BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

HAL ANTHONY and WAYNE McKY,
Petitioners,

vs.

JOSEPHINE COUNTY,
Respondent.

LUBA No. 2005-028

FINAL OPINION
AND ORDER

Appeal from Josephine County.

Hal Anthony and Wayne McKy, Grants Pass, filed a joint petition for review and argued on their own behalves.

John M. Junkin, Portland, filed the response brief and argued on behalf of respondent. With him on the brief was Bullivant Houser Bailey, PC.

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

REMANDED 11/17/2005

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

Opinion by Davies.

NATURE OF THE DECISION

Petitioners appeal a decision of the board of county commissioners that changes the comprehensive plan and zoning map designations for a 54.5-acre parcel.

FACTS

The subject property consists of two tax lots totaling approximately 54.5 acres. The challenged decision approves (1) a comprehensive plan amendment changing the designation for the subject property from Forest Resource to Residential, (2) a zone change from Woodlot Resource (WR) to Rural Residential – 5 Acre Minimum (RR-5), (3) a comprehensive plan amendment changing the designation for the subject property on the county's deer winter range map from critical deer winter range to impacted deer winter range, and (4) a PUD tentative plan. The Josephine County Rural Planning Commission conducted a hearing on the application on August 25, 2003 and recommended denial to the Josephine County Board of Commissioners. The board of commissioners conducted several hearings and, on February 18, 2004, took a vote that resulted in a tie. Approximately ten months later, the board conducted a final hearing on December 22, 2004, and approved the application. The decision became final on January 11, 2005. This appeal followed.

INTRODUCTION

In order to redesignate property from a resource designation (Forest) to a non-resource designation (Residential), the county was required to either (1) take an exception to Statewide Planning Goals 3 (Agricultural Lands) and 4 (Forest Lands), pursuant to ORS 197.732, or (2) demonstrate that neither Goal 3 nor Goal 4 applies to the subject property; *i.e.*, that the land is "non-resource." The challenged decision takes the second approach and applies Goal 11, Policy 3 of the Josephine County Comprehensive Plan (JCCP).[1]

[1] JCCP Goal 11, Policy 3 provides, in relevant part:

As the county explains, this Board has had numerous opportunities to address JCCP Goal 11, Policy 3. The history of that policy and its role in redesignating resource lands for nonresource

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"**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; and

"(3) The land is not necessary to permit farm practices or forest operations to continue or occur on adjacent or nearby resource zoned lands, subject to the rules and procedures as set forth in subsection C below.

"* * * * *."

use was discussed at length in *Doob v. Josephine County (Eliason)*, 48 Or LUBA 227 (2004). We repeat the relevant discussion from that opinion below:

> "Because the meaning of JCCP Goal 11, Policy 3(B) is at issue * * *, we describe its genesis and evolution in some detail. As noted above, the NRCS [Natural Resource Conservation Service] soils survey, adopted in 1983, describes 111 soils found in the county. Table 6 of the NRCS soil survey lists 67 of those 111 soils as 'suitable for production of commercial trees.' The absence of a soil on Table 6 indicates that 'information was not available.' * * * Table 6 lists Siskiyou (70F and 71F) and Holland (42D) as suitable for commercial forestry, but does not list Clawson (17B).
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> "In 1985 the county commissioned a consultant, Brown, to develop a system to rate the suitability of lands in the county for commercial forestry, in order to determine the appropriate zoning for such lands. The Brown Report started with the 67 soils listed at Table 6 of the NRCS soil survey, and did not evaluate the 44 other soils described in the survey. As an initial matter, the Report removed 11 of the 67 listed soils from further consideration, nine soils that are typically located at high elevations on public lands, and two high-value agricultural soils. The Report then evaluated the remaining 56 soils to determine the expected internal rate of return (IRR), considering investment costs and the expected rate of return on that investment over the harvest cycle, using the 30-year average return for the bond market as a benchmark. The IRR system also includes a method to calculate the composite internal rate of return (CIRR), for parcels with more than one rated soil, based on the weighted average by acreage.
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> "Under the IRR/CIRR system, lands with an IRR/CIRR value of 4.0 or greater are considered high quality, suitable for the most protective forest zone. Lands with an IRR/CIRR value between 3.50 percent and 4.0 percent are considered marginal quality, suitable for the less protective WR zone. Lands with an IRR/CIRR value less than 3.50 are not considered to be suitable for commercial forestry, and the Brown Report recommends non-forest zoning for such lands. The wood-fiber production threshold between marginal and unsuitable soils corresponds approximately to 85 cubic feet per acre per year, *i.e.*, the Brown Report considers lands that produce less than 85 cubic feet per acre per year of wood fiber as unsuitable for commercial forestry, and as lands that are not protected under Goal 4. According to the Brown Report, 27 of the 56 soils evaluated have an IRR value higher than 3.50, while 29 fall below that threshold. The three IRR-rated soils on the subject property have IRR values below 3.50.
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> "Based on the Brown Report, the county adopted the predecessor to JCCP Goal 11, Policy 3 in 1985, which was then codified at Goal 11, Policy 5(B)(1). That version provided simply that lands with an IRR or CIRR rating below 3.50 were not forest lands. Because the Brown Report rated only 56 of the soils in the county,

questions arose as to how to apply Goal 11, Policy 5(B)(1) to parcels with one of the 55 soils not rated by the Brown Report or soils not described in the NRCS soil survey. With respect to new soils not described in the NRCS soil survey, the county initially attempted to assign IRR values to those soils on a case-by-case basis. However, in *Doob v. Josephine County*, 27 Or LUBA 293 (1994) (*Doob I*), this Board held that the county erred in applying the IRR/CIRR methodology to a soil not listed in the NRCS soil survey. Because the new soil was not listed in the NRCS soil survey, nor given a numerical value under the acknowledged IRR/CIRR process embodied in the Brown Report, we held that the decision had the effect of improperly amending the comprehensive plan to assign IRR/CIRR values to soils without following post-acknowledgment amendment procedures. 27 Or LUBA at 297.

"With respect to soils described in the NRCS soil survey but not rated in the Brown Report, the county first attempted to include those soils in the IRR/CIRR system by informally assigning them a nominal 2.00 IRR value. However, the county abandoned this practice after an enforcement action was filed with the Land Conservation and Development Commission in 1995. County planning staff subsequently formulated a 'clarifying policy,' under which the 55 unrated soils were essentially deemed to be unsuitable for commercial forestry and such soils were not considered in applying the IRR/CIRR system. However, in an appeal of a decision applying the 'clarifying policy,' LUBA held that the 'clarifying policy' amounted to an improper amendment to the JCCP. *Doob v. Josephine County*, 31 Or LUBA 275, 286 (1996) (*Doob II*).

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

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

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

"We also noted the county's argument in its brief, which was not reflected in the decision, that the county intended Goal 11, Policy 3(B)(1) to govern rated *and* unrated soils in the NRCS soil survey, and intended Goal 11, Policy 3(B)(2) to govern *only* new soils that are not described in the NRCS soil survey. However, we saw nothing in the text of Goal 11, Policy 3(B) that supported that interpretation, and noted that the record included no findings or legislative history supporting that interpretation.

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

"In the present case, the county has adopted interpretative findings similar to those that were adopted on remand in *Doob III*, based on legislative history in the record. Based on that view of JCCP Goal 11, Policy 3(B), the county found that the subject property is 'non-forest land' under 3(B)(1), because the majority of the property consists of Siskiyou soils with IRR values less than 3.50." *Doob v. Josephine County (Eliason)*, 48 Or LUBA at 235-239 (footnotes and record citations omitted).[2]

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[2] In one of the omitted footnotes, we quoted a county interpretation of Goal 11, Policy 3 that is relevant in this appeal:

> "'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.
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> "'* * * * *

In the *Eliason* appeal, we were not required to decide whether the county was correct in assuming that unrated soils that do not appear in Table 6 are nonresource soils, because the property in that case was composed predominantly of soils rated less than 3.50 under the IRR/CIRR system. Accordingly, the proper treatment of the unrated soils, which the county determined comprised of well less than half of the property, was irrelevant to the determination of whether the property was non-resource. However, we included a footnote in that opinion expressing our disagreement with the county's rationale supporting its position that unrated soils are presumed to be non-forest; *i.e.*, less than 3.50 under the IRR/CIRR rating system.[3]

Our opportunity to address that issue directly arose in *Sommer v. Josephine County*, 49 Or LUBA 134 (2005), *aff'd* 201 Or App 528, ___ P3d ___ (2005). Specifically, we considered "whether, in applying Goal 11, Policy 3(B), the county may assume that unrated soils have an IRR of less than 3.50 and for that reason are nonresource soils." *Sommer*, 49 Or LUBA at 151. We disagreed with the county's interpretation, set forth here in n 2, and held that the county cannot assume that all unrated soils, those that are not listed in Table 6 have an IRR of less than 3.50 and are, for that reason alone, considered nonresource soils. *Id*. at 151-155.

We will not restate our entire analysis here. Suffice it to say that in *Sommer* we disagreed with the county that the Brown Report and thus, Goal 11, Policy 3, assumed that the 44 soils that are not included in Table 6 have an IRR of less than 3.50 and are therefore nonresource soils. We

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> "'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.' * * *" *Eliason*, 48 Or LUBA at 239 n 7.

[3] The pertinent portion of that footnote is set out below:

> "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.' * * * 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." *Eliason*, 48 Or LUBA at 242 n 8.

concluded that "[t]he Brown Report simply does not address the unrated soils at all" and that we could not assume LCDC acknowledged the policy with the understanding that those 44 soils that do not appear in Table 6 have an IRR of less than 3.50. *Id*. at 154. The Court of Appeals affirmed our decision in *Sommer* without opinion. *Sommer v. Josephine County*, 201 Or App 528, ___ P3d ___ (2005).

FIRST ASSIGNMENT OF ERROR

Petitioners' first assignment of error raises the same issue that we resolved against the county in *Sommer*. The county, relying on evidence presented by the applicant, found the subject property was composed of the following soils:

Map Symbol	Soil Name	IRR	% of Site
12D	Brockman Cobbly Clay Loam	---	52%
79F	Vannoy-Voorhies Complex	2.91	34%
21F	Cornutt-Dubakella Complex	2.78	12%
42C	Holland Sandy Loam	3.83	2%

As the table above depicts, the Brockman Cobbly Clay Loam comprises 52% of the property. Because the Brockman Cobbly Clay Loam soil is unrated and does not appear on Table 6, the applicant and the county assumed that it was rated 3.50 IRR or below.[4] Accordingly, the county held that the subject property is properly designated nonresource.

The county urges us to reconsider our holding in *Sommer* and affirm the challenged decision. We decline that invitation. We rely on our holding in *Sommer* and conclude that the county erred in assuming that the Brockman Cobbly Clay Loam has an IRR rating of 3.50 or below because it is unrated.

The county also argues that if we adhere to our holding in *Sommer*, we should remand the decision to allow the applicant to present evidence that the subject property should be designated nonresource pursuant to Goal 11, Policy 3(B)(2). It explains that the challenged decision relied on

[4] The challenged decision became final and was appealed to LUBA before our final opinion in *Sommer* was issued.

its assumption that the nonrated soils are nonresource soils and therefore concluded that the subject property was nonforest land, pursuant to Policy 3(B)(1). Accordingly, it did not apply Policy 3(B)(2), which provides that where a determination cannot be made using the IRR system, an applicant may demonstrate that the land is not protected by Goal 4 by demonstrating that the land is unsuitable for commercial forest uses based upon certain factors. *See* n 1. We agree that it is proper for the challenged decision to be remanded for the county to apply Policy 3(B)(2).

Petitioners' first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that the challenged decision is not supported by substantial evidence because it is based on the county's continued reliance on the 1985 Brown Report, which in turn relies upon outdated market information. In *Sommer*, the petitioners argued that the county's IRR system is based on faulty and outdated assumptions and that the challenged decision in that case was therefore not supported by substantial evidence. We addressed this issue in *Sommer*, and concluded:

> "The issue intervenors-petitioners attempt to raise in this assignment of error is really whether JCCP Goal 11, Policy 3 is supported by substantial evidence. But the challenged decision does not adopt or amend JCCP Goal 11, Policy 3(B); it *applies* JCCP Goal 11, Policy 3(B). Our review in this appeal is to determine whether the county correctly applied JCCP Goal 11, Policy 3(B), not to determine whether the Brown Report that provides the factual base and assumptions for JCCP Goal 11, Policy 3(B) was flawed from the beginning or is now out of date. Arguments to that effect may be appropriately directed to LCDC in periodic review, but they are not cognizable in this appeal." *Sommer*, 49 Or LUBA at 151 (emphasis in original).

Again, the Court of Appeals affirmed our decision without opinion.

Petitioners' argument here is essentially the same argument the petitioners made in *Sommer*. For the same reasons we denied that assignment of error in *Sommer*, petitioners' arguments here do not provide a basis for remand.

Petitioners' second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

As explained above, the subject proposal seeks a comprehensive plan amendment changing the comprehensive plan designation on the subject property to Residential. Rural Land Development Code (RLDC) 46.050(E) provides that where the proposed comprehensive plan designation is rural residential, the property "must be shown to be entirely outside of the critical habitat area" as mapped on the official 1985 Deer Winter Range map.[5] All but a small portion of the subject property falls within the critical habitat area. Accordingly, in order to designate the property for residential use, the applicant sought to amend the map.[6] The challenged decision amends the county's deer winter range map, changing the classification on the subject property from "critical" deer winter range to "impacted" deer winter range. Petitioners argue that the county failed to make findings supported by substantial evidence when it amended that map.

Petitioners' specific arguments supporting this assignment of error are somewhat disjointed and difficult to follow. However, it appears that the crux of petitioners' substantial evidence challenge is that the county's finding that the property is not critical winter deer range is based exclusively on a report prepared by applicant's expert, which is based in turn on only one site visit and a review of data previously prepared by the Oregon Department of Fish and Wildlife (ODFW). The report prepared by applicant's expert concluded that "The addition of eight new homes to an already impacted area is unlikely to have significant effects on deer or deer winter range." Record

[5] RLDC 46.050(E) provides:

> "If the proposed plan designation is Rural Residential, the lot or parcel must be shown to be entirely outside the critical habitat area (i.e., above 2500' or designated as impacted) on the official 1985 Deer Winter Range map, as adopted or amended."

[6] Approximately three acres of the subject property fall outside the critical habitat area and are designated "impacted deer winter range."

698. Petitioners assert that ODFW submitted evidence and provided testimony that the property is being used extensively as critical deer winter range. Petition for Review 18.[7]

The challenged findings explain that the county comprehensive plan and code do not provide criteria applicable to a proposal to amend the deer winter range map. They explain that the planning staff recommended the following considerations to be addressed when amending the Deer Winter Range map:

> "1. Has the land historically been used as winter habitat by substantial deer populations?
>
> "2. Does the land exhibit favorable Deer Winter Range characteristics?
>
> "3. Is the land already committed to uses that impede traditional big game management options?" Record 64.

The planning staff proposed, and the board accepted, a fourth criterion that we reword and summarize as follows:

> 4. Is the proposed change detrimental to Critical Deer Winter Range?[8]

The challenged decision addresses these four criteria at length and in detail. Record 63-74.[9] Petitioners nowhere specifically challenge those findings other than to argue, in essence, that the county should have believed the ODFW expert instead of the applicant's expert.

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[7] The county asserts that petitioners err in construing the position of ODFW. It notes that ODFW did not produce any evidence relating to the issue of whether the property provides critical habitat. While the county may be correct that ODFW did not supply its own evidence, its position is stated unequivocally as follows in the minutes of the November 26, 2004 hearing:

> "Mr. Haight stated that the ODFW is strongly opposed to this application. The project is located in a critical deer winter range and they feel that this project will have a definite negative impact on deer winter range. * * *." Record 456.

[8] The staff report that recommends applying these "criteria" concedes that the factors "cannot be considered established standards or criteria" but that "they are useful when considering amendments to the Winter Range Map." Record 64. Petitioners, however, do not argue that the county's consideration of the factors as criteria was error. We therefore do not address that issue further.

[9] The findings provide, in relevant part:

As we have explained on many occasions, substantial evidence is evidence a reasonable person would rely on in reaching a decision. *City of Portland v. Bureau of Labor and Ind.*, 298 Or 104, 119, 690 P2d 475 (1984). Where LUBA concludes that a reasonable person could reach the decision made by the local government, in view of all the evidence in the record, the choice between conflicting evidence belongs to the local government. *Younger v. City of Portland*, 305 Or 346, 360, 752 P2d 262 (1988). Where a reasonable person could have chosen to rely on a particular expert's conclusions, a local government may choose to believe that expert over another expert expressing a contradictory opinion. *Molalla River Reserve, Inc. v. Clackamas County*, 42 Or LUBA 251, 268 (2002).

"7. The 'habituation' of deer population show deer as 'opportunistic', that they 'tend to increase with residential development', can 'often increase to levels where they are considered pests', and are 'known to become tolerant of human disturbance' * * *.

"8. The proposed development is a Planned Unit Development, which has taken the areas shown to be shown most likely for deer habituation (swales and seasonal creek running through the property) and made them into a protected riparian corridor, established limits for fencing of one acre immediately around the home sites, and established home sites away from the potential deer habitat areas, no fencing at property lines, dogs only on leashes, all of which is manageable by the owners, enforceable in the courts, and protected as part of owner property values in a Planned Unit Development.

"9. The applicant has demonstrated that the Deer Winter Range on the subject property is not 'critical' Deer Winter Range, in that it is already impacted (see above), is a minute portion of existing County Deer Winter Range (eleven one-thousandths of one percent), that Deer Winter Range occupies 458,235 acres of Josephine County (44% of all county lands), that the subject property is not needed for the east-west migration of herds due to the barrier of the I-5 Freeway, city limits, and Scoville Rd./Granite Hill Rd. Development Corridor, and that adequate distance to the 2500 foot elevation to the east allows north-south migration below the 2500 foot elevation to the east.

"10. ODFW data (submitted by the Applicant) shows that management objectives for the subject property area wild deer population are being met, even though the subject property is 'drastically impacted' per ODFW parameters and not a likely source of winter range habitat for substantial numbers of the wild deer population.

"* * * * *

"12. There will be no 'domino effect' or expanding of the impact area to other properties as a result of this decision. Lands to the north and east of the subject property rise suddenly and steeply, too steep for residential development, and are in large lots which are mostly in public ownership." Record 73-74 (emphasis in original).

In this case, experts on both sides provided testimony regarding the issue whether the subject property is properly designated impacted or critical deer winter range. The ODFW expert opposed the application and expressed his opinion that the proposal would impact the deer winter range. Conversely, applicant's expert conducted a site visit, reviewed data previously prepared by ODFW and concluded that, given the current density of existing development and the deer's acclimation to that development, the proposal would not significantly impact deer winter range. For the reasons it provided in the challenged decision, the county chose to rely on the latter opinion.[10]

We do not agree with petitioners that the applicant's expert's reliance on only one site visit and on ODFW data renders its report somehow inadequate to provide substantial evidence for the county's conclusion. In our view, the county could reasonably have relied upon either set of experts with respect to the proposal's impact on deer winter range. Therefore, the choice of which evidence to believe is up to the county. Accordingly, we conclude that the county reliance on the applicant's expert was reasonable and that its amendment of the deer winter range map is supported by substantial evidence in the record.

This assignment of error is denied.

The county's decision is remanded.

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[10] The county chose not to rely on the ODFW expert's testimony, at least in part, because he offered no site specific data:

> "13. No property-specific rationale has been given by ODFW staff, other than that the Deer Winter Range line is 'the line', and should not be changed for any reason under any circumstance. The Sumner property should qualify as one of those properties which recognize the degree of existing impact and protects the existing use by habituated deer through PUD land use restrictions." Record 74 (emphasis in original).