

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

3  
4 STEVE DOOB,  
5 *Petitioner,*

6  
7 vs.

8  
9 JOSEPHINE COUNTY,  
10 *Respondent,*

11  
12 and

13  
14 ALLEN ELIASON AND VIRGINIA ELIASON  
15 *Intervenors-Respondent.*

16  
17 LUBA No. 2004-083

18  
19 FINAL OPINION  
20 AND ORDER

21  
22 Appeal from Josephine County.

23  
24 Steve Doob, Merlin, filed the petition for review and argued on his own behalf.

25  
26 John M. Junkin, Portland, filed a response brief and argued on behalf of respondent.

27  
28 Duane Wm. Schultz, Grants Pass, filed a response brief and argued on behalf of  
29 intervenors-respondent.

30  
31 BASSHAM, Board Member; HOLSTUN, Board Chair; DAVIES, Board Member,  
32 participated in the decision.

33  
34 AFFIRMED

11/10/2004

35  
36 You are entitled to judicial review of this Order. Judicial review is governed by the  
37 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioner appeals a decision of the board of county commissioners approving a comprehensive plan change from Forest to Residential and a zone change from Woodlot Resource (WR) to Rural Residential 5-acre (RR-5), for a 40-acre parcel.

**MOTION TO INTERVENE**

Allen Eliason and Virginia Eliason (intervenors), the applicants below, move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

**FACTS**

The subject 40-acre parcel is located about two miles from the City of Grants Pass, and was once zoned Suburban Residential 5-acres. In 1981 it was rezoned to WR, a zone that implements Statewide Planning Goal 4 (Forest Lands). Abutting lands to the west and south are also zoned WR, while abutting land to the north and east are zoned RR-5. The subject property is undeveloped, and generally covered with mixed stands of trees. A steep hilly area occupies the western half of the parcel. According to the *Soil Survey of Josephine County*, issued in 1983 by the United States Department of Agriculture, Soil Conservation Service (now known as the Natural Resource Conservation Service or NRCS) and referred to here as the NRCS soil survey, approximately 53 percent of the soils on the subject property consists of Siskiyou 70F and Siskiyou 71F soils, rated Class VI as agricultural soils, and approximately 47 percent consists of Holland 42D and Clawson 17B, class III and IV agricultural soils. According to the county soil maps, the two Siskiyou soils are located generally on the steeper western half of the parcel, and the Holland and Clawson soils on the eastern half.

Intervenors applied to the county to designate and zone the subject property as “non-resource land,” pursuant to Josephine County Comprehensive Plan (JCCP) Goal 11, Policy

1 3(A) and (B).<sup>1</sup> As discussed below, Goal 11, Policy 3(A) provides that parcels zoned WR or  
2 Farm Resource are considered “non-farm land” where, among other things, the predominant  
3 soils on the property are rated class V or higher as agricultural soils, and the land is otherwise  
4 unsuitable for farm use. Goal 11, Policy 3(B) provides that land zoned WR or Farm

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<sup>1</sup> JCCP Goal 11, Policy 3 provides, in relevant part:

**“Non-Resource Land Criteria.** Authorized lots or parcels (but not portions thereof) which have been zoned Woodlot Resource or Farm Resource may be designated as non-resource when the application demonstrates compliance with the following criteria and rules:

“A. The land within the lot or parcel is non-farm land because:

“(1) The predominant (greater than 50%) soil or soils are rated Class V or above in the *Soil Survey of Josephine County*, as adopted or amended in the plan data base (soils having both an irrigated and non-irrigated class ratings will be rated based on whether irrigation rights are or are not perfected at the time the application is filed); and

“(2) The land is otherwise unsuitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land-use patterns, technological and energy inputs required, or accepted farming practices[.]”

“\* \* \* \* \*

“B. The land within the lot or parcel is non-forest land because

“(1) It is not included within the following definition of forest land:

“A lot or parcel is considered forest land when the predominant (more than 50%) soil or soils on the parcel have an internal rate of return of 3.50 or higher (if a single forest-rated soil is present), or composite internal rate of return of 3.50 or higher (if multiple forest-rated soils are present).

“For the purpose of this criterion, any evaluation of the internal rates of return for forest soils shall be made pursuant to the document entitled, *Using The Internal Rate Of Return To Rate Forest Soils For Applications In Land Use Planning (1985)*, by Lawrence F. Brown, as amended; or

“(2) If a determination cannot be made using the internal rate of return system as described in subsection B[1] above, the land is shown to be unsuitable for commercial forest uses based upon a combination of proofs, to include (but not limited to) the site index or cubic foot calculations, the testimony of expert witnesses, information contained in scientific studies or reports from public and private sources, historic market data for the relevant timber economy, and any other substantive testimony or evidence regarding the commercial productivity of the subject land, which taken together demonstrate the land is not protected by Statewide Goal 4[.]”

1 Resource is “non-forest land” under several tests. Under Goal 11, Policy 3(B)(1), a lot or  
2 parcel is considered forest land when the predominant soil has an internal rate of return (IRR)  
3 or composite internal rate of return of 3.50 or higher. Under Goal 11, Policy 3(B)(2), “[i]f a  
4 determination cannot be made using the internal rate of return system” described in (B)(1),  
5 then the land may be shown to be unsuitable for commercial forestry based on a variety of  
6 factors that, taken together, demonstrate that the land is not protected under Goal 4.

7 The board of county commissioners approved intervenors’ application on January 9,  
8 2002. The decision was appealed to LUBA, which granted the county’s motion for voluntary  
9 remand on October 3, 2002. A remand hearing was held by the board of county  
10 commissioners, followed by a decision that upheld the original decision, with adoption of  
11 additional findings. This appeal followed.

## 12 **FIRST ASSIGNMENT OF ERROR**

13 Petitioner contends that the record does not support the county’s finding that the  
14 subject property is “non-farm land” under JCCP Goal 11, Policy 3(A)(1) and (2). *See* n 1.  
15 According to petitioner, intervenors’ own soil scientist concluded that the subject parcel  
16 consists predominantly of class III and IV agricultural soils. Further, petitioner argues that  
17 the evidence in the record does not support the county’s findings that the parcel is “otherwise  
18 unsuitable for farm use.”

### 19 **A. Class V or Higher Agricultural Soils**

20 The county considered (1) the NRCS soil survey, (2) a report from the applicants’  
21 first soil scientist, Meyer, and (3) a report from the applicants’ second soil scientist, Kitzrow,  
22 in concluding that more than 50 percent of the parcel has soils that are not classified as class  
23 I-IV agricultural soils. As noted, according to the NRCS soil survey approximately 53  
24 percent of the subject property is classified as class VI agricultural soils, and approximately  
25 47 percent has soils classified as class III and IV agricultural soils. In 1999, Meyer evaluated  
26 the property to determine if the parcel includes forest or agricultural soils, and to determine

1 septic drainfield suitability.<sup>2</sup> Meyer dug eight soil pits, and concluded that 55 percent of the  
2 parcel consists of Clawson (17B) soils, with 45 percent consisting of Holland (42D) soils.  
3 Because both soil units had inclusions of Holland (42E), a class VI agricultural soil, Meyer  
4 concluded that notwithstanding the predominant Clawson (17B) and Holland (42D)  
5 agricultural soils the parcel was not suited for agricultural production. Record Vol I 218.  
6 Notwithstanding the seeming differences between the NRCS soil survey and the Meyer report  
7 with respect to the composition of soils, the county’s initial decision relied on both sources to  
8 determine that the subject parcel was “non-farm land.”

9         After the county sought voluntary remand of its initial decision, intervenors submitted  
10 a soil report by a second soil scientist, Kitzrow, that examined a 15-acre portion in the eastern  
11 area of the parcel mapped under the NRCS soil survey as consisting of Holland (42D).  
12 Kitzrow concluded that that 15-acre portion did not in fact consist of Holland (42D) soil, but  
13 rather was one of the Siskiyou soils.<sup>3</sup> Combined with the portion of the parcel found under  
14 the NRCS soil survey to consist of Siskiyou soils, agricultural class VI, Kitzrow concluded  
15 that 73 percent of the subject property consists of non-agricultural Siskiyou soils. Record  
16 Vol II 294.

17         While the county’s decision on remand did not explicitly reject the Meyer report, it  
18 found that report to be “not well written” and to be more of a “clarification” than a

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<sup>2</sup> The Meyer report states, in relevant part:

“The purpose of the soil survey was to determine if the parcel is on woodlot, forest or agriculture productive soils, not to find fault with the previous mapping. The NRCS soil map was done at a scale of 1:1650 feet, and the information was used for a much broader purpose, while my mapping was done at a scale of one soil pit per 5 acres. The NRCS was interested in depicting soil conditions at a larger scale, therefore, minor soils and certain details were dropped.” Record Vol I 218.

<sup>3</sup> The Kitzrow study did not identify which of the three types of Siskiyou soils (69E/70F/71F) was found in that 15-acre portion.

1 contradiction of the NRCS soil survey.<sup>4</sup> The county appears to have principally relied on the  
2 NRCS soil survey and the Kitzrow report to determine that the majority of soils on the  
3 subject property consist of non-agricultural and non-forest Siskiyou soils.

4 Petitioner contends that all three sources materially contradict one another, and the  
5 county erred in selecting portions of each source as a basis for its conclusions under Goal 11,  
6 Policy 3(A). While a local government may choose between conflicting evidence, petitioner  
7 argues, it must choose a particular source of evidence to rely upon, and cannot take bits and  
8 pieces from different sources that contradict each other.

9 We disagree with petitioner that a local government cannot rely on portions of two or  
10 more expert studies, although explanatory findings may be necessary to identify what  
11 portions are relied upon, and to resolve or reconcile any differences or contradictions between  
12 the studies relied upon, so that we may perform our review function. Here, the county's  
13 findings adequately explain what evidence the county relied upon, and how the county  
14 resolves the apparent contradictions among the three sources. It is reasonably clear that the  
15 county relied mostly on the NRCS soil survey and the Kitzrow study. While those two  
16 sources are arguably inconsistent with respect to the extent of Holland 42D soils on the  
17 property, they both agree that a majority of the soils on the subject property consist of non-  
18 agricultural Siskiyou soils, which is the critical question for purposes of Goal 11, Policy  
19 3(A)(1). Further, it is reasonably clear that the county implicitly rejected the Meyer report to

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<sup>4</sup> The county's findings on remand state, in relevant part:

“The Board finds that the adopted official map of soils in Josephine County shows that a majority of soils are not class I-IV agricultural soils and that the Cumulative Internal Rate of Return (CIRR) is less than 3.50. The Board finds that the soil report from Roy Meyer is not well written and that the report does not contradict the official soil map but is more of a clarification of conditions. The Board finds the soil report from Gary Kitzrow, certified soil classifier is an Order One survey and provides additional evidence that the property is non-resource in fact as evidenced by the majority of the soils being Siskiyou soils. The Board finds that the objections to the report by [petitioner] are not based on expert contradicting evidence. The Board does not find that the objections of [petitioner] are creditable. The Board finds that all of the soils evidence when taken individually and as a whole support the position that the property is non-resource.” Record Vol II 17.

1 the extent it contradicts the NRCS soil survey and Kitzrow report. Petitioner does not argue  
2 that the Meyer report, standing alone, conclusively establishes the type and extent of soils on  
3 the subject property or so undermines the NRCS soil survey and Kitzrow report as to render  
4 those sources insubstantial evidence, and we do not see that it does.<sup>5</sup>

5 This subassignment of error is denied.

6 **B. Otherwise Unsuitable for Farm Use**

7 Petitioner contends that the record does not support the county’s finding under Goal  
8 11, Policy 3(A)(2) that, considering soil fertility, suitability for grazing, climatic conditions,  
9 irrigation, existing land use patterns, required technological and energy inputs, and accepted  
10 farming practices, the subject parcel is “otherwise unsuitable for farm use.” *See* n 1.

11 The county adopted extensive findings addressing the factors listed in Goal 11, Policy  
12 3(A)(2) and in identical code provisions. As the county’s findings explain, those provisions  
13 are

14 “designed to consider a combination of factors to see if there are special  
15 circumstances that offset or overcome the limitations described in the *Soil*  
16 *Survey*. These factors are intended to be considered together to give an overall  
17 consideration of the suitability of the property to be farmed. Based on the  
18 evidence in this record, as it relates to the subject property, the Board finds  
19 that there are no overcoming favorable factors. \* \* \*” Record Vol II 18.

20 Petitioner separately discusses each of the listed factors and argues that the record does not  
21 support a conclusion under that factor that the parcel is “non-farm land,” either because there  
22 is no evidence in the record with respect to that factor, the evidence is unsubstantial, or the  
23 evidence is contradicted by other evidence, in particular the Meyer report. As the above-  
24 quoted finding indicates, however, the county views the listed factors not as considerations

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<sup>5</sup> We note that the soil map that accompanies the Meyer report indicates that each of the eight soil pits Meyer dug are located in the eastern half of the property, where the NRCS soil survey maps Holland and Clawson soils. Record Vol I 224. The only notation with respect to the western portion of the parcel states “Steep slopes avoid for septic.” *Id.* That suggests that the Meyer report did not evaluate the soils on the western portion of the parcel, where the NRCS soil survey maps Siskiyou soils.

1 that must each individually demonstrate that the property is unsuitable for farm use, but  
2 rather as factors that must be considered and balanced together to determine whether,  
3 notwithstanding the presence of nonagricultural soils, the subject property may nonetheless  
4 be suitable for farm use. In other words, petitioner appears to view JCCP Goal 11, Policy  
5 3(A)(2) as requiring the applicant to provide evidence under each factor that the property is  
6 not suitable for farm use. Conversely, the county approaches the question as a matter of  
7 whether the factors considered together indicate that the property is suitable for farm use.  
8 Petitioner does not acknowledge the county’s approach or explain why it is error.

9 Be that as it may, petitioner’s evidentiary criticisms under each factor do not establish  
10 a basis to reverse or remand the challenged decision. Three of petitioner’s criticisms rely on  
11 the Meyer report that the county rejected in part. The remainder merely dispute the  
12 substantiality of the evidence the county relied upon or argue that the county should have  
13 relied on other evidence. Petitioner’s evidentiary criticisms do not demonstrate that the  
14 county’s findings under Goal 11, Policy 3(A)(2) are unsupported by substantial evidence.

15 This subassignment of error is denied.

16 The first assignment of error is denied.

17 **SECOND ASSIGNMENT OF ERROR**

18 Petitioner contends that the county erred in concluding that the subject property is  
19 “non-forest land” under JCCP Goal 11, Policy 3(B). In addition, petitioner argues that the  
20 county failed to demonstrate that redesignating and rezoning the parcel to non resource use is  
21 consistent with Goal 4.

22 **A. JCCP Goal 11, Policy 3(B)**

23 Because the meaning of JCCP Goal 11, Policy 3(B) is at issue in this assignment of  
24 error, we describe its genesis and evolution in some detail. As noted above, the NRCS soils  
25 survey, adopted in 1983, describes 111 soils found in the county. Table 6 of the NRCS soil  
26 survey lists 67 of those 111 soils as “suitable for production of commercial trees.” Record



1 Vol II 261. The absence of a soil on Table 6 indicates that “information was not available.”  
2 *Id.* Table 6 lists Siskiyou (70F and 71F) and Holland (42D) as suitable for commercial  
3 forestry, but does not list Clawson (17B).

4 In 1985 the county commissioned a consultant, Brown, to develop a system to rate the  
5 suitability of lands in the county for commercial forestry, in order to determine the  
6 appropriate zoning for such lands. The Brown Report started with the 67 soils listed at Table  
7 6 of the NRCS soil survey, and did not evaluate the 44 other soils described in the survey. As  
8 an initial matter, the Report removed 11 of the 67 listed soils from further consideration, nine  
9 soils that are typically located at high elevations on public lands, and two high-value  
10 agricultural soils. The Report then evaluated the remaining 56 soils to determine the  
11 expected internal rate of return (IRR), considering investment costs and the expected rate of  
12 return on that investment over the harvest cycle, using the 30-year average return for the bond  
13 market as a benchmark. The IRR system also includes a method to calculate the composite  
14 internal rate of return (CIRR), for parcels with more than one rated soil, based on the  
15 weighted average by acreage.

16 Under the IRR/CIRR system, lands with an IRR/CIRR value of 4.0 or greater are  
17 considered high quality, suitable for the most protective forest zone. Lands with an  
18 IRR/CIRR value between 3.50 percent and 4.0 percent are considered marginal quality,  
19 suitable for the less protective WR zone. Lands with an IRR/CIRR value less than 3.50 are  
20 not considered to be suitable for commercial forestry, and the Brown Report recommends  
21 non-forest zoning for such lands. The wood-fiber production threshold between marginal and  
22 unsuitable soils corresponds approximately to 85 cubic feet per acre per year, *i.e.*, the Brown  
23 Report considers lands that produce less than 85 cubic feet per acre per year of wood fiber as  
24 unsuitable for commercial forestry, and as lands that are not protected under Goal 4.  
25 According to the Brown Report, 27 of the 56 soils evaluated have an IRR value higher than

1 3.50, while 29 fall below that threshold. The three IRR-rated soils on the subject property  
2 have IRR values below 3.50.<sup>6</sup>

3 Based on the Brown Report, the county adopted the predecessor to JCCP Goal 11,  
4 Policy 3 in 1985, which was then codified at Goal 11, Policy 5(B)(1). That version provided  
5 simply that lands with an IRR or CIRRR rating below 3.50 were not forest lands. Because the  
6 Brown Report rated only 56 of the soils in the county, questions arose as to how to apply  
7 Goal 11, Policy 5(B)(1) to parcels with one of the 55 soils not rated by the Brown Report or  
8 soils not described in the NRCS soil survey. With respect to new soils not described in the  
9 NRCS soil survey, the county initially attempted to assign IRR values to those soils on a  
10 case-by-case basis. However, in *Doob v. Josephine County*, 27 Or LUBA 293 (1994) (*Doob*  
11 *D*), this Board held that the county erred in applying the IRR/CIRRR methodology to a soil not  
12 listed in the NRCS soil survey. Because the new soil was not listed in the NRCS soil survey,  
13 nor given a numerical value under the acknowledged IRR/CIRRR process embodied in the  
14 Brown Report, we held that the decision had the effect of improperly amending the  
15 comprehensive plan to assign IRR/CIRRR values to soils without following post-  
16 acknowledgment amendment procedures. 27 Or LUBA at 297.

17 With respect to soils described in the NRCS soil survey but not rated in the Brown  
18 Report, the county first attempted to include those soils in the IRR/CIRRR system by  
19 informally assigning them a nominal 2.00 IRR value. However, the county abandoned this  
20 practice after an enforcement action was filed with the Land Conservation and Development  
21 Commission in 1995. County planning staff subsequently formulated a “clarifying policy,”  
22 under which the 55 unrated soils were essentially deemed to be unsuitable for commercial  
23 forestry and such soils were not considered in applying the IRR/CIRRR system. However, in  
24 an appeal of a decision applying the “clarifying policy,” LUBA held that the “clarifying

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<sup>6</sup> Siskiyou (70F) has an IRR of 3.26, Siskiyou (71F) has an IRR of 2.75, and Holland (42D) has an IRR of 3.35. Record Vol II 186.

1 policy” amounted to an improper amendment to the JCCP. *Doob v. Josephine County*, 31 Or  
2 LUBA 275, 286 (1996) (*Doob II*).

3 In 1999, as part of periodic review, the county amended JCCP Goal 11, Policy 3 to  
4 take the form applied in the present case. Similar to earlier versions, Goal 11, Policy 3(B)(1)  
5 provides that a lot or parcel is considered forest land when the predominant soil has an IRR  
6 or CIRRR of 3.50 or higher, based on the Brown Report. *See* n 1. However, a new subsection  
7 (2) was added to provide that “[i]f a determination cannot be made using the internal rate of  
8 return system” described in (B)(1), then the land may be shown to be unsuitable for  
9 commercial forestry based on a variety of factors that, taken together, demonstrate that the  
10 land is not protected under Goal 4. JCCP Goal 11, Policy 3(B)(2).

11 In *Doob v. Josephine County*, 41 Or LUBA 303 (2002) (*Doob III*), the county applied  
12 the amended JCCP Goal 11, Policy 3 to determine that a parcel with unrated soils, *i.e.*, soils  
13 that are among the 111 soils described in the NRCS soil survey but not among those rated  
14 under the Brown Report and assigned a IRR/CIRRR value, was not forest land as determined  
15 under Goal 11, Policy 3(B)(1). The petitioner argued that because the soils on the parcel  
16 were unrated under the IRR/CIRRR system the county must determine whether the parcel is  
17 “forest land” under the test at Goal 11, Policy 3(B)(2). We agreed, noting that:

18 “\* \* \* JCCP Goal 11, Policy 3(B)(2), by its terms, applies where ‘a  
19 determination cannot be made using the internal rate of return system’ under  
20 JCCP Goal 11, Policy 3(B)(1). If that language does not mean that JCCP Goal  
21 11, Policy 3(B)(2) applies in cases where the soils have not been assigned an  
22 internal rate of return, it is difficult to imagine when JCCP Goal 11, Policy  
23 3(B)(2) would ever apply.” 41 Or LUBA at 313.

24 We also noted the county’s argument in its brief, which was not reflected in the decision, that  
25 the county intended Goal 11, Policy 3(B)(1) to govern rated *and* unrated soils in the NRCS  
26 soil survey, and intended Goal 11, Policy 3(B)(2) to govern *only* new soils that are not  
27 described in the NRCS soil survey. However, we saw nothing in the text of Goal 11, Policy

1 3(B) that supported that interpretation, and noted that the record included no findings or  
2 legislative history supporting that interpretation.

3 On remand, the county in *Doob III* adopted interpretative findings concluding that,  
4 based on legislative history, the county did intend Goal 11, Policy 3(B)(1) to govern both  
5 rated and unrated soils, and Goal 11, Policy 3(B)(2) to govern only new soils. That decision  
6 on remand was appealed to LUBA, but the appeal was ultimately dismissed because the  
7 petitioner failed to timely submit the petition for review. *Doob v. Josephine County*, 43 Or  
8 LUBA 473 (2003) (*Doob IV*).

9 In the present case, the county has adopted interpretative findings similar to those that  
10 were adopted on remand in *Doob III*, based on legislative history in the record.<sup>7</sup> Based on  
11 that view of JCCP Goal 11, Policy 3(B), the county found that the subject property is “non-  
12 forest land” under 3(B)(1), because the majority of the property consists of Siskiyou soils  
13 with IRR values less than 3.50.

14 Petitioner challenges the county’s interpretation and application of JCCP Goal 11,  
15 Policy 3(B) in the present case from several directions. Petitioner argues, based on the Meyer  
16 report, that 55 percent of the subject property consists of Clawson (17B) soils. Petitioner

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<sup>7</sup> The county’s findings state, in relevant part:

“Although the *Brown Report* does not entitle the excluded soils as “non-forest,” the Board concludes this is the only reasonable conclusion that can be made from the fact that they did not qualify [in Table 6 of the NRCS soil survey] as being ‘suitable for the production of commercial trees.’ When the Board adopted the language in the first paragraph of subsection B.1, it was our clear intent to completely eliminate the 55 soils then existing in the NCRS/county soil data base, but not covered by the *Brown Report*, from consideration under subsection B.1 \* \* \*. On this basis, subsection B.1 is meant to determine whether land is forest land based upon the predominant presence of IRR/CIRR rated soils only.

“\* \* \* \* \*

“Regarding the operation of subsection B.2, the Board finds that this subsection is meant to cover only those cases where ‘new soils’ are involved. We also find that ‘new soils’ refers to soils that are not in the county’s soil data base, the [NRCS soil survey]. This is the only circumstance when the *Brown Report* cannot be used to determine forest lands, because the soils will be outside of both the acknowledged soil data base and the acknowledged IRR system.” Record Vol II 15-16.

1 contends that neither the NRCS soil survey nor the Brown Report evaluated the 55 soils not  
2 listed in Table 6, including Clawson (17B), for suitability for production of commercial trees.  
3 Because the Brown Report and the IRR/CIRR system do not rate Clawson (17B) soils,  
4 petitioner argues, the county cannot rely on subsection 3(B)(1), but must instead evaluate the  
5 suitability of the property for commercial forestry under subsection 3(B)(2).

6 Even if the NRCS soil survey and Kitzrow report are correct that the majority of soils  
7 on the property are Siskiyou soils, petitioner notes that Table 6 of the NRCS soil survey  
8 describes both of the Siskiyou soils and Holland soil on the property as soils “suitable for  
9 production of commercial trees.” Record Vol II 263-64. Petitioner contends that there is a  
10 conflict between the NRCS soil survey, which lists 67 soils suitable for commercial forestry,  
11 and the Brown Report, which lists only 27 soils as suitable for commercial forestry.  
12 Petitioner cites to 1995 letters from the Department of Land Conservation and Development  
13 and the state Department of Forestry criticizing the IRR/CIRR system for using  
14 unrealistically low stumpage values and unrealistically high operative costs. Record Vol II  
15 324-28.

16 The county responds, and we agree, that most of petitioner’s arguments amount to  
17 collateral attacks on JCCP Goal 11, Policy 3(B), which is acknowledged to comply with Goal  
18 4. Rightly or wrongly, the Brown Report evaluated only 56 of the 67 soils listed in Table 6 of  
19 the NRCS soil survey, and rated as suitable for commercial forestry only 27 of those 56 soils.  
20 JCCP Goal 11, Policy 3(B)(1) requires usage of the Brown Report IRR/CIRR values in  
21 determining whether land is “non-forest land” under that subsection. Therefore, at least for  
22 soils evaluated by the Brown Report and given IRR/CIRR values, those IRR/CIRR values are  
23 the appropriate means for determining whether land composed predominantly of rated soils is  
24 forest land under JCCP Goal 11, Policy 3(B). Petitioner’s arguments that the Brown Report  
25 conflicts with the NRCS soil survey or that the IRR/CIRR system uses inaccurate figures are  
26 impermissible collateral attacks on JCCP Goal 11, Policy 3(B).

1           Petitioner’s arguments that *unrated* soils such as Clawson (17B) must be evaluated  
2 under JCCP Goal 11, Policy 3(B)(2) rather than 3(B)(1) presents a closer question. As noted  
3 above, in *Doob III* we agreed with that argument, and rejected an interpretation offered by the  
4 county at oral argument that subsection 3(B)(1) governs both rated and unrated soils, while  
5 subsection 3(B)(2) governs only new soils not among the 111 soils described in the NRCS  
6 soil survey. We found no support for that interpretation in the text of JCCP Goal 11, Policy  
7 3(B) or the county’s decision in that case. In the present case, the county’s decision explicitly  
8 adopts the interpretation offered by county counsel in *Doob III*, and the record includes a  
9 number of memoranda and documents that the county cites as evidence that in adopting the  
10 current version of JCCP Goal 11, Policy 3(B) in 1999, it intended subsection 3(B)(1) to  
11 govern both rated and unrated soils, and subsection 3(B)(2) to govern only new soils.

12           Unfortunately, the dispute between petitioner and the county on this point is rendered  
13 hypothetical in the present case, given our discussion of the first assignment of error, where  
14 we affirmed the county’s reliance on the NRCS soil survey and the Kitzrow report to  
15 conclude that the subject property is composed predominantly of Siskiyou soils that are rated  
16 under the IRR/CIRR system. Even if petitioner is correct that unrated soils such as Clawson  
17 (17B) must be evaluated under subsection 3(B)(2), that argument would not provide a basis  
18 to reverse or remand the challenged decision. That is because even under petitioner’s view  
19 (consistent with our view in *Doob III*), subsection 3(B)(2) applies only “[i]f a determination  
20 cannot be made using the internal rate of return system” described in subsection 3(B)(1).  
21 Here, the county made a determination under subsection 3(B)(1) that the predominant soils  
22 on the subject property are Siskiyou soils with an IRR/CIRR less than 3.50, and we have  
23 concluded that that determination is supported by substantial evidence. Under petitioner’s  
24 view (and our view in *Doob III*), subsection 3(B)(2) applies only when the predominant soils  
25 on the property do not have an IRR/CIRR rating of 3.50 or higher, *i.e.*, in circumstances  
26 where unrated soils predominate, the circumstance at issue in *Doob III*. While petitioner

1 argues that unrated Clawson (17B) soils predominate on the property, that argument is based  
2 on a conclusion in the Meyer report that the county rejected.

3 Because the present circumstances do not invoke subsection 3(B)(2) even under  
4 petitioner's interpretation of the relationship between subsection 3(B)(1) and 3(B)(2),  
5 petitioner's challenges to the county's interpretation under this subassignment of error do not  
6 provide a basis for reversal or remand. We therefore decline to review petitioner's challenge  
7 to the county's interpretation.<sup>8</sup>

8 This subassignment of error is denied.

9 **B. Goal 4**

10 Petitioner argues that, pursuant to JCCP Goal 11, Policy 2(A), the county must  
11 demonstrate that plan amendments and zone changes comply with all applicable statewide  
12 planning goals. For the same reasons discussed above, petitioner argues that in order to  
13 comply with Goal 4 the county must evaluate the Clawson (17B) soils to determine their  
14 suitability for commercial forestry.

15 As explained above, under JCCP Goal 11, Policy 3(B)(1) if the predominant soils on  
16 the subject property have IRR/CIRR values below 3.50, then the entire property is not forest  
17 land, regardless of the composition of the minority soils on the property. We affirmed the  
18 county's conclusion that the predominant soils on the subject property have IRR/CIRR values

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<sup>8</sup> While we need not and do not address the merits of the county's interpretation, we note that the key premise to that interpretation is the county's view that Table 6 of the NRCS soil survey is a complete list of soils in the county that the survey deems to be "suitable for production of commercial trees." The county infers from Table 6 that the 44 unlisted soils "did not qualify as being 'suitable for the production of commercial trees.'" See n 7. However, the next sentence of Table 6 clearly states that "[a]bsence of an entry indicates that information was not available." Record Vol II 261. In other words, it appears that the NRCS soil survey did not evaluate the 44 unlisted soils for suitability for commercial forestry, but simply lacked information to make that evaluation. The Brown Report does not discuss the 44 unlisted soils at all, much less evaluate those soils for suitability for commercial forestry, or explain why an evaluation is not warranted. As far as we can tell, the county's premise that the NRCS soil survey and the Brown Report determined that unlisted soils are not suitable for commercial forestry is incorrect.

1 below 3.50. Under these circumstances, petitioner’s argument is essentially a collateral  
2 attack on JCCP Goal 11, Policy 3(B), which is acknowledged to comply with Goal 4.

3 This subassignment of error is denied.

4 The second assignment of error is denied.

5 **THIRD ASSIGNMENT OF ERROR**

6 JCCP Goal 11, Policy 3(D) requires a finding that “[t]he land is not other forested  
7 lands that maintains soil, air, water and fish and wildlife resources.” The county adopted  
8 findings concluding that the subject property was not “other forested land,” because it is not  
9 within a wildlife habitat or fisheries habitat area, and is not needed for watershed protection,  
10 or to preserve wetlands, urban buffers or open space. Record Vol. II 17, 19-20. The county  
11 also found, based on a geologist’s report, that the property is suitable for residential  
12 development notwithstanding the potential for erosion inherent in the soils on the property.  
13 *Id.* at 19-20.

14 Petitioner argues that the county’s findings on whether the subject parcel is “other  
15 forested land” are not supported by substantial evidence. Citing to an aerial photograph,  
16 petitioner argues that the subject property acts as a bridge between two forested areas, one to  
17 the west and northwest, and the other to the southeast. In addition, petitioner argues, the trees  
18 on the property play some role in maintaining soil, air, and water resources, by slowing  
19 erosion, cooling the air and preserving the intermittent streams and wet areas on the property.

20 Intervenor responds, and we agree, that the county’s findings are supported by  
21 substantial evidence. That the subject property adjoins forested areas on two sides is not a  
22 sufficient reason to find that it is “other forested land” that maintains soil, air, water and fish  
23 and wildlife resources, for purposes of JCCP Goal 11, Policy 3(D) and the Goal 4 language  
24 that provision implements. Further, the mere presence of trees on the property is not itself  
25 sufficient to make land “other forested land.” All stands of trees presumably play some role  
26 in slowing erosion, and supporting air and water quality. Absent some reason to believe that



1 the subject property must remain in forest zoning in order to maintain soil, air, water and fish  
2 and wildlife resources, something petitioner has not established, the county’s findings that the  
3 property is not “other forested lands” are adequate and supported by substantial evidence.

4 The third assignment of error is denied.

5 **FOURTH ASSIGNMENT OF ERROR**

6 JCCP Goal 11, Policy 2(D) requires a finding that the proposed comprehensive plan  
7 designation is “consistent with the character of the surrounding area.” The county adopted  
8 findings concluding in relevant part that the character of the area is “mixed use” and  
9 “residential” in nature, and that the proposed residential use is consistent with that character.  
10 Record Vol II 22. Petitioner disputes those findings, arguing that only half the land bordering  
11 the subject property is zoned residential, and that based on aerial photographs most of the  
12 area, including the residentially-zoned parcels, is forested. Petitioner contends that the  
13 character of the area is resource use and the proposed residential use is inconsistent with that  
14 character.

15 Where half the land bordering a parcel is zoned and developed for residential uses,  
16 and the remainder is land zoned for resource use, a reasonable person could conclude, as the  
17 county did, that the character of the area is “residential” and that proposed residential use is  
18 consistent with that character. That a reasonable person might also, on the same facts, reach  
19 the opposite conclusions does not demonstrate that the county erred in viewing the evidence  
20 as it did.

21 The fourth assignment of error is denied.

22 The county’s decision is affirmed.