *Van Nalts v. Benton County*, 42 Or LUBA 497.

1.6.1 Administrative Law – Substantial Evidence – Generally. In granting design approval for a highway interchange improvement project originally proposed as part of a larger project, a decision maker is not required to study and address interim impacts to existing facilities covered by the larger project other than the interchange, and the decision maker’s failure to do so does not leave the evidence supporting approval of the

interchange project something other than substantial evidence. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435.

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision that analyzes numerous aspects of a proposed alteration of a nonconforming use compared to the historic use of the property is sufficient to establish the scope and nature of the nonconforming use where the petitioner does not challenge that analysis. *Ankarberg v. Clackamas County*, 41 Or LUBA 504 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. A prior local government decision that a nonconforming use had not been discontinued may constitute substantial evidence in support of a subsequent land use decision that, as of the date of the prior decision, the nonconforming use had not been discontinued. *Ankarberg v. Clackamas County*, 41 Or LUBA 504 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. Draft transportation and parking demand plans for a proposed school are substantial evidence supporting a finding of compliance with a “safe streets” approval standard, notwithstanding that the conditions of approval require that the school submit and city staff approve *final* plans in which the city might impose additional or different terms. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning staff report that advises the city council that a riparian vegetation plan had been reviewed and found to be adequate by the Oregon Department of Fish and Wildlife is substantial evidence in support of a finding that a proposal will not result in “adverse impact to the fish and wildlife resources in the area.” *Willhoft v. City of Gold Beach*, 41 Or LUBA 130 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the city’s comprehensive plan locates the boundary of a Goal 17 overlay zone at the “top edge” of the bluff overlooking the ocean, but nothing in the record supports the city’s conclusion that proposed expansion of a dwelling built into the bluff will occur outside the overlay zone, remand is necessary for the city to identify the “top edge” of the bluff and the existing dwelling’s location in relation to the zoning boundary. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Conditions imposed to ensure that only *de minimis* traffic volumes from a proposed recycling facility impact nearby failing intersections during certain times are insufficient and unenforceable, where the county’s decision fails to (1) define what *de minimis* traffic volumes are, (2) specify the times when the conditions apply, and (3) impose conditions or identify solutions that a reasonable person would find adequate to ensure that traffic associated with the facility uses a longer alternate route rather than the short direct route through failing intersections. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. The assumptions underlying the county’s revenue projections and its conclusion that an urban renewal plan

is “feasible” under ORS 457.095(6) and 457.085(3)(g) must be supported by substantial evidence, *i.e.*, evidence a reasonable person would rely upon. The local government need not demonstrate that projected new development is presently committed and certain to occur. *Zimmerman v. Columbia County*, 40 Or LUBA 483 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where nearly all the evidence in the record concerning potential groundwater pollution associated with a proposed aggregate mine is speculative and would support opposite conclusions concerning that potential, the local government’s selection of which evidence to believe is reasonable. *Donnell v. Union County*, 40 Or LUBA 455 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. An unsupported assurance by the applicant’s attorney that the entire septic system necessary to support a proposed church expansion can be located on a church-owned parcel is not substantial evidence supporting a finding to that effect, where all the other evidence in the record regarding the feasibility of the septic system assumes that part of it will be located on an adjoining parcel. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that property that is to be rezoned from residential to commercial can be adequately served by sewer and fire districts is supported by substantial evidence, where the record shows that nine months earlier the districts indicated in a prior proceeding concerning the property that such services could be provided. *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that a proposed road width variance will not be materially detrimental to other property owners in the area are not supported by substantial evidence when they are based on a comparison to other substandard roads rather than the effect of the proposed variance itself. *Georgeff v. Curry County*, 40 Or LUBA 101 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Even though substantial evidence did not exist in a prior application to support a finding of need for additional seasonal farmworkers, additional evidence may be presented during a subsequent application to support a finding of need. *Durig v. Washington County*, 40 Or LUBA 1 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city governing body is not required to apply the Oregon Rules of Evidence in its land use proceedings and may rely on hearsay evidence in a planning staff report to reach a conclusion regarding representations that were made to a permit applicant. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city’s finding that a proposal will have no adverse effect on abutting property is not supported by substantial evidence when the decision does not address how all abutting property owners are affected. *ODOT v. City of Klamath Falls*, 39 Or LUBA 641 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a proposed aggregate extraction site must demonstrate compliance with a public need criterion and a criterion that requires consideration of alternative sites, but identified alternative sites are rejected without explanation and the only cited evidence regarding public need is testimony from the public works director that he would support a site anywhere in the county, the decision is not supported by adequate findings or substantial evidence. *Donnell v. Union County*, 39 Or LUBA 419 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government’s determination that there is sufficient land designated multi-family residential to satisfy Goal 10 is supported by substantial evidence when the acknowledged Goal 10 housing inventory establishes that the city has a 238-acre surplus of land designated for multi-family development, and the proposal is to rezone only eight acres from multi-family residential to commercial. *Craig Realty Group v. City of Woodburn*, 39 Or LUBA 384 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning staff report may constitute substantial evidence upon which a local government may rely, and a planning staff report may summarize applicable portions of professional manuals, such as the Institute of Transportation Engineers Trip Generation Guide. *Chilla v. City of North Bend*, 39 Or LUBA 121 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning administrator’s “unique knowledge” of additional information that is not contained in the record is not substantial evidence upon which a local government may rely in reaching its decision. *Hausam v. City of Salem*, 39 Or LUBA 51 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Although items of evidence, when viewed individually, might be sufficiently questionable that they would not be relied upon by a reasonable decision maker, when viewed together those same items of evidence might become evidence a reasonable person could accept in support of a challenged finding. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city’s finding that the portion of a dwelling exceeding a code-mandated height limit adversely affects the ocean view of a neighboring property is supported by substantial evidence where the record includes photographs, a videotape and drawings that show the subject dwelling blocking the view of ocean water from the neighboring property, notwithstanding that the photographs, videotape and drawings show that the subject dwelling blocks only a tiny sliver of ocean water view. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person with an understanding of the assumptions and limitations that underlie USDA soils data would not rely on those data to conclude that sites rated to have severe soils limitations for small commercial uses for that reason alone cannot accommodate any commercial use. *DLCD v. Douglas County*, 38 Or LUBA 542 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an existing adult video store seeks a conditional use permit to remain open past the normal 10 p.m. closing time required in the zoning district, evidence that a police prostitution sting operation at a nearby 24-hour adult video store resulted in numerous arrests after 10 p.m. and testimony by a business neighbor of vandalism and criminal activity outside another 24-hour adult video store operated by the permit applicant is substantial evidence that granting the requested conditional use permit would result in an increase of criminal activity and thereby violate a conditional use “compatibility” and “livability” standard. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Absent a condition requiring a holding tank of sufficient size, a reasonable decision maker could not conclude that a well producing 1,200-2,400 gallons per day is adequate to serve a rural use without adversely affecting neighboring wells, when there is undisputed evidence that the peak demands of the proposed use exceed the estimated well capacity. *Spiro v. Yamhill County*, 38 Or LUBA 133 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government’s findings determining that traffic generated by a proposed development will be mitigated by certain conditions of approval is not supported by substantial evidence, where the government’s decision does not limit the maximum developable area to that established as the basis for the traffic impact analysis. *DLCD v. City of Warrenton*, 37 Or LUBA 933 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where petitioner challenges the adequacy and evidentiary basis for a local government’s decision determining that a proposed development “is or will be compatible” with the land use development pattern in the vicinity of the request, LUBA will analyze the findings to determine (1) whether the findings are adequate; (2) whether there is substantial evidence in the record to support a finding that, absent some conditions of approval, the compatibility standard is met; and (3) if conditions of approval are necessary to establish compatibility, whether the local government adopted such conditions. *DLCD v. City of Warrenton*, 37 Or LUBA 933 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county may reasonably rely on a report based on consideration of a broad sample of native tree species to determine whether the predominant soils on the property are capable of producing more than 49 cubic feet per acre per year of wood fiber of any kind where there is not reasonable basis presented for believing that planting one or more nonnative tree species on the predominate soils would produce more than 49 cubic feet per acre per year of wood fiber. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a county prohibits the refiling of a new or substantially similar application until two years after a final decision denying an application; the decision maker determines that a second application, filed less than a year after the first, was “substantially similar” because it involved the same use on the same property and the changes in the facts supporting the

application were otherwise insufficient to demonstrate that the application is different; and the decision maker points to evidence in the record to support his conclusions, that decision is supported by substantial evidence. *Munn v. Clackamas County*, 37 Or LUBA 621 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence that industrial uses are occurring on industrially zoned property within two miles of the subject property is insufficient to demonstrate, as a matter of law, that a proposed excavation business located in a rural residential zone complies with a requirement that the use “will not interfere with existing uses on nearby land or with other used permitted in the zone in which the property is located.” *Munn v. Clackamas County*, 37 Or LUBA 621 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the city council’s review of a planning commission decision is limited to whether the lower decision is supported by substantial evidence, and petitioner argues that the city council exceeded its review authority by reweighing the evidence, LUBA will deny the assignment of error where it concludes that the city council understood and applied the substantial evidence standard correctly. *Ontrack, Inc. v. City of Medford*, 37 Or LUBA 472 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a hearings officer rejects a proposed stormwater control method as inadequate to ensure compliance with an approval criterion that requires reduction of flood flows below erosive capacity, but nonetheless finds compliance with the standard based on the hearings officer’s unsupported opinion that more adequate methods are available, the finding of compliance is not supported by substantial evidence. *Mitchell v. Washington County*, 37 Or LUBA 452 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. When a city’s decision to annex territory is also a land use decision, the city must be able to demonstrate that the annexation decision complies with the statutory annexation requirements and is supported by substantial evidence in the record. A failure to demonstrate such compliance requires a remand. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A bill to the property owner for spraying and planting of trees is substantial evidence that the required spraying was done on the property, notwithstanding that the bill refers to a different property, where the property owner explains during the local hearing that the reference to a different property is an error and LUBA concludes a reasonable person could have accepted that explanation. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A property owner’s explanation that required plowing and cultivation occurred at the time Christmas trees were planted is substantial evidence that required plowing and cultivation occurred, where the only contrary evidence is opponents’ unsupported expressions of doubt that the

required plowing and cultivation occurred. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local ordinance requiring feasible or adequate bicycle or pedestrian connections to adjacent and nearby planned unit developments is not met when the evidence fails to show where the bicycle and pedestrian connections are to be located, and the decision does not require the connections to be located in any particular place. *Highland Condominium Assoc. v. City of Eugene*, 37 Or LUBA 13 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. 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).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence supports a city’s rezoning of land from multi-family to single-family residential uses, where the city’s inventory indicates a need for 1,081 multi-family dwellings, and a reasonable person could conclude that the number of existing and approved multi-family dwellings exceeds 1,081 units, notwithstanding flaws in the city’s analysis that render the exact number of those dwellings uncertain. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city’s finding that a proposed college pedestrian/bicycle path meets applicable safety standards is supported by substantial evidence notwithstanding concerns raised about the efficacy of proposed safety measures, where there is evidence the college has not historically experienced the kinds of criminal activity opponents speculate may occur as a result of construction of the path. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city’s ultimate finding that constructing a parking lot that will add pedestrians to a pedestrian/bicycle path complies with bicycle safety criteria is supported by substantial evidence, notwithstanding the lack of evidence in the record concerning how the relative mix of pedestrians and bicyclists will be affected by the parking lot, where petitioners fail to challenge the city’s separate finding that co-existence of bicycles and pedestrians is “expected” on pedestrian/bicycle paths. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city’s decision to rely on estimates of traffic impacts based solely on student enrollment is supported by substantial evidence, notwithstanding the failure to separately account for traffic impacts that might be associated with a 90,000-square foot expansion of school facilities, where the facility expansion will not increase student enrollment and the city explained that the traffic impact projections based on student enrollment were very conservative and

overstated the likely actual traffic impacts. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a city interprets its zoning ordinance as requiring that a “recycling center” have the “primary purpose” of extracting recyclables from a waste stream, but not requiring that any particular percentage of the waste stream will be recycled, the city’s conclusion that a proposed facility is a “recycling center” is supported by substantial evidence, notwithstanding the absence of evidence quantifying the percentage of recyclables in the waste stream. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. 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).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the applicant bears the burden of demonstrating under a local provision that there is no reason to believe a potential hazard exists on the subject property, the absence of evidence regarding potential hazards on the property does not constitute substantial evidence of compliance with that provision. *Jebousek v. City of Newport*, 36 Or LUBA 124 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence supports a city’s denial of a subdivision application based on a standard prohibiting cul-de-sacs longer than 400 feet, when the preliminary plat shows a cul-de-sac 427 feet in length. The city is not obligated to approve an application that does not comply with approval standards even if the approval could be conditioned on submitting a final plat that shows compliance with the applicable criteria. *Holland v. City of Cannon Beach*, 35 Or LUBA 482 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. That findings of noncompliance with an approval criterion are not supported by substantial evidence is not a basis for reversal or remand, where petitioner fails to challenge other findings of noncompliance with that criterion that are an independent basis for denial. *Holland v. City of Cannon Beach*, 35 Or LUBA 482 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where subdivision approval criteria do not require that the city determine whether a particular access route would be the “primary” access route, the city’s failure to adopt such a finding and a lack of substantial evidence that the particular access route would be the primary access route provides no basis for reversal or remand. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that a proposed subdivision will be connected to the city’s storm drainage system is not

supported by substantial evidence, where the proposed drainage system stops short of the city's storm drainage system and a condition of approval requiring paved access to the subdivision is not adequate to ensure that the storm drainage connection will be constructed along with that paved access. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. The evidence supporting a decision denying a permit need not match the evidence supporting the permit application in a qualitative and quantitative sense. *Johns v. City of Lincoln City*, 35 Or LUBA 421 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's improper reliance on poor past management practices in concluding a property is not suitable for commercial forest use provides no basis for reversal or remand, where there is other evidence in the record that a reasonable person could rely on to reach that conclusion. *Dept. of Transportation v. Coos County*, 35 Or LUBA 285 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a site plan depicting setbacks was before the county decision maker, and was inadvertently not submitted to LUBA, testimony discussing the measurements and setbacks depicted on the site plan is evidence that may support the county's findings regarding setbacks, notwithstanding that the site plan is itself absent from the record. *Thomas v. Wasco County*, 35 Or LUBA 173 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A staff report constitutes substantial evidence, where petitioner does not challenge the explanation and calculations contained in the report. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A condition requiring a drainage plan for a towing facility is supported by substantial evidence notwithstanding the owner's claim that towed vehicles would be drained of fluids, where the record showed the city council questioned the owner's claim and it was not clear where the drained fluids would be stored. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a local government fails to find a proposal complies with a code requirement for two parking spaces per unit, the applicant's testimony that two parking spaces will be provided per unit is not evidence that clearly supports a finding of compliance with the parking requirement under ORS 197.835(11)(b). *Deal v. City of Hermiston*, 35 Or LUBA 16 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision maker may review certain types of land use permit applications more stringently than others, provided the higher burden of proof is not attributable to bias or some other legally impermissible reason. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. 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).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is no evidence that a property only functions as winter range between December 1 and March 31, the selection of that time period for a condition of approval is not supported by substantial evidence. It is not within generally accepted knowledge that property only functions as winter range between December 1 and March 31. *Botham v. Union County*, 34 Or LUBA 648 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government's unsupported inference that ranching operations are 2-3 miles distant from the proposed nonfarm dwelling, and its reliance on the absence of evidence on which the applicant bears the burden of proof, do not constitute substantial evidence supporting a finding that the nonfarm dwelling is compatible with farm uses. *Wolverton v. Crook County*, 34 Or LUBA 515 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a county finds that the subject property's soils constitute "high-value farmland" as that concept is defined by statute, but there is no evidence in the record that supports that ultimate conclusion, the decision must be remanded. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning "staff report" may provide an "adequate factual base" to support a legislative land use decision. *Buhler Ranch v. Wallowa County*, 33 Or LUBA 594 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an applicable criterion requires that a dwelling have the "least impact" on adjoining lands and the applicant does not show the dwelling could not be located on alternative sites on the property that would have fewer impacts, the applicant fails to demonstrate compliance with the criterion as a matter of law. *Evans v. Multnomah County*, 33 Or LUBA 555 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where, on remand, an applicant modifies a site plan for a gas station and car wash so that only the location of the gas pumps is carried forward from the original site plan to the modified site plan, a reasonable person could not conclude that the two plans are substantially similar. A finding that the plans are substantially similar does not adequately address the code requirements that apply to a site plan. *Sullivan v. City of Woodburn*, 33 Or LUBA 356 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Unsupported statements and assurances that a proposed dwelling will comply with local roof height

and pitch standards do not constitute substantial evidence. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioner cannot challenge a moratorium extension by asserting that the city lacked substantial evidence to justify the initial moratorium; the relevant question is whether the record includes substantial evidence to support the moratorium extension. *Manning v. City of St. Paul*, 33 Or LUBA 193 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. In reviewing evidence, LUBA may not substitute its judgment for that of the local decision maker, but must consider and weigh all evidence in the record to determine if the local decision maker's conclusion is supported by substantial evidence. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. To demonstrate a nonconforming use was not interrupted under ORS 215.130, the evidence must establish that the business was operational on an ongoing basis. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioners fail to establish that a reasonable person could not reach the county's conclusion, based upon the facts before it, where petitioners disagree with the county's evaluation of the evidence, and present arguments as to how the facts could support a contrary conclusion. *Alliance For Responsible Land Use v. Deschutes County*, 33 Or LUBA 12 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. 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).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a petitioner challenges percentages relied upon by the county in support of a finding, the petitioner must provide citations to the record where the data upon which it relies to calculate its own percentages can be found. *Helvetia Community Assoc. v. Washington County*, 31 Or LUBA 446 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. There is no general requirement that survey evidence supporting a consultant's calculation of area be included in the record; instead, LUBA must determine whether, considering all relevant evidence in the record, a reasonable person could rely on the consultant's calculations. *Squires v. City of Portland*, 31 Or LUBA 335 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. In considering the substantiality of evidence supporting a Goal 3 reasons exception for realignment of a

highway, LUBA must look at the evidence supporting the challenged decision for the entire four-mile stretch of highway and all the impacted properties, not just the evidence of effects on one of the properties. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioners' challenge of the reliability of an environmental impact statement (EIS) that was relied upon by the county in its decision is insufficient where the challenge is based solely on the age of the EIS, without identification of other evidence in the record which undermines the EIS. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. 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).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's denial of petitioners' application for a temporary special care permit is supported by substantial evidence in the record where the hearings officer finds that alternative housing exists close enough to petitioners' residence to provide necessary special assistance, and petitioners presented no evidence indicating that alternative housing is not available. *Lundy v. Clackamas County*, 30 Or LUBA 377 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a local criterion requires that the county find a proposed use will not significantly reduce or impair significant wildlife, a finding that compliance with fencing specifications will "help the request comply" does not factually address or establish compliance with the criterion. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence of resource preservation gathered on one property can be substantial evidence to support findings of resource preservation on adjacent properties. *Reeves v. Yamhill County*, 30 Or LUBA 135 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. In performing an alternative sites analysis under Goal 14 and its own zoning ordinance, a city may not assume that the cost of a previously developed site within the city limits is excessive or that forecasted redevelopment expenses will be prohibitive. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. An unsupported statement in an application is not evidence, and an estimate of a geologist as to resource quantity, made without reference to evidence of any kind, is not substantial evidence. *Palmer v. Lane County*, 29 Or LUBA 436 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person would not conclude that a code conditional use permit standard requiring a proposed development to be timely considering the adequacy of storm drainage systems is satisfied, where there is no evidence in the record concerning the existence or adequacy of storm drainage facilities to handle anticipated runoff from the proposed development. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. The mere existence of a survey or computer listing of a city's available industrial land, absent argument by petitioner that particular listed sites represent available, industrially-designated sites in the vicinity of a proposed plan map amendment, does not refute other evidence relied on by the city to determine there are no suitable alternative sites within a reasonable area of a proposed plan map amendment. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that the impacts of a proposed livestock sales facility will be reduced because the livestock to be sold will be purebred, as opposed to animals of mixed ancestry, lack evidentiary support where there is no evidence distinguishing the impacts of these types of livestock. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that an orchard's accepted farming practices have not been significantly affected by trespassing golf balls are supported by substantial evidence where the evidence shows no orchard employees have been hit by golf balls, tree buffers are effective in deflecting golf balls and petitioner's testimony was discredited by video tape of petitioner collecting golf balls on the golf course property. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a finding that the gravel extraction rate at a proposed site will not change from historic rates is not supported by substantial evidence, and the finding appears to play a significant role in the local government's finding of compliance with a code "compatibility" requirement, the challenged decision approving a conditional use permit for a gravel operation is not supported by substantial evidence. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. A lack of response from the county Road Master is not substantial evidence that a code provision requiring no undue impairment of traffic flow is met. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could not conclude that a proposed forest dwelling satisfies a "necessary for forest use" standard because the subject property is "quite remote," where the evidence in the record shows only that the subject property is five miles from an urban growth boundary and a 35 minute drive from a city. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. Statewide Planning Goal 2 requires that planning decisions and actions have an adequate factual base, regardless of the legislative or quasi-judicial nature of the decision. The Goal 2 requirement for an adequate factual base is equivalent to the requirement for substantial evidence in the whole record. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. A determination that a nonconforming quarry occupied five acres at the time it became nonconforming is not supported by substantial evidence in the whole record where the only evidence cited by the parties as establishing the size of the quarry operation at the relevant time is an undated aerial photograph. *Mazeski v. City of Mosier*, 27 Or LUBA 100 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. Testimony from an Oregon Department of Forestry (DOF) representative which suggests a proposed dwelling could be compatible with forest uses, but was clarified by the DOF representative to eliminate any suggestion of compatibility, is not evidence a reasonable decision maker would rely upon to establish a proposed nonforest dwelling is compatible with forest uses. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the record establishes only that a small portion of the subject parcel is unsuitable for forest uses, a reasonable person could not conclude the entire parcel is generally unsuitable for farm or forest uses. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Under ORS 197.830(13)(a), LUBA's review is limited to the record of the proceedings below. Statements in a local government comprehensive plan background and inventory document, that are not included in the record, cannot constitute substantial evidence in support of a challenged decision. *Fleck v. Marion County*, 25 Or LUBA 745 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a reasonable decision maker could rely on information contained in a geotechnical report to determine there are engineering solutions available to solve identified landslide, drainage and other hazards associated with the subject property, the geotechnical report is substantial evidence to support the local government's determination that the proposal complies with relevant local code standards. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the governing body ratifies an act of another local government official in the challenged decision, that aspect of the challenged decision is itself substantial evidence that the local official possessed authority to accomplish the disputed act. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. An expression of belief that a local code standard imposing a specific decibel limitation will not be violated is not an adequate finding of compliance with that standard. Expressions by the applicant's attorney that noise generated by the proposed use will not be excessive or violate the standard are not substantial evidence that the standard will be met. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. A staff report can contain evidence to support a decision challenged at LUBA. *Oregon Raptor Center v. City of Salem*, 25 Or LUBA 401 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government is free to disregard or give little weight to a party's allegations concerning the substance of a telephone conversation between that party and another person not present at the local hearing. *Decuman v. Clackamas County*, 25 Or LUBA 152 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence in the local record that there are currently a certain number of approved mobile home subdivision lots within a local jurisdiction, is not undermined by a statement in the comprehensive plan that several years earlier, a different number of mobile home subdivision lots were approved, but had not been "finalized." *Mannenbach v. City of Dallas*, 25 Or LUBA 136 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the local decision maker determines the existence of a nonconforming personal use airport, but the evidence concerning the scope of that nonconforming use is nonspecific, LUBA will affirm the local decision maker's determination that the scope of the nonconforming use amounts to no more than one four-hour flight per year from such airport. *Warner v. Clackamas County*, 25 Or LUBA 82 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. In determining compliance with a local code standard that a proposed farm dwelling be on a parcel as large as the median commercial farm unit in the area, a local government may rely on evidence that farm operations on three adjoining parcels constitute one commercial farm operation for purposes of calculating the size of the median commercial farm unit in that area. *Walker v. Clackamas County*, 25 Or LUBA 6 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. There is substantial evidence to support a local government's determination that a parcel is in farm use, where the parcel is a pasture for livestock and poison oak is burned on the property to retain that pasture. *Leabo v. Marion County*, 24 Or LUBA 495 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence is evidence a reasonable person would accept as adequate to support a conclusion. Absent some indication that the information provided by a traffic count at a single location is an

unreliable indicator of the daily traffic on a road, the traffic count is substantial evidence of the daily traffic on that road. *Reeves v. Washington County*, 24 Or LUBA 483 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. There is no statutory requirement that legislative decisions be supported by substantial evidence. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 466 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government determination that a proposed nonresource dwelling "does not materially alter the stability of the overall land use pattern of the area" is not supported by substantial evidence, where the parties cite no evidence in the record establishing the relevant area, the overall land use pattern of such area or the effect of the proposed dwelling on the stability of such land use pattern. *Todd v. Columbia County*, 24 Or LUBA 289 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is evidence in the local government record that the number of golf balls claimed to have landed in adjoining orchards is exaggerated, a decision approving a golf course and imposing a condition requiring the planting of trees to contain golf balls on-site and installation of a fence and screen to prevent golfers and golf balls from entering adjoining orchard property, is supported by substantial evidence. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the aerial application of chemicals on an orchard adjoining a proposed golf course will be rendered more difficult, although possible, in that at least one aerial sprayer indicates he would be willing to spray the affected orchard, and the decision approving the golf course requires the operator to close the golf course to facilitate such spraying, there is substantial evidence in the record that the golf course will not force a significant change in or significantly increase the cost of aerial spraying of the adjoining orchard. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision that a golf course will not significantly change or increase the cost of ground spraying of an adjoining orchard is supported by substantial evidence, where there is conflicting evidence concerning the magnitude of ground spraying drift expected to travel onto adjoining properties, and the decision imposes a condition requiring that the golf course operator provide monitors to prevent golfers from coming into contact with ground spray drift. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where different reasonable conclusions could be drawn from the evidence in the record, the choice between the different reasonable conclusions belongs to the local government. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government determination that a proposed development can be built without placing new construction

within 25 feet of the centerline of a designated water feature is supported by substantial evidence where site plans in the record indicate the centerline of the water feature and display an acceptable design for the development that does not impinge on the 25 foot boundary. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is uncontradicted evidence that up to 70 percent of the waste material to be accepted at a proposed recycling facility will be recycled, and that some recycling facilities accept material that includes both solid waste that cannot be recycled as well as recyclable material, a local government's finding that the solid waste transfer component of the proposed facility is "customarily incidental" to the recycling component of the facility is supported by substantial evidence in the record. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could conclude that adequate water service can be provided to a proposed development, where the record contains evidence demonstrating that under a worst case scenario of high water demand and limited availability of water from existing water rights, sufficient water can be provided if a certain additional quantity of water is stored in impoundments on the subject property, and that impounding such quantity of water on the subject property is feasible. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an applicable code criterion requires that an existing structure have been issued all necessary permits in the past and a party raises a substantial issue concerning whether such is the case, the local government is required to adopt findings explaining why the code criterion is met and those findings must be supported by substantial evidence. *Mercer v. Josephine County*, 23 Or LUBA 608 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the evidence indicates that there are two rock cairns on the subject property which may be Native American burial cairns eligible for listing on the National Register of Historic Places, and the function of the cairns cannot be determined without further archaeological evaluation, there is not substantial evidence in the record to support a determination that there are no significant archaeological sites on the property. *Larson v. Wallowa County*, 23 Or LUBA 527 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is expert evidence in the record that traffic systems in the area are inadequate to serve a proposed golf course, and only conclusory evidence to the contrary, a local government's finding of compliance with a code standard requiring adequate rural facilities to serve the proposed use is not supported by substantial evidence in the record. *Kaye v. Marion County*, 23 Or LUBA 452 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the only evidence supporting a finding that a site contains 1.5 million cubic yards of aggregate

material is a page from a reclamation application with that figure filled in, with no supporting documentation, the finding is not supported by substantial evidence in the record and is inadequate to comply with the Goal 5 inventory requirements of OAR 660-16-000. *Calhoun v. Jefferson County*, 23 Or LUBA 436 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Comments made by individual local government decision makers during deliberation on an application cannot constitute *evidence* in support of, or in opposition to, a challenged decision approving or denying such application. *Forster v. Polk County*, 23 Or LUBA 420 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the only evidence cited in the record strongly suggests that sewer service is unavailable to the subject property, and the availability of water service and storm drainage systems to serve the subject property is uncertain, a determination that a UGB amendment complies with Goal 14 factor 3, requiring "[o]rderly and economic provisions for public facilities and services," is not supported by substantial evidence. *ODOT v. City of Newport*, 23 Or LUBA 408 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Even if the subject property is properly described as marginal farmland with poor drainage, where there is undisputed evidence in the record of the property's historic and current use for agricultural production and that the property has Class II and IV agricultural soils, a finding that the property "is not likely to be used for agricultural production" is not supported by substantial evidence. *Brandt v. Marion County*, 23 Or LUBA 316 (1992).