

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A conclusion that poor economic conditions do not exist in the market that would advise against proceeding with a hotel project because two other hotel projects have received building permits or are at the building permit stage is not supported by substantial evidence where (1) the applicant submitted regional and national market data for the hotel industry showing severe declines in occupancy, (2) the applicant pointed to comments in the local government’s own budget which recognize the likelihood of a recession and a loss of funding, including from a decrease in transient lodging tax collections, (3) the applicant submitted several letters from lenders as additional evidence of poor economic conditions, (4) the decision-maker does not consider the applicant’s relevant evidence, and (5) the applicant noted the differences between its project and the two other projects. *Hollander Hospitality v. City of Astoria*, LUBA No 2020-088 (Jan 15, 2021).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Tax filings and a commodities report indicating that 232.24 acres of the 249-acre subject tract were used for grazing during the prior year are substantial evidence that “[t]he subject tract is currently employed for farm use,” for purposes of OAR 660-033-0135(1)(b), even where aerial photos from the prior year do not depict cattle on the subject tract. *Landwatch Lane County v. Lane County*, LUBA No 2020-104 (Mar 19, 2021).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** An affidavit of the owner of the subject property stating that a particular structure is removable does not establish, as a matter of law, that the structure is removable where photographs depict the structure as being located on the subject property during the rainy season over many years. *Armstrong v. Jackson County*, 81 Or LUBA 651 (2020).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a decision-maker relies on 40-foot contour maps in the record, sourced from county data, to determine the slopes on the subject property, an argument that the decision-maker erred by disregarding finer-scale, two-foot contour maps that petitioners submitted provides no basis for reversal or remand where the decision-maker reasoned that petitioners’ contour maps were “not reliable, accurate or trustworthy evidence” because they were not signed by a registered professional surveyor and because they contained an incorrect scale, and where the petitioners have not otherwise established that credible evidence weighs overwhelmingly in favor of their description of the slopes on the subject property or that the evidence upon which the decision-maker did rely was not substantial evidence. *Velasquez v. Jackson County*, 80 Or LUBA 1 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a neighbor describes observing, from their living room view, minimal orchard, meadow, and garden-related activity on the property and, other than horses belonging to some of the owners of the property, never seeing any livestock or other animals on the property between 1970 and 2004, and where the neighbor subsequently reiterates that there was no farm use, such as cattle or crops, between 1978 and 1983 and that, during the 1980s, owners of the property kept their show horses on the property, a local government may reasonably conclude that the property was “not managed for three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income” for purposes of *former* ORS 197.247(1)(a) (1991), even where the record includes (1) aerial photos from 1979 and 1982, (2) a 1979 permit for a new barn,

(3) a 1987 farm dwelling approval, and (4) testimony from other area residents contradicting the neighbor's testimony, where the record does not disclose the proximity of the other area residents' properties to the subject property or whether those area residents had made firsthand observations of the subject property during the relevant statutory period. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** An attorney-land-use-consultant-prepared ESEE analysis including numerous plans, reports, and other documents supporting the redesignation and rezoning of protected habitat from forest land to marginal land under *former* ORS 197.247 (1991) is not sufficient to rebut expert testimony including (1) a letter authored by an ODFW biologist that generally discusses the cumulative impact of development on habitat and (2) general ODFW guidance related to levels of residential density in areas of peripheral big game habitat absent evidence of the attorney land use consultant's expertise. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** In the context of an application to change the comprehensive plan designation of property to Rural Residential Exception Area, where a comprehensive plan provision provides that “any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating that the property does not meet the definition of agricultural \* \* \* land,” a county correctly determines that an applicant satisfies that provision by producing copies of the county's adopted and acknowledged agricultural lands inventories, which do not include the property. Even where an opponent submits an NRCS soils map into the record, which the opponent argues shows the property's soils constitute agricultural lands, where the NRCS website that the opponent used to prepare the soils map includes a disclaimer regarding the large scale of mapping, stating that “[e]nlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement,” a reasonable decision-maker would rely on the inventories to conclude that the property is not agricultural land, and a reasonable decision-maker could determine that the NRCS soils map is less credible than the inventories. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a city bureau manages the city's transportation system, including private uses in the city right-of-way, and where bureau staff have special expertise in the safe and efficient use of the right-of-way and various demands on streets, including traffic, parking, and loading, statements from the bureau (1) that studio apartments have lower turnover rates, less need for unloading large furniture, and, thus, less need for a loading space, and (2) that signed, infrequent on-street loading will not have a negative effect on the traffic safety or other transportation functions of the abutting right-of-way are evidence that would permit a reasonable person to find that an on-street loading space is adequate for a proposed studio apartment building's loading needs such that the development continues to meet the intended purpose of, and, therefore, qualifies for an adjustment to, an off-street loading space requirement, even where there is testimony in the record from an opponent of the development regarding anticipated negative congestion and safety impacts of off-street loading. *NDNA v. City of Portland*, 80 Or LUBA 269 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where an approved site plan indicates that a replacement dwelling will be sited on an *adjacent* property, but where the building permit for the replacement dwelling allows a replacement dwelling “in the same footprint as the original home,” and where an ArcGIS map marked with distances and existing development indicate that the footprint of the original dwelling was located on the *subject* property, a conclusion that the subject property does not “include[] a dwelling” for purposes of forest template dwelling approval under ORS 215.750(4)(d) is not supported by substantial evidence. *Bielefeld v. Lane County*, 80 Or LUBA 480 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will not second-guess a decision-maker’s choice between conflicting evidence, including expert testimony, so long as a reasonable person could decide as the decision-maker did. *Fairmount Neighborhood Assoc. v. City of Eugene*, 80 Or LUBA 551 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where an applicant proposes to occupy one guest apartment within an 18,000-square-foot dwelling while allowing the remainder of the dwelling and all of its amenities to be used by bed and breakfast guests, a county’s conclusion that the bed and breakfast is not a “subordinate use” of the dwelling, and therefore not a home occupation, and that the applicant is not a “resident of the dwelling” is consistent with the plain meaning of the code language and is supported by substantial evidence in the record where there is evidence that the applicant “spends a couple of days a week” at a different home, and that the subject dwelling does not appear to be occupied when viewed from the road or neighboring properties, even though the applicant provides a copy of her driver’s license that lists the subject dwelling. *Lee v. Marion County*, 79 Or LUBA 199 (2019).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A reasonable person could conclude, based on expert testimony, that the 14-foot paved width of the only access street is sufficient to ensure compliance with a planned unit development (PUD) approval standard requiring that the PUD is not an “impediment to emergency response,” where there is evidence that with adjoining paved or graveled parking areas to allow opposing traffic to pull over, the access street could allow emergency vehicle access in the same manner as a “queuing street,” notwithstanding that the access street does not possess all the characteristics of a queuing street. *Conte v. City of Eugene*, 77 Or LUBA 69 (2018).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Whether an individual “appeared” during the proceedings below and thus has standing to appeal or intervene before LUBA is a mixed question of law and fact that often requires extra-record evidence to evaluate, including the circumstances surrounding whatever action is the basis for the asserted appearance. *Conte v. City of Eugene*, 76 Or LUBA 498 (2017).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A hearings officer’s conclusion that the subject property was “lawfully created” is supported by substantial evidence in the record that includes (1) a set of receipts for 1980 recording fees for the final partition plat for submittal of a survey, (2) a set of 1980 recorded deeds, and (3) the recorded final partition plat, despite the fact that the final partition plat was not recorded until 1996, where a reasonable person

could rely on that evidence to conclude the subject property was created in conformance with all applicable ordinances. *Landwatch Lane County v. Lane County*, 75 Or LUBA 151 (2017).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Adequate findings must (1) identify the relevant approval standards, (2) set out the facts which are believed and relied upon, and (3) explain how those facts lead to the conclusion that the approval standards are met; but adequate findings need not necessarily address evidence that conflicts with the evidence the local government chooses to rely upon, or explain why the decision-maker chose not to rely upon evidence that conflicts with the evidence it did choose to rely upon. *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a hearings officer finds that the only evidence on a key legal issue regarding required mitigation for the impacts of a destination resort was presented by permit opponents, but the record makes it clear that the applicant also submitted conflicting evidence on that legal issue, remand is required. *Central Land and Cattle Company, LLC v. Deschutes County*, 74 Or LUBA 326 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will affirm a county’s finding that a high-voltage line that effectively divides a property into thirds is a condition “unique to the property” justifying a variance to a minimum parcel size, where there is no argument or evidence that nearby properties are similarly divided by the high-voltage line. *Neil v. Columbia County*, 74 Or LUBA 442 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** An applicant’s letter detailing the nature and location of a concrete batch plant’s fuel tanks, stockpiles and buildings is not sufficient to establish their location as a matter of law or to establish that a hearings officer erred by failing to rely on that letter, where the hearings officer pointed out discrepancies between that letter and other letters submitted by the applicant. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where there is conflicting believable evidence regarding whether a proposal to replace a concrete batch plant with an asphalt batch plant would present a greater risk of explosions and damage to surrounding properties, a hearings officer’s conclusion that the asphalt batch plant poses a greater risk of explosions and damage is supported by substantial evidence. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A reasonable decision-maker could infer from the lack of any mention of composting on the subject property in any contemporaneous documentation prior to the 1990s that composting did not occur on the property prior to the period, notwithstanding conflicting testimony from the applicant that composting occurred prior to 1962, the date a composting facility became nonconforming on the property. *Grabhorn v. Washington County*, 73 Or LUBA 27 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A landscape architect’s conclusory statement that a proposed buffer will “ensure compatibility” between urban

and rural agricultural uses is not supported by an adequate factual base, where the record includes uncontroverted testimony that the buffer depends on vegetation growth that will take up to 15 years to effectively screen equestrian jumping events located only 50 feet away from urban residential development, and that horses participating in the events may be panicked by fireworks and other sudden visual and auditory impacts stemming from the unscreened residential uses. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** An exhibit prepared by the applicant’s attorney showing that three equestrian centers are located within urban areas does not provide an adequate factual base to support a finding that a 50-foot-wide buffer is sufficient to ensure compatibility between urban residential uses and an adjacent equestrian center, where that testimony is undermined by testimony from the owners of the urban equestrian centers that their operations rely on buffers that are 160 to 300 feet wide, and that a buffer only 50 feet wide would compromise the safety of horse riders. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The lack of evidentiary support for a finding that a vegetative buffer is superior to a distance buffer at reducing visual incompatibilities is not harmless error, where the only evidence on that point is to the contrary, and under the local government’s interpretation of the compatibility standard whether one buffer method is better at reducing or minimizing adverse visual impacts than another method appears to be a legitimate consideration. *Forest Park Neighborhood Assoc. v. Washington County*, 73 Or LUBA 193 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A reasonable decision-maker could rely upon a diesel fume test conducted by the applicant to determine whether diesel fumes are detectable at the property line, combined with a condition of approval limiting idling and operation within 60 feet of the property line, to conclude that a “no fume detection” home occupation standard is met, notwithstanding conflicting anecdotal testimony from the neighbors across the road that they can sometimes detect diesel fumes. *Jacobs v. Clackamas County*, 73 Or LUBA 262 (2016).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where OAR 660-023-0180 sets a default maximum mining impact area of 1500 feet, and the county employed an impact area of one-half mile and relied on testimony from the operator of a nearby cattle operation and a second person with experience with mining impacts on cattle in other locations to conclude that the one-half-mile impact area did not need to be extended based on potential mining noise impacts on cattle, the county’s decision that the one-half-mile impact area need not be extended is supported by substantial evidence. *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 45 (2015).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the record includes only speculative testimony that mining would impact sage grouse causing them to relocate and conflict with grazing operations beyond the proposed one-half-mile mining impact area, thus justifying a larger impact area, a county finding that mining would neither impact sage grouse nor cause them to relocate nor result in conflicts with distant farming operations is supported by

substantial evidence, where the record includes testimony from the manager of a nearby grazing operation that there were no nearby sage grouse and the proposed mine would not have any impacts on grazing. *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 45 (2015).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** While the evaluation of impacts on estuarine resources required by Goal 16, Implementation Requirement 1 need not be prepared by an expert, the nature of some types of potential adverse impacts caused by development on estuarine resources may be such that some technical expertise is necessary to provide substantial evidence to support conclusions based on the evaluation. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the record includes expert testimony that residential development may adversely impact endangered salmon species in an adjacent estuary through pollution from stormwater runoff, some level of scientific or professional expertise is necessary to rebut that testimony in order to provide supporting evidence for a contrary conclusion. A letter from the applicant’s attorney opining that stormwater runoff will not adversely impact salmon is not substantial evidence to support that conclusion. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A county errs in applying a rigorous “compelling evidence” standard to evaluate testimony from farmers located more than one mile from a proposed landfill, regarding impacts of the landfill operation on their farm costs and practices. Nothing in ORS 215.296(1) suggests that a county can apply different evidentiary standards on different parties based on the geographic distance to the proposed non-farm use. *Stop the Dump Coalition v. Yamhill County*, 72 Or LUBA 341 (2015).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** In comparing uses across different zoning districts for purposes of determining whether a rezone “significantly affects” a transportation facility under the Transportation Planning Rule (TPR), consistent assumptions must be used, with the only variables reflecting the different zoning standards. Where the opposition traffic expert used different assumptions about development under the original zone and the new zone that are not based on the differences between the two zones, that testimony does not undermine reliance on the applicant’s expert’s conclusion that the new zone does not allow more traffic-intensive uses than the old zone. *Save Downtown Canby v. City of Canby*, 70 Or LUBA 68 (2014).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where findings explain that a 1996 flood destroyed some county permit records, but staff testifies that the flood did not destroy older building permit records because the older records were stored above the flood damage area, substantial evidence exists to support the finding that the county permit records are complete through that period, as well as the inference that the absence of a building permit for a second dwelling means that the dwelling was constructed without a building permit approval, and therefore was not lawfully established. *Macfarlane v. Clackamas County*, 70 Or LUBA 126 (2014).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where, based on Natural Resources Conservation Service data, opponents take the position that the water table lies two feet below the surface of a proposed topsoil mining operation, but the local government accepts the applicant’s position that the water table lies 125 feet below the surface, but no party identifies the evidence the applicant and local government relied on for the 125-foot estimate, LUBA will remand the decision so that the county can adopt findings explaining the large discrepancy in the two estimates and why it accepted the 125-foot estimate. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A city’s finding that a historic resource is not capable of generating a reasonable economic return is supported by substantial evidence, where the applicant submitted detailed studies showing that the cost of rehabilitating the structure to meet current building codes would far exceed the reasonable rental value, notwithstanding conflicting testimony by opponents that rehabilitation costs could be lower, and rental returns higher, than the applicant’s experts estimated. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The city has discretion to rely on the evidence it chooses in making its decision, and the city’s decision not to rely on evidence provided by an applicant that calculates slopes on a property using a method that differs from the method requested by the city is not a basis to reverse or remand the decision. *SE Neighbors Neighborhood Assoc. v. City of Eugene*, 68 Or LUBA 51 (2013).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a hearings official is faced with testimony from one expert that a proposal’s sewage effluent would be residential strength and from another expert that the proposal’s effluent would be greater than residential strength, and both experts’ testimony is believable, the choice of which expert to believe lies with the hearings official. *Teen Challenge v. Lane County*, 67 Or LUBA 300 (2013).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will not second guess a land use decision maker’s choice between conflicting expert testimony, so long as it appears to LUBA that a reasonable person could decide as the decision maker did based on all of the evidence in the record. *Willamette Oaks, LLC v. City of Eugene*, 67 Or LUBA 351 (2013).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a hearings officer specifically recognizes that there is conflicting expert testimony and the expert testimony he finds more persuasive is believable, his decision is supported by substantial evidence. *Tonquin Holdings LLC v. Clackamas County*, 64 Or LUBA 68 (2011).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the local government recognizes that there is conflicting expert testimony and the expert testimony the local government finds more persuasive is believable, the decision is supported by substantial evidence. *Protect Grand Island Farms v. Yamhill County*, 64 Or LUBA 179 (2011).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where DEQ rules require that septic drain fields must be set back at least 100 yards from wells and there is conflicting

substantial evidence regarding the existence of an old well in an area proposed for a septic drain field, LUBA will defer to a hearings official's decision that has the effect of allowing the drain field to be used as proposed. *Freedman v. Lane County*, 64 Or LUBA 309 (2011).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a decision maker is required to conduct a *de novo* review of the evidence in the record, but the decision maker erroneously believes that under the appropriate standard of review the decision maker is obligated to resolve all evidentiary conflicts in the applicant's favor absent overwhelming conflicting evidence, a decision based on that erroneous understanding would likely not constitute *de novo* review. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A finding expressing an erroneous understanding of the local decision-maker's standard of evidentiary review is harmless error at best, where no party identifies any findings addressing the approval criteria or evidence in which the decision-maker applied that erroneous standard of review. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the critical finding in a hearings officer's decision in a code enforcement proceeding is that petitioner had a longstanding regular practice of mowing grass and blackberry bushes in the riparian zone on his property, the only evidence that supports that finding is the testimony of the code enforcement officer based on field notes regarding conversations he had with petitioner that are not part of the record, petitioner testifies in the hearings before the hearings officer that he mowed in the riparian area on only one occasion, and it is not clear that the hearings officer even recognized that the testimony of petitioner and the code enforcement officer conflicted on the critical issue, remand is required. The hearings officer may be able to explain why he believed the code enforcement officer over petitioner, but without any explanation his decision is not supported by substantial evidence. *Wigen v. Jackson County*, 63 Or LUBA 490 (2011).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Substantial evidence supports a county's finding that alternative sites not requiring an exception cannot accommodate a proposed travel plaza, where the record indicates that limited access to the alternative sites precludes use by large trucks. A county does not err in determining reasonable access by large trucks to be an essential or necessary characteristic of a proposed travel plaza. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the opponents' traffic engineer testifies based on data in the record that a left turn lane is required to ensure that the proposed use complies with a local transportation standard, and the applicant's traffic engineer disagrees, but without citing any evidence or explaining the basis for the contrary opinion, the applicant's engineer's unsupported opinion is not substantial evidence demonstrating compliance with the standard. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Remand is necessary where the applicant's traffic engineer declines to consider the impact of large spectator events at an already approved speedway near the proposed travel plaza, because the speedway events would

“overwhelm” the local transportation system, without explaining why those impacts can be ignored in evaluating whether the local transportation system has the “carrying capacity” to handle traffic from the proposed travel plaza. *Devin Oil Co., Inc. v. Morrow County*, 62 Or LUBA 247 (2010).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** That there is conflicting evidence in the record regarding whether an existing cell tower has capacity for co-locating the applicant’s cellular antennas is not a basis for reversal or remand, where the decision maker could reasonably conclude based on substantial evidence in the record that the existing tower does not have capacity. *Oberdorfer v. Deschutes County*, 62 Or LUBA 296 (2010).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** When a traffic impact analysis (TIA) states that it was based on ODOT recommended guidelines but fails to follow those ODOT guidelines, and the final decision relies on that TIA and does not respond to opponents’ challenges to the failure to comply with the ODOT guidelines, the decision to rely on a TIA is not reasonable and the decision is not supported by substantial evidence. *Citizens for Responsible Development v. City of The Dalles*, 60 Or LUBA 12 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the petitioner fails to challenge findings that explain why the county chose to rely on a consultant’s report that estimates the costs of putting land to farm use based on certain assumptions, the petitioner’s evidentiary arguments that the county should have used other assumptions fails to establish that the report is flawed or that the county erred in relying on the report. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** When nearby ranchers submit evidence that conflicts with the applicant’s expert testimony regarding whether the property could be used in conjunction with other land for farm use, even though that evidence could constitute substantial evidence, the county was entitled to rely on the conflicting evidence submitted by the applicant’s expert. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A hearings officer does not err in rejecting as not credible testimony that a 19-acre farm produced over \$80,000 in revenue from hay grown on the property, where the applicant provided no evidence of how much hay was grown on the property, or documentation distinguishing revenue from the sale of hay grown on the property from revenue derived from the resale of \$83,000 in hay that the applicant purchased that year, and substantial evidence in the record indicated that to derive \$80,000 in revenue solely from hay grown on the property would mean the applicant achieved yields and prices several times higher than average for the county. *Chapman v. Marion County*, 60 Or LUBA 377 (2010).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** When determining what comprehensive plan designation is more appropriate, a local government may consider evidence regarding wildlife habitat protection, recreation, need for parkland, water quality preservation, noise and air pollution, and tree preservation with respect to the entire property at issue in deciding that open space is the proper designation. The consideration is not limited to

inventoried habitat and riparian areas. *Haertl Development Company v. City of Portland*, 59 Or LUBA 69 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where Metro has designated 308 acres next to a city for industrial development, a market analysis is not substantial evidence that those 308 acres are not needed to meet the 20-year regional need for industrial land, where that market analysis concludes that under the right economic conditions only 150 acres of 308 acres will be developed but also concludes that there is a current shortage of industrial land to meet the region’s 20-year need for industrial land. *Graser-Lindsey v. City of Oregon City*, 59 Or LUBA 388 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Although a local government land use decision maker is entitled to choose between conflicting believable expert testimony, where the decision maker does not demonstrate that it recognized the conflicting expert testimony and chose to believe one expert’s testimony rather than the other expert’s testimony, remand is required. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the record includes conflicting believable evidence about whether an applicant’s assumption that 90 percent of the groundwater withdrawn for use by a destination resort will be returned to the subsurface hydrologic system and the county hearings officer findings recognize the conflicting evidence but choose to rely on the applicant’s expert’s position, which had been accepted by the Oregon Water Resources Department, the hearings officer’s findings on that question are supported by substantial evidence. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A county reasonably concludes that the record does not include “factual information indicating significant potential conflicts” with respect to whether a proposed quarry will disrupt sage grouse flights to and from a protected breeding site, where the only evidence suggesting that grouse flights come near the quarry site is a map the significance of which is subject to conflicting expert testimony. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Arguments that merely cite to opposing testimony and contend that that testimony should be believed over the evidence the local government chose to rely upon are insufficient to demonstrate that the decision is not supported by substantial evidence. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A county errs in relying on testimony of a general well constructor to conclude that digging 32 new wells would not adversely affect the underlying aquifer, where (1) the constructor’s testimony is based on the current functioning of three wells in the area and does not address the impacts of 32 new wells, (2) the constructor provided no water budget for the aquifer or similar data, and (3) the opponents submitted a detailed study and water budget from an acknowledged aquifer expert who testified that 32 new wells would adversely impact the aquifer. *Gardener v. Marion County*, 56 Or LUBA 583 (2008).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The existence of conflicting evidence in the record regarding whether an existing structure within a setback is 7.5 feet or one foot from the property boundary is not a basis for remand, as long as the city’s choice between the conflicting evidence is one a reasonable person could make. *McConnell v. City of Grants Pass*, 55 Or LUBA 280 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** While an astronomer’s testimony regarding the impact of dust on an observatory’s telescopes is substantial evidence from which a reasonable decision maker could conclude that dust from an open-pit mining operation would significantly conflict with the observatory, the county could nonetheless rely on the distance between the site and the observatory and proposed measures to control dust to conclude that the mine would not significantly conflict with the observatory. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Expert testimony that an existing firearms training facility in a forest zone is a fire hazard and increases costs and risks of fire suppression is not sufficient to undermine a finding to the contrary, where the testimony is based on the operation of the facility as a whole, and not on the post-1995 improvements that are the subject of the application. *Citizens for Responsibility v. Lane County*, 54 Or LUBA 1 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will affirm the hearings officer’s choice to rely on a traffic model that has not been “calibrated” against real-world data, where the applicable guidelines stress the importance of calibration but do not state that calibration is the only way to ensure that the model is accurate, and the applicant’s expert testifies that the model is reliable notwithstanding the absence of calibration. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** To obtain remand of development approval based on evidentiary grounds, it is insufficient to simply cite the evidence that the hearings officer rejected and argue that the evidence undermines the hearings officer’s ultimate evidentiary choice. The petitioner must also challenge and establish error in the findings in which the hearings officer explained why he found petitioner’s evidence unreliable. *Wal-Mart Stores, Inc. v. City of Gresham*, 54 Or LUBA 16 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A finding that it is feasible to construct a driveway that complies with maximum finished grade standards is not supported by substantial evidence, where the proposed driveway alignment clearly does not comply, the applicant’s engineer stated generally that an alternate alignment is likely to meet grade standards but submitted no plans or drawings demonstrating the location or feasibility of that alignment, and the opponents’ engineer submitted detailed testimony supported by drawings showing that the suggested alternate alignment will not comply. *Lenox v. Jackson County*, 54 Or LUBA 272 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where an approval criterion for an adjustment to the size of required loading spaces requires that the adjustment not

negatively affect traffic safety or other transportation features, the mere fact that there might be some moving or delivery vehicles that will not fit into the adjusted spaces that could have fit into the unadjusted spaces does not compel the conclusion that the approval criterion is not satisfied. *Yun v. City of Portland*, 54 Or LUBA 564 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A county reasonably relies on a forester’s opinion that Ponderosa pine is a more valuable species to grow on certain soils than Douglas fir, over conflicting opinions by persons who are not soil or forestry experts. *Anderson v. Lane County*, 54 Or LUBA 669 (2007).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** In determining whether a property is generally unsuitable for the production of farm crops and livestock or merchantable tree species, a county’s conclusion that any historic agricultural use on the property before that time does not provide a substantial hurdle is supported by substantial evidence where the county chooses to rely on an expert’s opinion that proposed nonfarm parcels have not been used for agricultural operation in the past 20 years. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** It is not unreasonable for a local decision maker to cite issues raised regarding the evidence submitted by an applicant’s engineers that were not responded to, and to rely on opponents’ experts’ testimony to find that the applicant failed to carry its burden of proof. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A local government may rely on evidence that clam beds that partially justified a previous natural management unit designation have been smothered by erosion, and the reduced habitat value warrants redesignation of the area to a conservation management unit, notwithstanding conflicting evidence over the remaining habitat value. *Oregon Shores Cons. Coalition v. Lane County*, 52 Or LUBA 471 (2006).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where an applicant’s expert and the United States Fish and Wildlife Service disagree about the adequacy of the expert’s survey of endangered western lilies on the site of a proposed development, LUBA will defer to the city’s choice to believe the applicant’s expert. While the United States Fish and Wildlife Service may ultimately prevail in future federal permitting proceedings, a city’s choice between conflicting testimony at the city’s master plan of development approval stage presents no basis for reversal or remand. *Oregon Shores Cons. Coalition v. City of Brookings*, 49 Or LUBA 273 (2005).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** An expert study concluding that a clay layer prevents rainwater from permeating down to the aquifer and that proposed storm water facilities will ensure that post-development hydrology differs little from pre-development hydrology is substantial evidence a reasonable person could rely upon to conclude that proposed development will not adversely affect the aquifer or wells that rely on it. *Dinges v. City of Oregon City*, 49 Or LUBA 376 (2005).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Even if intersection improvements that are required in approving a destination resort will maintain acceptable levels of service on nearby roads and key intersections, it does not necessarily follow that there will not be conflicts between the increased levels of traffic the proposed destination resort will generate on these roads and agricultural traffic (including livestock and large slow-moving agricultural vehicles) seeking to negotiate these same roads. However, where the relevant approval standard only requires “reasonable compatibility,” and the testimony on both sides of the seriousness of the conflicts from such traffic is speculative, LUBA cannot say the county was unreasonable in finding the destination resort will be “reasonably compatible” with nearby farm use and farm traffic. *Burke v. Crook County*, 48 Or LUBA 23 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A local government may rely on portions of two conflicting expert studies of soil classifications, although explanatory findings may be necessary to identify what portions are relied upon, and to resolve any differences or contradictions between the studies relied upon, so that LUBA may perform its review function. *Doob v. Josephine County*, 48 Or LUBA 227 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Expert evidence that an enhanced wetland is very unlikely to attract species that would conflict with operation of an adjoining aggregate mine is substantial evidence to support a finding that the enhanced wetlands will not “adversely impact” the mine, notwithstanding conflicting evidence on that point and the fact that the applicant’s expert could not guarantee no adverse impacts. *Cadwell v. Union County*, 48 Or LUBA 500 (2005).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A code standard requiring that a proposed use will not interfere with or cause an adverse impact on a mining operation does not require evidence that adverse impacts are impossible; rather, it requires the decision maker to evaluate probabilities. Expert evidence that it is “highly unlikely” that wetland enhancements will attract species that might lead to restrictions on a mining operation is evidence a reasonable person could rely on to find compliance with the adverse impacts standard, notwithstanding conflicting expert evidence on that point. *Cadwell v. Union County*, 48 Or LUBA 500 (2005).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where LUBA concludes that the evidence in the local government record regarding whether use of a nonconforming dwelling was abandoned for more than one year was “hardly overwhelming” but was nevertheless such that a reasonable decision maker could either find that the use was discontinued or find that the use was not discontinued, the hearings officer’s finding that the nonconforming use was discontinued is supported by substantial evidence. *Bradley v. Washington County*, 47 Or LUBA 11 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where LUBA is able to determine that a reasonable decision maker could rely on the evidence the decision maker chose to rely on, findings specifically addressing conflicting evidence are unnecessary. *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A surveyor’s map that shows elevation differences at certain points on the subject property, but does not provide a basis to estimate whether the slope of the property is predominantly more or less than seven percent, does not so undermine a small-scale county soil survey map indicating that the soil slope on the subject property is predominantly greater than seven percent, as to render the county soil survey nonsubstantial evidence. *Tallman v. Clatsop County*, 47 Or LUBA 240 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A finding that sales of non-construction related materials at a home improvement store, such as house plants, barbeques, etc., are incidental and subordinate to the primary use of “Construction Sales and Services” is supported by substantial evidence, where the testimony cited by petitioners takes a broader view of what constitutes non-construction related material that the local decision maker and in any case fails to establish that the sales of such non-construction related materials is so predominant as to make such sales the principal use. *Heilman v. City of Corvallis*, 47 Or LUBA 305 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where two traffic studies indicate that post-acknowledgment plan amendments may cause a transportation facility to fall below the minimum acceptable performance standard, and the respondent cites no evidence to the contrary that a reasonable person would rely upon, remand is necessary for the city to address whether the plan amendment will “significantly affect” that transportation facility within the meaning of OAR 660-012-0060(2)(d). *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where there is conflicting believable expert testimony regarding the efficacy of a subdivision applicant’s proposed measures to ensure that construction of a road near large trees with intertwined roots can be accomplished without so damaging the roots that the trees will die, LUBA will defer to the city’s choice of which expert to believe. *Miller v. City of Tigard*, 46 Or LUBA 536 (2004).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Substantial evidence supports a hearings officer’s conclusion that only five percent of traffic generated by a proposed church would turn south at an affected intersection, and that traffic counts performed in February are indicative of summer peak traffic loads, where it is undisputed that few if any church members reside south of the intersection, and the applicant’s traffic engineer testified that the affected intersection is not subject to seasonal fluctuations in traffic levels. *Noble v. Clackamas County*, 45 Or LUBA 366 (2003).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A reasonable decision maker may rely upon existing state and federal safety standards, and evidence of safety features designed to prevent fire or explosion in the event an airplane crashes into a proposed fuel station located near a runway, to conclude that no additional safety standards are necessary, notwithstanding testimony from the airport manager and aviation officials that the location of the proposed station is unsafe. *Graham Oil Co. v. City of North Bend*, 44 Or LUBA 18 (2003).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where petitioners present evidence and testimony that a property is not predominately composed of Class IV through

Class VIII soils because an access easement that covers over 25 percent of the property is not wholly comprised of Class VI soils, and the testimony of the applicant's soil scientist does not explain why the entire easement is comprised of Class VI soils, the county's determination that the property is predominately composed of Class IV through VIII soils is not supported by substantial evidence. *Friends of Yamhill County v. Yamhill County*, 44 Or LUBA 777 (2003).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A city is entitled to rely on expert testimony that a specific model of the flood depth and velocity over the subject property is necessary to demonstrate compliance with a standard requiring no significant hazard to life or property, and the city may decline to extrapolate that information from other expert testimony that models an adjacent area. *Starks Landing, Inc. v. City of Rivergrove*, 43 Or LUBA 237 (2002).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A county decision that relies on an engineer's report to identify the location of a floodway boundary is supported by substantial evidence, where the county does not require that a land surveyor locate the floodway boundary and the conflicting evidence that supports a different location for the boundary is not so compelling as to cause a reasonable person to doubt the credibility of the engineer's report. *Mertz v. Clackamas County*, 43 Or LUBA 313 (2002).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** In determining whether conflicting uses can be minimized pursuant to OAR 660-023-0180(4), a local government may draw reasonable inferences from expert testimony to determine that a numerical standard for minimization, such as for turbidity, cannot be satisfied. *Molalla River Reserve, Inc. v. Clackamas County*, 42 Or LUBA 251 (2002).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Petitioner fails to overcome the county's determination that property is forest land under Goal 4, and fails to demonstrate as a matter of law that land is not "suitable for commercial forest uses," where petitioner's own expert testifies that notwithstanding limitations on productivity the subject property is in a "medium productivity range" and would yield \$81,300 worth of commercial timber at 50 years, after an investment of \$7,450. *Potts v. Clackamas County*, 42 Or LUBA 1 (2002).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Although local governments are required to address legitimate issues that are raised in a quasi-judicial land use proceeding concerning relevant approval criteria, local governments are not required to address in their findings every conflict in the evidence or every criticism that is made of particular evidence. *Knight v. City of Eugene*, 41 Or LUBA 279 (2002).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Substantial evidence supports a finding that a proposed high school will not increase traffic through an affected intersection during the peak morning hour, notwithstanding failure of the traffic study to take certain trips into account, where the decision imposes conditions that effectively eliminate the possibility of those trips impacting the intersection. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A reasonable person could conclude that revenue projections for an urban renewal plan are feasible for purposes of ORS 457.095(6) and 457.085(3)(g), where expert evidence in the record shows that the total debt can be retired if four new industrial developments locate in the industrial park improved under the renewal plan, that three new industrial developments have advanced plans to locate in the park, and that the park, once improved, is likely to attract at least one other new industrial development over the relevant time period. *Zimmerman v. Columbia County*, 40 Or LUBA 483 (2001).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** 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).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** An architect’s unsupported statement that a proposed structure is 14,719 square feet in size and thus complies with a local standard limiting permissible size to 14,723 square feet is not substantial evidence supporting a finding of compliance with the standard, where the opponents offered detailed evidence showing that the structure exceeds the maximum size and the applicant failed to either explain the architect’s supporting calculations or refute the opposing evidence. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Expert testimony that existing riprap will prevent dune retreat if repaired when damaged is substantial evidence supporting the county’s finding under Goal 18 that the dune upon which development is proposed is stabilized and not subject to wave overtopping or ocean undercutting, notwithstanding conflicting expert evidence that the riprap may be insufficient or may fail. *Save Oregon’s Cape Kiwanda v. Tillamook County*, 40 Or LUBA 143 (2001).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A determination by a hearings officer that, based on conflicting testimony and evidence, the impacts from a proposed alteration to a nonconforming use would be greater than the allowed nonconforming use does not allow opponents to “effectively veto” the alteration, where the decision identifies the evidence considered by the hearings officer and articulates the reasons why the hearings officer found certain testimony more credible than other testimony. *Hal’s Construction, Inc. v. Clackamas County*, 39 Or LUBA 616 (2001).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A city’s finding that all fill that had been placed in an estuary had been removed is supported by substantial evidence where the city relied on testimony by the applicant’s engineer, a letter from the Corps of Engineers and other evidence of delivery and removal of fill, notwithstanding certain weaknesses in that evidence and the existence of other conflicting evidence. *Willhoft v. City of Gold Beach*, 39 Or LUBA 353 (2001).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The burden of proof to show the legitimacy of a nonconforming use rests with the party asserting the existence of the

use. LUBA will not substitute its judgment for that of the local decision maker where a reasonable person could find a beach house is not a valid nonconforming use. *Crook v. Curry County*, 38 Or LUBA 677 (2000).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Evidence that alternatives to the preferred option require a sewer connection to a different drainage basin, a pump station contrary to applicable regulations and the removal of mature trees, and that they are significantly more expensive to install, demonstrates that the alternatives are impracticable. *Malinowski Farm v. Metro*, 38 Or LUBA 633 (2000).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Neighboring farmer's testimony regarding potential for goose depredation of crops is substantial evidence that impacts from mining will not substantially increase the cost of or force a significant change in agricultural practices, notwithstanding contrary general statements from a government wildlife biologist. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A title insurance company letter indicating that a property has legal access is substantial evidence that such access exists, notwithstanding contrary evidence in the record. *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A city's conclusion that additional parking is needed is supported by substantial evidence notwithstanding contrary evidence contained within a parking study, where the city found the parking study is limited in scope and does not account for certain variables, and there is also evidence that parking is unavailable during peak times and that persons avoid a particular store because of a perceived lack of parking. *Douglas v. City of Lake Oswego*, 37 Or LUBA 826 (2000).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will affirm a hearings officer's choice between conflicting expert testimony where a reasonable person could conclude, based on the testimony of applicant's expert, that a proposed intersection provides a sight distance exceeding that required by the code, notwithstanding the contrary testimony of opponents' engineer. *Mitchell v. Washington County*, 37 Or LUBA 452 (2000).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where an applicant submits evidence that an intersection will operate at level of service C but later submits evidence showing the intersection will operate at level of service E, a finding that the intersection will operate at level of service C is not supported by substantial evidence. Where the finding concerning the intersection is a necessary part of the decision, the decision must be remanded. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** 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).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A city’s denial of a permit to construct a house proposed to be cantilevered out over the face of a sand bluff is supported by substantial evidence, where there is conflicting expert testimony regarding adverse impacts from structural supports sunk into the face of the bluff, and the city reasonably chose to believe an expert opinion that under no circumstances should the face of the bluff be compromised. *Johns v. City of Lincoln City*, 37 Or LUBA 1 (1999).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Neighbors’ testimony regarding adverse impacts of vibration from construction on the integrity of a sand bluff underlying adjacent properties is substantial evidence supporting the city’s denial of a house proposed to be built on the bluff, notwithstanding a contrary conclusion inferred from geotechnical reports supporting the application. *Johns v. City of Lincoln City*, 37 Or LUBA 1 (1999).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where all the testimony regarding whether students would or would not continue current parking behavior in the future is based on unsupported speculation about what might happen in the future, a reasonable decision maker could choose either the proponent’s or the opponent’s testimony. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Substantial evidence supports a city’s finding that the primary purpose of a proposed facility is to recover recyclables from a waste stream, where there is evidence that the most significant function and justification of the proposed facility is to recover recyclables, notwithstanding that the proposed facility might also serve or facilitate other economic purposes. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** 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).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** An assignment of error criticizing a city council for not discussing conflicting evidence will be rejected, because it is the written decision rather than oral deliberations where the decision maker is required to explain its choice between conflicting evidence. Moreover, where LUBA can determine that a reasonable decision maker would rely on the evidence the decision maker relied on, findings specifically addressing the conflicting evidence are not necessary. *Port Dock Four, Inc. v. City of Newport*, 36 Or LUBA 68 (1999).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA does not independently analyze the evidence, but reviews evidence in the record solely to determine whether it was reasonable for the decision maker to rely on that evidence in making a decision. Where the written evidence is conflicting and a video tape makes it clear that only small remnants

of past farming or Christmas tree growing efforts on the subject property remain among the piles of debris that have been scattered over the subject property, it is reasonable for a hearings officer to conclude there is no current farm use of the property. *Best Buy in Town, Inc. v. Washington County*, 35 Or LUBA 446 (1999).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA does not duplicate the role of a local hearings officer. Where the evidence is conflicting such that a reasonable decision maker could reach different conclusions based on that evidence, the choice of which evidence to believe and which conclusion to reach is for the hearings officer. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A local government's decision regarding the scope of an alleged nonconforming use is supported by substantial evidence, where the evidence the local government relies on is credible, and the opposing evidence does not so undermine the evidence relied upon as to render the local government's reliance on supporting evidence unreasonable. *Aman v. City of Tigard*, 35 Or LUBA 353 (1998).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where findings identify substantial evidence to support a local government's position, the government is not required to explain why it chose to balance conflicting evidence in a particular way or to identify evidence it chose not to rely upon. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where there is a dispute between expert opinions, a local government is entitled to choose between conflicting evidence, provided that opposing testimony and other evidence in the record do not undermine the government's evidence to the extent that no reasonable person would rely on it. *ODOT v. City of Oregon City*, 34 Or LUBA 57 (1998).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Selected portions of an engineer's letter, cited to support a finding that water supply is adequate, do not constitute substantial evidence where that finding is undermined by the engineer's letter taken as a whole and by other conflicting evidence. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will defer to a local government's choice between conflicting evidence if it concludes a reasonable person would have reached the decision the local government made in view of all of the evidence in the record. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Population projections of a witness who is not shown to be qualified by education or experience to evaluate evidence and draw conclusions concerning a highly technical and complex subject raise substantial evidence concerns, particularly when they are contradicted by the official population estimates prepared by the Center for Population Research and Census (CPRC) and letters from CPRC experts. *Concerned Citizens v. Jackson County*, 33 Or LUBA 70 (1997).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Although the choice between conflicting testimony belongs to the county, where the evidence provided by petitioners reveals factual inconsistencies in intervenors’ evidence, the county must at least explain a reasonable basis for its choice between the conflicting evidence. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the county’s factual findings determine that the subject parcel contains soils that are presumptively suitable for farm use, but then conclude that the proposed dwelling is situated on land that is unsuitable for farm use, the county’s conclusion is not supported by substantial evidence in the record. *Le Roux v. Malheur County*, 32 Or LUBA 124 (1996).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the county’s conclusion that two parcels are not contiguous for purposes of OAR 660-04-028(6)(c)(B) is not factually established in the record and is inconsistent with evidence relied upon by the county regarding nonresource use on adjacent parcels, the county’s finding is not supported by substantial evidence in the record. *Johnson v. Lane County*, 31 Or LUBA 454 (1996).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will not substitute its judgment for that of the local decision maker. Without references to conflicting evidence in the record that so undermines the evidence upon which the county based its conclusion as to compel a conclusion that a reasonable person could not have reached the county’s conclusion, LUBA will not find the county’s findings lack substantial evidence. *Canfield v. Yamhill County*, 31 Or LUBA 25 (1996).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The county is not required to address all conflicting evidence in its findings, but the findings must address and respond to specific issues raised in the local proceedings that are relevant to compliance with approval standards. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the evidence is conflicting, if a reasonable person could reach the decision made by the local government in view of all the evidence in the record, LUBA will defer to the local government’s choice between the conflicting evidence, notwithstanding that reasonable people could draw different conclusions from the evidence. *Canby Quality of Life Committee v. City of Canby*, 30 Or LUBA 166 (1995).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA does not substitute its judgment regarding conflicting evidence in the record for that of the local government. If a reasonable person could reach the decision made by the local government, LUBA will defer to the local government’s choice between conflicting evidence. *Gionet v. City of Tualatin*, 30 Or LUBA 96 (1995).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where evidence in the record supports the city’s finding that a development site is not capable of supporting an 11-lot subdivision, LUBA will defer to the city’s evaluation of the evidence, notwithstanding

petitioner's citation to contrary evidence in the record that the site could accommodate 11 units. *Holland v. City of Cannon Beach*, 30 Or LUBA 85 (1995).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Petitioners' disagreement with a local government's evaluation of conflicting evidence is not a basis for remand; where different reasonable conclusions can be drawn from evidence in the record, the local government may choose the evidence upon which it will rely. *Friends of Neabeack Hill v. City of Philomath*, 30 Or LUBA 46 (1995).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Petitioners' disagreement with the county's evaluation of the evidence and its conclusions is not a basis for remand or reversal if the county's evaluation and conclusions are reasonable in light of all the evidence in the record. *Sandgren v. Clackamas County*, 29 Or LUBA 454 (1995).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where LUBA concludes a reasonable person could reach the decision made by a local government, in view of all the evidence cited in the record, LUBA will defer to the local government's choice between conflicting evidence. *Carter v. Umatilla County*, 29 Or LUBA 181 (1995).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** 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).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where there is conflicting evidence concerning the effectiveness of a condition requiring golf course closures during spraying operations to avoid significant effects on or cost increases in such spraying, a finding that the condition has been effective is supported by substantial evidence. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the evidence in the record cited by the parties can be characterized as conflicting, but does not so undermine the local government's conclusion as to make the conclusions unreasonable, the record contains substantial evidence supporting the local government's conclusion. *Mazeski v. Wasco County*, 28 Or LUBA 178 (1994).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the evidentiary support for a local government's determination of compliance with a relevant code standard is a 1990 traffic study, that evidentiary support is not undermined by a 1992 traffic study in the record which is based on data collected over a shorter period of time and from fewer intersections, further from the affected area. *Heine v. City of Portland*, 27 Or LUBA 571 (1994).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the evidence in the record concerning likely impacts associated with a vacation rental dwelling is largely

conflicting opinion testimony, and could reasonably lead to a conclusion that relevant approval criteria either are or are not met, the choice of which evidence to believe belongs to the local government. *Towry v. City of Lincoln City*, 26 Or LUBA 554 (1994).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where LUBA concludes a reasonable person could reach the decision made by the local government, in view of all the evidence in the record, LUBA will defer to the local government’s choice between conflicting evidence. *Bottum v. Union County*, 26 Or LUBA 407 (1994).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A local government’s decision that a proposed plan map amendment would negatively impact groundwater quantity and violate an applicable plan criterion is supported by substantial evidence where there is conflicting lay and expert testimony, and the expert testimony concedes the uncertainty of the proposal’s impacts. *Ericsson v. Washington County*, 26 Or LUBA 169 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** 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).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Determining compatibility is inherently subjective. Where there is conflicting believable evidence concerning a proposed PUD’s compatibility with the surrounding neighborhood, LUBA will not disturb the local government’s determination that the height of the proposed buildings is compatible with the surrounding neighborhood. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** LUBA will defer to a local government’s choice between conflicting believable evidence. *Cemper v. Clackamas County*, 25 Or LUBA 486 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The choice between conflicting believable evidence belongs to the local government, and so long as the evidence relied upon by the local government is such that a reasonable person could reach the conclusion that the local government reaches, the decision is supported by substantial evidence in the whole record. *McInnis v. City of Portland*, 25 Or LUBA 376 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The choice between conflicting believable evidence belongs to the local government decision maker. *Neuharth v. City of Salem*, 25 Or LUBA 267 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** The choice between conflicting believable evidence belongs to the local government. *Clarke v. City of Hillsboro*, 25 Or LUBA 195 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A school district letter rating schools as adequate to serve a proposed subdivision is adequate to demonstrate compliance with a code requirement for documentation of school facility adequacy, notwithstanding a subsequent letter from the school district raising questions about the earlier rating, where the executive director of school district facilities expressly reaffirms the earlier rating of the schools as adequate. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** 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).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where the evidence in the record cited by petitioner does not so undermine the evidence in the record relied upon by the local government that it is unreasonable for the local government to have relied on it, LUBA will defer to the local government’s choice between conflicting evidence. *Smith v. Lane County*, 25 Or LUBA 1 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where LUBA concludes a reasonable person could reach the decision made by the local government, in view of all the evidence in the record, it defers to the local government’s choices between conflicting evidence and of reasonable conclusions to be drawn from the evidence. *Heceta Water District v. Lane County*, 24 Or LUBA 402 (1993).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where there is conflicting believable evidence, the choice of which evidence to believe belongs to the local government. *Giesy v. Benton County*, 24 Or LUBA 328 (1992).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where a local decision maker relies on prior nonspecific and equivocal testimony concerning the location and presence of wetlands, in place of a well documented specific expert study, and adopts no findings explaining that choice, the challenged decision is not supported by substantial evidence. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** A county determination that particular land is “agricultural land” is supported by substantial evidence in the record where the comprehensive plan defines agricultural land to include land consisting of predominantly Class I-IV soils as determined by SCS soil maps, and there is no dispute that the subject land consists of predominantly Class I-IV soils based on such SCS maps. Expert testimony that the subject land is not agricultural land, based on a different definition, does not undermine the county’s determination. *Wells v. Clackamas County*, 23 Or LUBA 402 (1992).

**1.6.5 Administrative Law – Substantial Evidence – Conflicting Evidence.** Where conflicting evidence does not so undermine the evidence relied upon by the local decision maker that it is

unreasonable for the decision maker to rely upon it, the choice between such conflicting believable evidence belongs to the local government decision maker and LUBA will not disturb that choice. *Harwood v. Lane County*, 23 Or LUBA 191 (1992).