BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

DENNIS D. JAMES, MARGARENT C. JAMES, PAUL KRUEGER, JOLENE KRUEGER, NORM DAFT, PAM DAFT, RUSS NYE and THE JONES CREEK NEIGHBORHOOD ASSOCIATION, Petitioners, vs. JOSEPHINE COUNTY, Respondent, and COLVIN OIL COMPANY, an Oregon Corporation, and COLVIN STATIONS, INC., an Oregon Corporation, Intervenors-Respondent.	)	LUBA No. 98-135 FINAL OPINION AND ORDER

Appeal from Josephine County.

Dennis D. James, Grants Pass, filed the petition for review and argued on behalf of petitioners. With him on the brief was Nelson & James.

No appearance by respondent.

Walter L. Cauble, Grants Pass, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was Schultz, Salisbury, Cauble & Dole.

HOLSTUN, Board Chair; and GUSTAFSON, Board Member, participated in the decision.

REMANDED 2/23/99

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

Opinion by Holstun.

NATURE OF THE DECISION

Petitioners appeal the county's decision amending the comprehensive plan map designation for three tax lots from residential to industrial, amending the zoning map designation from Rural Residential (RR 2.5) to Rural Industrial (RI), and taking an irrevocably committed exception to Goals 11 and 14.

MOTION TO INTERVENE

Colvin Oil Company, the applicant below, and Colvin Stations, Inc. (collectively, intervenors), move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

FACTS

The subject property consists of tax lot 100 (east parcel), the eastern portion of tax lot 2500 (south parcel) and a northern portion of tax lot 300 (north parcel). All three parcels are designated residential and zoned RR 2.5.

The subject property is located approximately one mile west of the urban growth boundary for the City of Grants Pass, and lies immediately north of Foothill Boulevard, which runs east-west between the City of Grants Pass and the City of Rogue River. Interstate 5 parallels Foothill Boulevard immediately to the south.

The south parcel is slightly less than one half acre in size, and fronts Foothill Boulevard at its intersection with Jones Creek Road, which runs north. The south parcel is improved with a gravel surface that currently serves as a parking lot for intervenors' trucks and vehicles. The east parcel is north of and adjacent to the south parcel. It is 3.29-acres in size, fronts onto Jones Creek Road, and is improved with a single-family dwelling currently being used as a rental. To the northwest of the east parcel across Jones Creek Road is the north parcel, which is 1.29-acres in size and consists of an open field. All three tax lots considered together total approximately five acres.

An irrigation canal crosses the area from northwest to southeast, bordering the north parcel on the south, crossing under Jones Creek Road, and bisecting the southern portion of the east parcel. With some exceptions, lands north of the irrigation canal are generally zoned RR 2.5, while lands south of the irrigation canal are zoned RI. Thus, the parcels to the north, northeast and northwest of the subject property are zoned RR 2.5; most are improved with residences. The parcels to the south and west of the subject property are zoned RI, and improved with various industrial and commercial uses, described below. The area to the east of the subject property is zoned rural commercial (RC) and developed with a logging operation. The land further to the east of the logging operation is generally zoned for residential uses, with some rural industrial or commercial uses along Foothill Boulevard.

On a larger scale, the area surrounding the subject property features a corridor running east-west along the Foothill Boulevard/I-5 axis, with the majority of uses immediately bordering the north side of that axis zoned for industrial or commercial uses, but with large areas zoned either for rural residential use or resource use north and south of that corridor. The area including the subject property is served by private wells and individual septic systems; the nearest public water and sewer facilities are approximately one half-mile distant from the subject property.

Intervenors own and operate a fuel distribution facility and oil depot on approximately 18 acres of land on the western portion of tax lot 2500 and the southern portion of tax lot 300 where those lots are zoned RI. Intervenors also lease facilities and parking spaces to several other businesses on those lots. Intervenors' facility is the headquarters for one of the largest fuel distribution operations in Southern Oregon, and features oil depots, fueling stations, and an office building with seven employees.

Intervenor Colvin Oil Company applied to the county for a comprehensive plan amendment and zone change for the subject property from RR 2.5 to RI, in order to use the east parcel and the north parcel to park eight multi-trailer trucks and for employee parking

related to intervenors' facility. Such parking uses are not allowed in the RR 2.5 zone. The county planning commission conducted hearings, resulting in a tie vote and a recommendation of denial to the county board of commissioners (commissioners). The commissioners conducted further hearings, and on July 29, 1998, approved the comprehensive plan amendment and zone change as well as irrevocably committed exceptions to statewide planning Goals 11 (Public Facilities and Services) and 14 (Urbanization).

This appeal followed.

SECOND ASSIGNMENT OF ERROR

Petitioners contend that the county erred in taking an exception to Goal 14, particularly in concluding that all uses allowed by the goal are impracticable.

Goal 14 is "[t]o provide for an orderly and efficient transition from rural to urban land use." When amending its acknowledged comprehensive plan and zone designations for rural land to allow arguably urban uses, a local government must demonstrate that the new plan and zone designations comply with Goal 14 or adopt an exception to Goal 14. Churchill v. Tillamook County, 29 Or LUBA 68, 75 (1995). Similarly, LUBA has held that Goal 14 is applicable to a plan amendment redesignating rural residential land as commercial land, where the commercial designation would permit commercial use of any size or intensity, including large commercial uses that are urban in character and intensity. Geaney v. Coos County, ___ Or LUBA ___ (LUBA No. 97-104, March 24, 1998), slip op 14-15.

The county chose to adopt an exception to Goal 14, and applied the framework set forth in OAR 660-004-0028 for taking irrevocably committed exceptions to statewide planning Goals. In addressing OAR 660-004-0028(3), the county stated that:

> "The [county] finds that none of the uses allowed in the RR-2.5 zone are practicable for the subject property. The [county] relies on Exhibit K submitted by the applicant, and Exhibit B to the [commission's] Weekly Business Session of January 7, 1998. The evidence that was presented on the impracticable test showed if the site were considered for other uses such as a

golf course it is too small, and if for a new single family dwelling it is not ideal due to the abutting uses." Record 40.

The "Exhibit B" referenced in the county's finding is a list of uses allowed in the RR 2.5 zone, with various comments why such uses are not practicable. For single family residential use, Exhibit B states for each of the three tax lots in the subject property that the tax lot is "[t]oo close to the freeway." Record 112.

OAR 660-004-0028 implements ORS 197.732, which in relevant part provides that in reviewing a decision approving or denying an exception, LUBA must determine whether the local government's findings and reasons demonstrate that the standards for the exception have or have not been met.[1] In 1000 Friends of Oregon v. Columbia County, 27 Or LUBA 474, 476 (1994), we described our approach to reviewing decisions adopting committed exceptions under OAR 660-004-0028:

> "[We first] resolve any contentions that the findings fail to address issues relevant under OAR 660-004-0028 or address issues not properly considered under OAR 660-004-0028. We next consider any arguments that particular findings are not supported by substantial evidence in the record. Finally, we determine whether the findings that are relevant and supported by substantial evidence are sufficient to demonstrate compliance with the standards of ORS 197.732(1)(b) that 'uses allowed by the goal [are] impracticable.'" (Footnote omitted).

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[1]ORS 197.732(6) provides:

> "Upon review of a decision approving or denying an exception:
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> "(a) [LUBA] shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;
>
> "(b) [LUBA] shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (1) of this section have or have not been met; and
>
> "(c) [LUBA] shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards of [ORS 197.732(1)] have or have not been met."

We address petitioners' specific arguments in light of the framework described in 1000 Friends of Oregon v. Columbia County. Petitioners' primary challenge is to the county's conclusion that all uses allowed by Goal 14, in particular rural residential uses permitted in the RR 2.5 zone, are impracticable. Petitioners argue that the county misconstrued the relevant standard and its conclusion is not supported by substantial evidence or adequate findings. Petitioners note that there is an existing single family house on the east parcel, and that it is currently occupied as a residence. Petitioners submit there is no evidence in the record that the north parcel, currently vacant, could not also support a single family dwelling. Petitioners argue that the county's finding that residential uses on these lots are "not ideal" falls well short of the applicable standard, that residential uses are "impracticable." Further, petitioners contend that the county's reliance on Exhibit B, stating that the subject tax lots are "[t]oo close to the freeway," also fails to demonstrate why residential uses are impracticable, particularly given that other residences are as close or closer to the freeway than the residence located on the east parcel. Record 108, 211.

Intervenors' respond that the county's conclusion regarding the practicability of residential uses on the subject property is supported by substantial evidence, citing to evidence that no recent residential development has taken place within the industrial/commercial corridor along Foothills Boulevard. Intervenors state that, "[f]or obvious reasons, single-family residences have not sprouted in these sites hemmed in by commercial and industrial uses and Interstate 5." Intervenors-respondent's Brief 8-9.

We agree with petitioners that the county has misconstrued OAR 660-004-0028. A finding that a use allowed by Goal 14, specifically rural residential use, is "not ideal" is not responsive to the relevant standard, which is whether uses allowed by Goal 14 are "impracticable." Further, we agree that there is not substantial evidence in the record that rural residential uses on the subject property are impracticable. See 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA 508, 519-20 (1994) ("[t]he impracticability standard is a

demanding one"). As petitioners note, a single family dwelling exists on the east parcel and is currently being used for a residence. The subject property is part of a larger area zoned and used for residential uses, to the north, northeast and northwest. Moreover, the relative proximity of the highway is obviously not a factor that renders residential use of the subject property impracticable, given that a number of other dwellings currently exist as close or closer to the highway than the subject property. See e.g. Record 211.[2] Finally, and perhaps most importantly, the challenged decision does not explain what conflicts or other aspects of the "abutting uses" make it impracticable to use the subject property for rural residential use. It is not obvious, as intervenors assert, either that the subject property is "hemmed in" by industrial and commercial uses, or that the impacts from those uses have rendered residential use on the subject property impracticable.

The second assignment of error is sustained.

FIRST ASSIGNMENT OF ERROR

Petitioners argue that in taking an irrevocably committed exception to Goal 11 the county failed to demonstrate that the subject property is impracticable for use as rural residential property, for the same reasons discussed in the second assignment of error. In addition, petitioners argue that the county erred in taking the exception to Goal 11 because, in doing so, the county applied zoning to the subject property that allows a range of industrial uses, some of which may require public facilities such as water and sewer services. According to petitioners, the county considered only the impacts of the proposed use, and failed to consider whether other uses that are allowed under the RI zoning would require public facilities and services that are presently not available. Petitioners explain that the RI zone allows a number of intense industrial uses, such as manufacturing facilities, some of

[2]It appears from the map at Record 211 that the existing dwelling on the east parcel is approximately 400 feet from Foothill Boulevard, which is adjacent to the interstate highway. A number of dwellings on both sides of the interstate are considerably closer to the highway than the dwelling on the east parcel.

which may require some level of public facilities or services such as water or sewer.

Goal 11 is to "plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." Further, "[u]rban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable, and rural areas to be served." Goal 11 defines the term "rural facilities and services" to mean "facilities and services suitable and appropriate solely for the needs of rural lands." Goal 11 is not among the statewide planning goals to which the exceptions process is generally applicable. OAR 660-004-0010(2)(g). However, an exception to Goal 11 may be required where a county approves zoning on rural lands that allows urban levels of development outside an urban growth boundary. 1000 Friends of Oregon v. Yamhill County, 27 Or LUBA at 520-21; see also 1000 Friends of Oregon v. LCDC (Curry Co.), 301 Or 447, 508-11, 724 P2d 268 (1986) (indicating that a county may avoid violating Goals 11 and 14 where its plan prohibits provision of certain services to rural areas or demonstrates that proposed uses on rural lands would not require urban levels of service).

With respect to Goal 11, the challenged decision states:

> "The [county] finds that the public facilities that serve this area include private water, underground septic, maintained roads, electricity, County Sheriff, and County schools. * * * The existing use and the proposed truck parking on the subject parcels will be minimally impactive on the facilities and services, as truck parking does not require urban level facilities. * * * Since the truck parking operation does not require urban services, the sites are irrevocably committed for an exception to Goal 11. This is also supported in the fact that the site is over ½ mile from the closest public water and public sewer, and truck parking does not warrant their extension. The comprehensive plan and zone change to rural industrial does not affect the framework for urban development or disrupt the present arrangement of the public facilities." Record 28-29.

Petitioners argue the county's findings fail to demonstrate that uses allowed by Goal 11 are impracticable and that in taking the Goal 11 exception the county was required to

address all of the uses allowed by the RI zone, not just the proposed truck parking, in determining whether the subject property is committed to uses not allowed by Goal 11.

Intervenors respond that the county properly found that uses allowed by Goal 11, specifically rural residential uses not requiring public facilities, are impracticable on the subject property, for the same reasons addressed in the second assignment of error. Further, intervenors contend that there is no need for the county to consider other uses allowed in the RI zone in taking an exception to Goal 11, because as a practical matter, the subject tax lots are too small (collectively, approximately five acres) to accommodate most of the uses allowed in the RI zone, such as airports, that might require public facilities.

At the outset, it is not entirely clear to us why the county felt it needed to take an exception to Goal 11. Had the county chosen as a condition of approval to limit uses on the subject property to uses like the proposed use that do not require or impact public facilities, the county might well have concluded that Goal 11 is not applicable or that the proposed plan amendment complies with Goal 11. Be that as it may, the county chose to take an exception to Goal 11, and therefore, pursuant to ORS 197.732(6)(b), we must determine whether the county's findings and reasons demonstrate that the standards for taking an irrevocably committed exception to Goal 11 have been met.

Our task is particularly difficult given that Goal 11 is one of the statewide planning goals for which an exception, either a reasons exception or an irrevocably committed exception, is not generally taken or required, except in circumstances not relevant here. OAR 660-004-0010(2)(g). The county's attempt to demonstrate an irrevocably committed exception to Goal 11 in the present case illustrates why an exception to Goal 11 is not usually required under the present circumstances. The effect of taking an irrevocably committed exception to Goal 11 in the present context is to allow uses that are <u>not</u> allowed by Goal 11, <u>i.e.</u> not supported by types and levels of public facilities and services appropriate for to the needs and requirements of the area to be served. Stated differently, the apparent

effect of the exception to Goal 11 that the county adopted in this case is to allow uses that the current type and level of public facilities in the area cannot support. Viewed in this light, the county's reasoning that an irrevocably committed exception to Goal 11 is warranted because the proposed use does not require urban services is difficult to understand.

Again, be that as it may, we are required to determine whether the county's findings and reasons demonstrate that the relationship between the exception area and adjacent lands shows that uses allowed by the Goal, i.e. uses that are supported by types and levels of public facilities and services appropriate for the needs and requirements of the area, are impracticable.

For the reasons expressed in our discussion of the second assignment of error, above, we agree with petitioners that the county failed to demonstrate that uses allowed by Goal 11, specifically rural residential uses, are impracticable. Given that conclusion, we need not address petitioners' further argument, that the county erred in considering only the impacts of the proposed use and not the impacts of all uses allowed in the RI zone in taking the exception to Goal 11.

The first assignment of error is sustained.

THIRD ASSIGNMENT OF ERROR

Petitioners argue that the county erred in finding that the subject property was part of an area already developed to urban densities and development, pursuant to OAR 660-014-0030.

OAR 660-014-0030 governs the proper method of applying Goal 14, among other goals, to the incorporation of new cities, and allows incorporation of new cities on rural lands that are irrevocably committed to urban levels of development. The county applied OAR 660-014-0030 and found that "the immediate area is committed to urban uses and the proposed urban level of development can occur at this site as it already occurs on the abutting land." Record 54. In the same vein, the county concluded that "the subject property

is currently classified as rural yet it is irrevocably committed to urban. * * * [T]he neighborhood is developed to urban densities with one acre lots and urban commercial/industrial uses[.]" Record 58.

The gist of petitioners' argument under this assignment of error is that the subject property and the immediate area remain rural and the county erred in concluding that the area has been irrevocably committed to urban levels of development under OAR 660-014-0030. The more relevant question, however, is how the criteria at OAR 660-014-0030 could have any conceivable application to the present case. Intervenors did not apply to incorporate a new city, and the county's decision does not grant approval to incorporate a city. We perceive no basis to apply the criteria at OAR 660-014-0030, unless the county is incorporating a city.

Where a local government erroneously applies an inapplicable standard, its determination that the standard is satisfied is harmless error, and provides no basis for reversal or remand. Gettman v. City of Bay City, 28 Or LUBA 116 (1994). In the present case, unless petitioners demonstrate that the county's application of and finding of compliance with OAR 660-014-0030 was an essential basis for the challenged decision or affected the county's consideration of other standards that are applicable, the county's application of OAR 660-014-0030 as well as any errors committed in finding compliance with OAR 660-014-0030 constitute only harmless error. In this assignment of error, petitioners challenge only the merits of the county's conclusion under OAR 660-014-0030, and do not attempt to argue that the county's conclusion formed an essential basis for the challenged approval, or affected the county's consideration of any other applicable standards. Accordingly, the specific errors petitioners allege in the county's conclusions under OAR 660-014-0030 do not provide a basis for reversal or remand of the challenged decision.

The third assignment of error is denied.

FOURTH ASSIGNMENT OF ERROR

Petitioners argue that the county's decision is contrary to Goal 11, Policy 4 and 6 of the county's comprehensive plan because it allows a full range of rural industrial uses despite the lack of evidence that the subject property is physically capable of supporting that range of uses.

Both Policy 4 and 6 of Goal 11 in the county's comprehensive plan require, in relevant part, that amendments to the comprehensive plan map or zoning designation shall demonstrate the "[p]hysical capability of the land to support permitted uses: e.g. adequate water supply, septic suitability, soil quality, and adequate access."

With respect to these criteria, the challenged decision states:

> "The [county] finds that the physical capability [of the land] will support the proposed use. Truck parking will not require water, nor septic, the soil is stable, and the site has access [that is] adequate." Record 61.

Petitioners argue that Policies 4 and 6 require a demonstration that the land is physically capable of supporting permitted uses under the RI zone, not the proposed use, and that intervenors failed to show, and the county failed to find, that the subject property is physically capable of supporting all of the permitted uses in the RI zone, which, according to petitioners, include a number of industrial uses of varying intensity that might require septic disposal beyond the capacity of the soil to absorb.

Intervenors respond that as a practical matter none of the permitted uses in the RI zone other than the proposed use could possibly be conducted on the subject property due to its small size, and thus that there is no point in considering uses other than the proposed use. However, intervenors do not cite to any findings to that effect, nor any evidence in the record that none of the permitted uses in the RI zone other than the proposed use can be conducted on the subject parcels. More importantly, intervenors do not address petitioners' point that the terms of Policy 4 and 6 require the county to consider the physical capability of the land to support permitted uses, not just the proposed use, or uses that it would be "practical" to

conduct on the subject property. The county's finding clearly does not address whether the land can physically support uses permitted in the RI zone. Accordingly, we agree with petitioners that the county's finding is inadequate to demonstrate compliance with Policies 4 and 6.

The fourth assignment of error is sustained.

FIFTH ASSIGNMENT OF ERROR

Petitioners contend that the county's decision is contrary to Goal 10, Policy 1 of the county's comprehensive plan. Policy 1(G)(2) describes the purpose of the rural industrial zone as follows:

> "Areas for industrial use that are located in close proximity to the natural resources on which they rely for raw materials. These uses shall not require full urban services and linkage shall be established to demonstrate that the location is appropriate and necessary for resource utilization."

With respect to Policy 1(G)(2), the challenged decision states:

> "The [county] finds the proposal complies [with] the purpose and definitions involving Rural Industrial. The location and use do not require full urban services, and the area surrounding the site is already developed with the parent parcel use as a fuel depot. We find that an alternative site of this size is not available within the urban growth boundary that would allow moving the existing operation. The location of this property has been shown to be appropriate, essential and necessary for the business operation, with central access to the highway and arterial roads." Record 65-66.

Petitioners argue that the county's finding is not responsive to Policy 1(G)(2) and fails to demonstrate compliance with that provision, because the county does not show any linkage between the location being rezoned and any natural resource, and thus has failed to show that the location is "appropriate and necessary for resource utilization."

Intervenors respond that the relevant "resource" in this case is Interstate 5 and Foothill Boulevard, and accordingly the county properly found that the location of the property, considered in conjunction with intervenors' fuel distribution facility, is appropriate and necessary to utilize that resource. Implicit in intervenors' response is the view that the

"natural resources" mentioned in Policy 1(G)(2) include resources such as highways or access to highways. The challenged finding does not mention resources, natural or otherwise, or expressly interpret Policy 1(G)(2).

To the extent the challenged finding contains an implicit interpretation of Policy 1(G)(2), that interpretation is inadequate for review. ORS 197.829(2); Alliance for Responsible Land Use v. Deschutes Cty, 149 Or App 259, 265, 942 P2d 836 (1997), rev dismissed 327 Or 555 (1998).[3] We cannot discern from the challenged finding how the county interprets Policy 1(G)(2). The challenged decision does not indicate whether the county views the term "natural resources" to have the scope of meaning intervenors suggest or whether the county simply failed to consider that Policy 1(G)(2) appears to require linkage between uses in rural industrial zones and natural resources. Accordingly, we may, but need not, exercise the discretion granted to us under ORS 197.829(2) to determine whether the county correctly applied Policy 1(G)(2). Opp v. City of Portland, 153 Or App 10, 14, 955 P2d 768, rev den 327 Or 620 (1998).

In Thomas v. Wasco County, 30 Or LUBA 302, 313 (1996), we stated that we would decline to interpret a local provision in the first instance under ORS 197.829(2) where the purpose of the provision is unclear and subject to numerous interpretations. In the present case, it is not at all clear to us what role Policy 1(G)(2) plays in decisions rezoning land to RI or in approving proposed uses in RI zones. In particular, we note that the list of uses permitted in the RI zone contains a number of uses that do not appear to be consistent with the apparent requirement in Policy 1(G)(2) that uses be linked with natural resource use. Further, as noted above, Policy 1(G)(2) is subject to several plausible but conflicting

[3]ORS 197.829(2) provides that:

> "If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, the board may make its own determination of whether the local government decision is correct."

interpretations. Accordingly, remand is appropriate for the county to determine, in the first instance, what Policy 1(G)(2) requires in considering the disputed application.

The fifth assignment of error is sustained.

SIXTH ASSIGNMENT OF ERROR

Petitioners argue that the county's decision violates statewide planning Goal 10 (Housing) and Goal 3 of the county's comprehensive plan in finding that the subject property is not suitable for housing. Statewide planning Goal 10 is "[t]o provide for the housing needs of citizens of the state," and further requires that comprehensive plans "shall encourage the availability of adequate numbers of needed housing units" at affordable prices. County Goal 3 is to "[p]rovide land allocations to encourage a wide variety of safe and affordable housing."

The challenged decision states with respect to Goal 10 and County Goal 3:

> "The [county] finds that the subject property is not suitable for housing purposes. The evidence in support of this finding includes the adjacent land uses (commercial and industrial) and the proximity of the I-5 Highway. In addition, * * * the old house [on the east parcel] has not been remodeled or rebuilt.
>
> "* * * * *
>
> "We find that the North Parcel has not been used for residential purposes, the East Parcel is Tax Lot 100 with the old home, and the [south] parcel is too small. The housing density will not be impacted as the house on Tax Lot 100 can be maintained as a caretakers residence, and the one acre buffer on the north end of the North Parcel has the potential for a single family dwelling. We find the proposal supports the Housing Goals, and the zone change will not affect the buildable lands for residential purposes." Record 66-67.

Thus, the county found the subject property is not suitable for residential uses, for the same reasons the county found that residential uses are "impracticable" on the subject property, and that finding is the basis for the county's further conclusion that the application is consistent with the housing goals.

The gist of petitioners' argument with respect to both housing goals appears to be that the county's finding regarding the suitability of the subject property for housing is not supported by substantial evidence for the same reasons stated in the second assignment of error. Accordingly, petitioners contend, the challenged decision violates both Goals because it converts suitable residential land to nonresidential purposes.

Intervenors defend the challenged finding, reiterating their arguments stated in the second assignment of error to the effect that it is "inconceivable" that the subject property could support rural residential uses, given its location and surrounding uses. Intervenors-respondent's Brief 16.

The standard for determining whether a residential use is "impracticable" for purposes of OAR 660-004-0028 and the standard for determining whether land is suitable for residential purposes, and thus whether Goal 10 or county Goal 3 might apply, are not the same. Nonetheless, the county and the parties cite the same evidence in addressing both standards, and the two standards are similar enough in the present context to make our determination with respect to one standard relevant to the other. For the same reasons expressed in our discussion of the second assignment of error, we agree with petitioners that there is not substantial evidence to support the county's finding that the subject property is not suitable for rural residential uses. A single family dwelling currently exists on part of the subject property, and is currently occupied as a residence. The county's conclusory finding regarding the proximity of the subject property to the highway does not demonstrate unsuitability, particularly given that a number of other dwellings are located closer to the highway than the dwelling in the east parcel. And the county's conclusory finding regarding proximity of the subject property to industrial and commercial uses does not demonstrate unsuitability, given that several dwellings currently exist as close to those uses as the dwelling in the east parcel and as close as the potential dwelling sites in the north parcel. Record 211. Further, the challenged decision does not identify, nor do intervenors identify in

the record, evidence of any conflicts from proximate commercial or industrial uses that might render the subject property unsuitable for rural residential use.[4]

Substantial evidence is evidence a reasonable person would rely upon in making a decision. City of Portland v. Bureau of Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984). The choice between conflicting evidence belongs to the county, so long as the evidence relied upon by the county is such that a reasonable person could reach the conclusion the county did. McInnis v. City of Portland, 25 Or LUBA 376, 385 (1993). In the present case we are not cited to any evidence supporting the county's decision, other than a presumption that mere proximity to highways and industrial/commercial uses renders property unsuitable for residential use. We conclude that the decision's finding with respect to the suitability of the subject property for residential use is conclusory and not supported by substantial evidence.

However, petitioners' further argument, that the county's decision violates statewide planning Goal 10 and county Goal 3 because it converts residential land to nonresidential uses, is not developed sufficiently for our review. Deschutes Development v. Deschutes Cty., 5 Or LUBA 218, 220 (1982). Petitioners do not cite any language in either goal or offer any explanation why either goal has the effect of categorically prohibiting the conversion of suitable residential lands to nonresidential uses, as petitioners appear to assert, and it is not otherwise apparent from the text of either goal that they impose such a categorical prohibition. Accordingly, we hold only that the county erred in concluding that the "proposal supports the Housing Goals" because the subject property is not suitable for

[4]The challenged finding identifies proximity to the highway and adjacent uses as the main basis for concluding that the subject property is unsuitable for residential use. However, the challenged finding also refers to the south parcel as being "too small" for residential use. It is not clear if this is a reference to the minimum lot size applicable in the RR 2.5 zone or other restrictions affecting residential use of the south parcel, such as minimum acreage for a septic field. Neither the decision nor the parties describe the applicable minimum lot size or otherwise explain why the south parcel is "too small" for residential use.

residential use. On remand, the county may clarify what those goals require, and address whether the proposed rezoning is consistent with both goals.

The sixth assignment of error is sustained, in part.

SEVENTH ASSIGNMENT OF ERROR

Petitioners contend that the challenged decision is contrary to Josephine County Zoning Ordinance sections 47.030 and 48.030, which require that an application for a zone change or plan change, respectively, must meet "all applicable review criteria." Petitioners then repeat most of their arguments in the preceding assignments of error, apparently to demonstrate that the county erred in concluding that intervenors' application had met "all applicable review criteria."

If we understand this assignment of error, it is wholly derivative of the preceding assignments of error, and states no independent basis to reverse or remand the challenged decision. Accordingly, we do not consider it further.

The seventh assignment of error is denied.

The county's decision is remanded.