

1                   BEFORE THE LAND USE BOARD OF APPEALS  
2                   OF THE STATE OF OREGON

3  
4 DOUGLAS B. SIMPSON,                   )  
5    )  
6                   Petitioner,                   )  
7    )  
8                   and    )  
9    )  
10 JOHN E. MAKEPEACE,                    )  
11    )  
12                   Intervenor-Petitioner,                    )  
13    )  
14                   vs.    )  
15    )  
16 JOSEPHINE COUNTY,                    )  
17    )  
18                   Respondent,                    )  
19    )  
20                   and    )  
21    )  
22 DARRELL SHOEMAKER and                    )  
23 GALE SHOEMAKER,                        )  
24    )  
25                   Intervenors-Respondent.                    )

LUBA No. 95-032  
  
FINAL OPINION  
AND ORDER

26  
27  
28                   Appeal from Josephine County.

29  
30                   Douglas B. Simpson, Merlin, filed a petition for review  
31 and argued on his own behalf.

32  
33                   John E. Makepeace, Grants Pass, filed a petition for  
34 review on his own behalf.

35  
36                   Gloria M. Roy, Assistant County Counsel, Grants Pass,  
37 filed the response brief.

38  
39                   No appearance by intervenors-respondent.

40  
41                   LIVINGSTON, Chief Referee; HANNA Referee; GUSTAFSON,  
42 Referee, participated in the decision.

43  
44                   REMANDED   08/31/95

1           You are entitled to judicial review of this Order.  
2   Judicial review is governed by the provisions of ORS  
3   197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioner and intervenor-petitioner appeal a decision  
4 of the county board of commissioners changing the  
5 comprehensive plan designation of 106 acres from Forest to  
6 Residential and the zoning from Forest Commercial - 80 (FC-  
7 80) to Rural Residential 2.5 Acre Minimum (RR-2.5).

8 **STIPULATED REMAND**

9 The county stipulates in its brief to a remand on both  
10 of petitioner's assignments of error and on both of  
11 intervenor-petitioner's assignments of error. However, the  
12 county disputes intervenor-petitioner's suggested method of  
13 calculating the Composite Internal Rate of Return (CIRR) for  
14 unrated soils.<sup>1</sup> The county asserts that intervenor-  
15 petitioner never presented the suggested method during the  
16 local proceedings and contends that the county, rather than  
17 LUBA, should determine how to interpret the comprehensive  
18 plan as it concerns unrated soils.

19 We agree. When reviewing a decision by a local  
20 governing body, this Board cannot interpret local enactments  
21 in the first instance. Gage v. City of Portland, 123 Or App  
22 269, 860 P2d 282, on reconsideration, 125 Or App 119, 866

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<sup>1</sup>The acknowledged county comprehensive plan incorporates a document entitled "Using Internal Rate of Return to Rate Forest Soils for Application in Land Use Planning." This document sets out the plan's acknowledged methodology for rating forest soils. See Doob v. Josephine County, 27 Or LUBA 293, 295 (1994).

1 P2d 466 (1993), rev'd on other grounds, 319 Or 308, 877 P2d  
2 1187 (1994); Weeks v. City of Tillamook, 117 Or App 449,  
3 453, 844 P2d 914 (1992).<sup>2</sup>

4 The county's decision is remanded.

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<sup>2</sup>The county concedes intervenor-petitioner raised the issue of rating soils not already rated in the county's comprehensive plan. Response Brief 8. At the county hearing on remand, intervenor-petitioner will have an opportunity to present the approach suggested in his brief to rating presently unrated soils.