

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where a county code provision requires a finding that development of a proposed solar facility will “not result in unnecessary soil erosion or loss,” and includes a provision that this finding “*may* be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual,” and “[t]he approved plan *shall* be attached to the decision *as a condition of approval*,” that provision allows an applicant and the county the *option* of relying on a qualified soil and erosion control plan to satisfy the provision and, if that option is followed, by imposing a condition of approval that requires compliance with the approved plan. The phrase “attached to the decision as a condition of approval” is a term of art that does not mean that the plan must be physically attached to the decision. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where a county code provision requires that a proposed solar facility may not “create unnecessary negative impacts on agricultural operations,” including dividing a field or multiple fields “in such a way that creates small or isolated pieces of property that are more difficult to farm,” and placing solar facility components on lands in a manner that “could disrupt common and accepted farming practices,” a hearings officer’s decision errs in concluding that a 12-acre solar facility located on a 14.15-acre lot will not create an isolated strip of cultivated land because as a matter of simple arithmetic, some portion of the 14.15-acre lot will remain outside the 12-acre solar facility. *Harris v. Marion County*, 78 Or LUBA 209 (2018).

1.6.2 Administrative Law – Substantial Evidence – Definition of. ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) require a finding that the proposed uses authorized by the proposed exception are “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.” To establish compliance with OAR 660-004-0020(2)(d), the county’s finding that the likely adverse impacts of the proposed uses allowed under the proposed exception are similar to the impacts of the existing uses must be supported by substantial evidence. The absence of evidence that the impacts would be different is not a basis to conclude that the impacts would be similar. Where this unsupported presumption that the impacts would be similar is the foundation of the much of the county’s subsequent analysis, the presumption is not supported by substantial evidence, and remand is necessary for the county to adopt more adequate findings regarding compatibility, supported by substantial evidence. *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547 (2018).

1.6.2 Administrative Law – Substantial Evidence – Definition of. ORS 197.732(2)(c)(D) and OAR 660-004-0020(2)(d) require a finding that the proposed uses authorized by the proposed exception are “compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.” The potential adverse impacts of different types of liquid bulk terminals affiliated with a deepwater port, such as an oil terminal versus a fertilizer export operation, could be different enough to require a separate analysis. Adequate findings regarding compatibility would start by identifying the likely adverse impacts of typical uses authorized under approved use categories, evaluating each use category separately, and if necessary specific types of uses within each category. The findings should also address the characteristics of uses on adjoining areas, and assess vulnerability to potential externalities from industrial uses in the exception area. Informed by those analyses, the county can then reach sustainable conclusions regarding whether the proposed uses are compatible with adjoining uses, or can be rendered

compatible via identified measures. *Columbia Riverkeeper v. Columbia County*, 78 Or LUBA 547 (2018).

1.6.2 Administrative Law – Substantial Evidence – Definition of. A city council errs in concluding that a city council-devised future modification to a submitted but unsatisfactory drainage and grading plan that will be reviewed in a future non-public proceeding can satisfy a requirement that the storm drainage plan “maintain[s] pre-existing levels and meet[s] planning and engineering requirements.” Pursuant to *Gould v. Deschutes County*, 216 Or App 150, 171 P3d 1017 (2007), the city council must determine whether the submitted drainage and grading plan complies with the approval criteria or must consider the modifications to the drainage plan identified by the city council in a proceeding that allows public participation. *Dodds v. City of West Linn*, 75 Or LUBA 24 (2017).

1.6.2 Administrative Law – Substantial Evidence – Definition of. 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).

1.6.2 Administrative Law – Substantial Evidence – Definition of. 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).

1.6.2 Administrative Law – Substantial Evidence – Definition of. 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).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where no issue is raised during local proceedings concerning whether a need to save significant trees on a site would reduce the number of houses that can be constructed on a site, the city was not required to adopt findings addressing that question. Absent some reason to suspect the trees presented a development constraint, the city’s decision to rely on assumptions concerning development potential of the site that do not take the trees into account is supported by substantial evidence. *Neighbors for Livability v. City of Beaverton*, 37 Or LUBA 408 (1999).

1. 6.2 Administrative Law – Substantial Evidence – Definition of. Where the evidence is such that a reasonable person could conclude that a permit applicant failed to carry his burden of proof, the hearings officer’s decision denying the permit is supported by substantial evidence. A hearings officer is not obligated to defer to an unopposed affidavit submitted by a permit applicant as establishing the facts alleged in the affidavit. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

1.6.2 Administrative Law – Substantial Evidence – Definition of. A permit applicant with the burden of demonstrating compliance with an off-site odor standard may not rely on the lack of odor-based complaints in an earlier code enforcement proceeding to establish compliance with the odor standard, where the record includes testimony about possible off-site odor problems. *River City Disposal v. City of Portland*, 35 Or LUBA 360 (1998).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where the city’s decision is based on a well-reasoned analysis that reaches the conclusion that a state road crossing a lot is located on an easement rather than on land owned in fee by the state, the city’s determination that the lot may include the area occupied by the state road in determining whether the lot meets minimum lot size requirements is supported by substantial evidence. *Marshall v. City of Yachats*, 35 Or LUBA 82 (1998).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where LUBA concludes the evidence in the record is such that a reasonable person would rely on the evidence, the decision is supported by substantial evidence, notwithstanding that a reasonable person could also draw different conclusions. *Rouse v. Tillamook County*, 34 Or LUBA 530 (1998).

1.6.2 Administrative Law – Substantial Evidence – Definition of. In deciding whether a challenged decision is supported by substantial evidence in the whole record, LUBA is required to consider whether supporting evidence is refuted or undermined by other evidence in the record, but cannot reweigh the evidence. *Wilson Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 106 (1994).

1.6.2 Administrative Law – Substantial Evidence – Definition of. 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).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Substantial evidence is evidence a reasonable person would rely upon to reach a conclusion, notwithstanding that different reasonable people could draw different conclusions from the evidence. *Adler v. City of Portland*, 25 Or LUBA 546 (1993).

1.6.2 Administrative Law – Substantial Evidence – Definition of. 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).

1.6.2 Administrative Law – Substantial Evidence – Definition of. 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).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where a golf course adjoining an orchard will force alterations in accepted farming practices and increase the costs associated with such practices, the relevant question under ORS 215.296(1) is whether such alterations and increased costs will be *significant*. Where there is evidence in the whole record that would allow a local government decision maker to answer that question either way, LUBA is required by ORS 197.835(7)(a)(C) to defer to the local government’s judgment. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where a reasonable person would not conclude, based on the evidence cited in the record, that the proposed use will comply with an applicable approval standard, the local government’s determination of compliance with that approval standard is not supported by substantial evidence. *Reynolds v. Clackamas County*, 24 Or LUBA 14 (1992).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Where the relevant facts are not in dispute, the choice between different reasonable conclusions based on the undisputed evidence in the record belongs to the local government. *Dority v. Clackamas County*, 23 Or LUBA 384 (1992).

1.6.2 Administrative Law – Substantial Evidence – Definition of. Substantial evidence is evidence a reasonable person would rely on in reaching a decision. *Brandt v. Marion County*, 23 Or LUBA 316 (1992).

1.6.2 Administrative Law – Substantial Evidence – Definition of. The “evidence * * * which clearly supports the decision” standard of ORS 197.835(9)(b) imposes a higher evidentiary standard than the “substantial evidence” standard of ORS 197.835(7)(a)(C). *Friedman v. Yamhill County*, 23 Or LUBA 306 (1992).