1.6.1 Administrative Law – Substantial Evidence – Generally. Where a decision-maker relies on 40-foot contour maps in the record, sourced from county data, to determine the slopes on the subject property, an argument that the decision-maker erred by disregarding finer-scale, two-foot contour maps that petitioners submitted provides no basis for reversal or remand where the decision-maker reasoned that petitioners' contour maps were "not reliable, accurate or trustworthy evidence" because they were not signed by a registered professional surveyor and because they contained an incorrect scale, and where the petitioners have not otherwise established that credible evidence weighs overwhelmingly in favor of their description of the slopes on the subject property or that the evidence upon which the decision-maker did rely was not substantial evidence. *Velasquez v. Jackson County*, 80 Or LUBA 1 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a local government adopts a post-acknowledgment plan amendment creating a new zone that allows 20-acre lots, an argument that DEQ rules indicate that properties of 10 or more acres in size are generally able to support on-site wastewater systems is not sufficient to establish compliance with Goal 11 with respect to wastewater where those rules appear for the first time in the response brief, where there are no findings or evidence in the record addressing wastewater, and where there is no evidence in the record that the rule is accurate within the portion of the local government's jurisdiction at issue. Similarly, references to the proximity of the majority of candidate lands to fire districts, to evidence that more demand for funds would not be created in one of the districts, to 10 years of data indicating that less than two percent of fires resulted from residential structures, and to local fire protection standards with which future development would be required to comply are not sufficient to establish compliance with Goal 11 with respect to fire protection where there is no analysis of the likelihood of increased fire as more residences are potentially introduced into the area or discussion of the capacity of the existing fire service organizations to provide more service. *DLCD v. Douglas County*, 80 Or LUBA 98 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a neighbor describes observing, from their living room view, minimal orchard, meadow, and garden-related activity on the property and, other than horses belonging to some of the owners of the property, never seeing any livestock or other animals on the property between 1970 and 2004, and where the neighbor subsequently reiterates that there was no farm use, such as cattle or crops, between 1978 and 1983 and that, during the 1980s, owners of the property kept their show horses on the property, a local government may reasonably conclude that the property was "not managed for three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced $20,000 or more in annual gross income" for purposes of *former* ORS 197.247(1)(a) (1991), even where the record includes (1) aerial photos from 1979 and 1982, (2) a 1979 permit for a new barn, (3) a 1987 farm dwelling approval, and (4) testimony from other area residents contradicting the neighbor's testimony, where the record does not disclose the proximity of the other area residents' properties to the subject property or whether those area residents had made firsthand observations of the subject property during the relevant statutory period. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. For purposes of designating marginal lands under *former* ORS 197.247 (1991), it is not enough for an applicant to provide a list of the allegedly qualifying lots or parcels; the applicant must provide foundational evidence

that the lots or parcels are lawful and that lots or parcels that were in common ownership on July 1, 1983, are not overcounted. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. An attorney-land-use-consultant-prepared ESEE analysis including numerous plans, reports, and other documents supporting the redesignation and rezoning of protected habitat from forest land to marginal land under *former* ORS 197.247 (1991) is not sufficient to rebut expert testimony including (1) a letter authored by an ODFW biologist that generally discusses the cumulative impact of development on habitat and (2) general ODFW guidance related to levels of residential density in areas of peripheral big game habitat absent evidence of the attorney land use consultant's expertise. *Landwatch Lane County v. Lane County*, 80 Or LUBA 205 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. In the context of an application to remove property from a county's Goal 5 inventory of significant aggregate resources, where the county has previously determined, in two separate final, acknowledged decisions—one based on area-specific soils mapping and the other based on periodic review which resulted in an updated inventory—that the property should not be included on the county's Goal 3 inventory of agricultural lands; where the county zoned the property for surface mining, a zone that does not implement Goal 3, after one of those previous determinations; and where the ESEE analysis for the property does not specify a post-mining zoning designation or use, a conclusion that the property is not agricultural land is supported by substantial evidence. The county, having previously determined that the property is not agricultural land, is not required to revisit whether the property is agricultural land. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. In the context of an application to change the comprehensive plan designation of property to Rural Residential Exception Area, where a comprehensive plan provision provides that "any new Rural Residential Exception Areas need to be justified through initiating a non-resource plan amendment and zone change by demonstrating that the property does not meet the definition of agricultural * * * land," a county correctly determines that an applicant satisfies that provision by producing copies of the county's adopted and acknowledged agricultural lands inventories, which do not include the property. Even where an opponent submits an NRCS soils map into the record, which the opponent argues shows the property's soils constitute agricultural lands, where the NRCS website that the opponent used to prepare the soils map includes a disclaimer regarding the large scale of mapping, stating that "[e]nlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement," a reasonable decision-maker would rely on the inventories to conclude that the property is not agricultural land, and a reasonable decision-maker could determine that the NRCS soils map is less credible than the inventories. *Central Oregon Landwatch v. Deschutes County*, 80 Or LUBA 252 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a city bureau manages the city's transportation system, including private uses in the city right-of-way, and where bureau staff have special expertise in the safe and efficient use of the right-of-way and various demands on streets, including traffic, parking, and loading, statements from the bureau (1) that studio apartments have lower turnover rates, less need for unloading large furniture, and, thus, less need for a loading space, and (2) that signed, infrequent on-street loading will not have a negative effect

on the traffic safety or other transportation functions of the abutting right-of-way are evidence that would permit a reasonable person to find that an on-street loading space is adequate for a proposed studio apartment building's loading needs such that the development continues to meet the intended purpose of, and, therefore, qualifies for an adjustment to, an off-street loading space requirement, even where there is testimony in the record from an opponent of the development regarding anticipated negative congestion and safety impacts of off-street loading. *NDNA v. City of Portland*, 80 Or LUBA 269 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a city within Metro's jurisdiction adopts its portion of an intergovernmental concept plan into its comprehensive plan and applies an industrial zoning designation to a portion of the planning area with slopes greater than 10 percent, that Metro's previous decision to include the planning area in its UGB stated that land needed for industrial uses should generally have slopes of less than 10 percent and that a previous Metro housing need projection anticipated almost 600 more housing units than the industrial zoning designation would allow provide no basis for reversal or remand where Metro's previous UGB decision is not evidence, an applicable approval criterion, or a relevant consideration for the city in determining the correct zoning designation for the property and where Metro's previous housing need projection has been superseded by a later decision to remove the property from its inventory of buildable residential lands. *Watts v. City of Tualatin*, 80 Or LUBA 339 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an approved site plan indicates that a replacement dwelling will be sited on an *adjacent* property, but where the building permit for the replacement dwelling allows a replacement dwelling "in the same footprint as the original home," and where an ArcGIS map marked with distances and existing development indicate that the footprint of the original dwelling was located on the *subject* property, a conclusion that the subject property does not "include[] a dwelling" for purposes of forest template dwelling approval under ORS 215.750(4)(d) is not supported by substantial evidence. *Bielefeld v. Lane County*, 80 Or LUBA 480 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an applicant proposes to occupy one guest apartment within an 18,000-square-foot dwelling while allowing the remainder of the dwelling and all of its amenities to be used by bed and breakfast guests, a county's conclusion that the bed and breakfast is not a "subordinate use" of the dwelling, and therefore not a home occupation, and that the applicant is not a "resident of the dwelling" is consistent with the plain meaning of the code language and is supported by substantial evidence in the record where there is evidence that the applicant "spends a couple of days a week" at a different home, and that the subject dwelling does not appear to be occupied when viewed from the road or neighboring properties, even though the applicant provides a copy of her driver's license that lists the subject dwelling. *Lee v. Marion County*, 79 Or LUBA 199 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a local code provision provides that issuance of a conditional use permit (CUP) requires a determination that "[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone," a local government decision granting a CUP is not supported by substantial evidence where it does not identify and describe all of the existing and permitted

uses on adjacent properties and where it fails to analyze or measure the extent of the potential impacts of the proposed use and instead proceeds straight to mitigation measures. *Currie v. Douglas*, 79 Or LUBA 585 (2019).

1.6.1 Administrative Law – Substantial Evidence – Generally. If an exhibit is attached to the petition for review before LUBA, but that exhibit was not a part of the record made available to the local decision maker, LUBA may not consider it in resolving petitioner's assignment of error. ORS 197.835(2)(a). When the petitioner's argument relies on exhibits not in the record, it provides no basis for reversal or remand of the decision. *Newbrook v. City of Portland*, 78 Or LUBA 73 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence is a somewhat deferential test LUBA applies in its review of a local government fact-finder's evidentiary judgments. When a hearings officer incorrectly applies the substantial evidence standards of review, ORS 197.835(11)(b) does not authorize LUBA to affirm a decision by reweighing the evidence under the correct standard of evidentiary review. On remand, the hearings officer must reapply the evidence using the correct standard of review—the preponderance of the evidence. *Morgan v. Jackson County*, 78 Or LUBA 188 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. When an opponent provides evidence sufficient to rebut the presumption under ORS 215.130(10)(a) regarding the existence, continuity, nature and extent of the proposed nonconforming use, the applicant has the burden of demonstrating that the use proposed for verification has existed and continued in its current nature and extent from the date the use became nonconforming, or 20 years prior to the date of application, whichever date is applicable. *Morgan v. Jackson County*, 78 Or LUBA 188 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. ORS 215.130(11) prohibits a challenge to the lawful establishment element of a nonconforming use which would compel the applicant to submit evidence regarding the nature and extent of the use during periods that are more than 20 years prior to the date of application. A hearings officer cannot adopt findings based on impermissible evidence. *Morgan v. Jackson County*, 78 Or LUBA 188 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioner's argument that a proposed detached accessory structure for an "art studio" is not a permissible "accessory" structure allowed in the Impacted Forest Lands (F-2) zone provides no basis for reversal or remand where petitioner cites to no local code, state statute or administrative rule governing forest lands, suggesting limitations on accessory structures to a primary dwelling that is otherwise allowed on forest lands under state law. *Landwatch Lane County v. Lane County*, 78 Or LUBA 272 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's finding that land in the forest zone upon which development is proposed is "flat" is not supported by substantial evidence where the finding is supported only by the applicant's assertion that the relevant slope is "less than 3" percent, but the record includes two topographic maps that appear to show that the slope exceeds 10 percent, which if so triggers additional fire safety requirements. *Landwatch Lane County v. Lane County*, 78 Or LUBA 272 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the city's code provides that development application materials "shall reflect that consideration has been given to [tree] preservation," the city does not err in finding that the code requirement is met when the applicant's submissions demonstrate that consideration was given to tree preservation through a tree survey and site design that preserves trees within a stand on slopes greater than 25 percent, contains yard sizes that decrease critical root zone impacts, and preserves trees between and around homes. Those application materials reflect that consideration was given to tree preservation even though some high and moderate priority trees must be removed to develop streets, utilities and building pads, and preservation of trees on residential lots would be left to the discretion of future lot owners. The code does not require the actual preservation of trees; instead, the code requires a project applicant to consider tree preservation and submit evidence to demonstrate that such consideration occurred. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. Extension and improvement of a residential access road over an existing public right-of-way is not subject to a city code section that requires streets that are "dedicated to the public by the applicant * * * conform" with adopted street right-of-way maps. A proposed improvement of a type of street that is not depicted on the city's adopted street right-of-way map does not fail to "conform" with that map. *Fairmount Neighborhood Assoc. v. City of Eugene*, 78 Or LUBA 418 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. In considering whether property is generally unsuitable for farm use, it is not appropriate to disregard adjoining parcels as "nonfarm" parcels, simply because there is a nonfarm dwelling on the properties, where there is evidence those adjoining parcels have been planted in winter wheat. Without some findings addressing that evidence of farm use, findings that the property is generally unsuitable for farm use are not supported by substantial evidence. *Central Oregon Landwatch v. Crook County*, 77 Or LUBA 202 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local governing body commits no error in requesting that a prevailing party prepare written findings for it to adopt. And the governing body commits no error in adopting written findings that deviate from statements made at the final evidentiary hearing, and it is those written findings and not the oral statements that are subject to LUBA review on the merits. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings of fact and law are the decision; they are not evidence. A local governing body commits no error in adopting new findings following a LUBA remand for inadequate findings, without reopening the evidentiary record. *Rawson v. Hood River County*, 77 Or LUBA 415 (2018).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable decision maker could conclude that a 3,050-square-foot Event Center that is marketed to both hotel patrons and to the general public would generate larger events, with far more event attendees, and more traffic and parking demand from off-site than an Event Center that is conditioned to limit the Event Center use to hotel patrons and their guests only. *Hagan v. City of Grants Pass*, 76 Or LUBA 196 (2017).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's decision relying upon intervenor's traffic study is supported by substantial evidence where the hearings officer addressed petitioner's challenges to the credibility of the traffic study by citing to testimony of the intervenor's traffic engineer responding to each of petitioner's challenges. *Willis v. Clackamas County*, 76 Or LUBA 244 (2017).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a city ballot measure that approved the sale or transfer of park land to a school district included a statement that the former park land would "maximize recreational opportunities while preserving significant trees," and the school district's plans preserve 1.28 or 1.6 acres of former park land in its natural forested condition, the development uses only .32 acres of park land for school facilities, preserves many significant trees on the site, expands the school's playground located adjacent to the former park land, and preserves some acreage in a natural park like setting, a reasonable decision maker could find that school district has maximized recreational opportunities. *Dodds v. City of West Linn*, 75 Or LUBA 24 (2017).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that city streets have adequate capacity to accommodate traffic generated on annexed land is not supported by substantial evidence, where the finding cites and relies only upon extra-record street capacity data found in the transportation system plans of three nearby cities, rather than any evidence in the record. *J4J Misc PAC v. City of Jefferson*, 75 Or LUBA 120 (2017).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that the noise created by wind turbines site on top of a building located next to a bay will be mitigated by ocean noise and noise generated by nearby sewage pumps is not supported by substantial evidence, where the record includes no evidence concerning how loud the ocean and sewage pumps are at the site of the building. *Burgermeister v. Tillamook County*, 75 Or LUBA 350 (2017).

1.6.1 Administrative Law – Substantial Evidence – Generally. Remand is required where the county standards provide that a parcel created by land sale contract is a legal lot of record only if the contract is (1) dated and signed by the parties, (2) includes a separate legal description, and (3) does not include more than one legal description, but the county concluded that a parcel is as a legal lot of record based on an incomplete copy of a land sale contract without signatures that did not provide a separate legal description for the subject parcel. *Grimstad v. Deschutes County*, 74 Or LUBA 360 (2016).

1.6.1 Administrative Law – Substantial Evidence – Generally. An applicant's letter detailing the nature and location of a concrete batch plant's fuel tanks, stockpiles and buildings is not sufficient to establish their location as a matter of law or to establish that a hearings officer erred by failing to rely on that letter, where the hearings officer pointed out discrepancies between that letter and other letters submitted by the applicant. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is conflicting believable evidence regarding whether a proposal to replace a concrete batch plant with an asphalt batch plant would present a greater risk of explosions and damage to surrounding properties, a

hearings officer's conclusion that the asphalt batch plant poses a greater risk of explosions and damage is supported by substantial evidence. *Meyer v. Jackson County*, 73 Or LUBA 1 (2016).

1.6.1 Administrative Law – Substantial Evidence – Generally. The standard of review that LUBA applies in reviewing substantial evidence challenges to critical findings of fact is not particularly demanding. City findings that a landslide poses a danger to water reservoirs, which are supported by the testimony of two engineers, one of them a geotechnical engineer, are supported by substantial evidence where the contrary evidence is not sufficient to call the testimony of the engineers into question. *Fernandez v. City of Portland*, 73 Or LUBA 107 (2016).

1.6.1 Administrative Law – Substantial Evidence – Generally. A memorandum from the city engineer that upsizing sewer pipes, rehabilitating and replacing sewer facilities and adding an infiltration and inflow abatement programs will result in an adequate sewer system is substantial evidence that with those improvements "adequate sewer facilities and services are presently or can be made available with development." *Graser-Lindsey v. City of Oregon City*, 72 Or LUBA 25 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. A board of commissioners could reasonably conclude that a double-wide mobile home was located on property in 1987, the year in which the county approved placement of a temporary medical hardship dwelling, where the record includes the 1987 permit approving placement of the temporary medical hardship dwelling, and that permit included a condition that required connection to the existing septic system. The existence of a septic system already on the property is some evidence of the contemporary existence of the temporary medical hardship dwelling and the double-wide mobile home on the property. *Treadway v. Jefferson County*, 72 Or LUBA 122 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. For purposes of determining, under OAR 660-033-0130(8)(a)(C)(ii), whether a dwelling was "improperly removed" from the tax roll and whether the dwelling has "taxable value in its present state," a board of commissioners' decision that a dwelling was "improperly removed" from the tax roll is supported by substantial evidence in the record, where the record includes the two most recent years of tax assessor's reports for a single-wide mobile home that describe the mobile home as having two bedrooms and one bathroom and show an assessed value of approximately $1,000. *Treadway v. Jefferson County*, 72 Or LUBA 122 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government reasonably relies on testimony from a civil engineer that a retaining wall provides support for a parking lot and transmits its imposed load to the earth, notwithstanding that the civil engineer is a member of the board of directors of the non-profit organization applicant, because the engineer's participation on the board of directors does not, in itself, call her professional credibility into question. *Knapp v. City of Jacksonville*, 72 Or LUBA 299 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. Remand is necessary where the findings conclude that the water supply is "adequate" to support proposed residential development because a main water line is located adjacent to the property, but do not address the code requirement to address the availability of water "relative to capacity," and the findings and record

do not address capacity or issues raised about the capacity to serve new development while meeting existing obligations. *Oregon Coast Alliance v. City of Brookings*, 71 Or LUBA 14 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable decision maker could rely on planning staff testimony that with zoning ordinance provisions allowing transfer of density, it is not necessary to remove 500,000 cubic yards of rock from a five-acre site to permit the site to be developed residentially. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that a proposed truck maintenance home occupation will comply with a 600-square-foot floor area limitation is inadequate and not supported by substantial evidence, where the findings do not address how much floor area employees will use in performing maintenance tasks, and there is no evidence in the record supporting a finding that the physical area occupied by trucks, tools, storage, and the area needed to perform maintenance tasks will occupy no more than 600 square feet. *Stevens v. City of Island City*, 71 Or LUBA 275 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. Notwithstanding that the record includes no evidence quantifying how much water would be transferred between a ranch and a proposed golf course, a county's finding that the water transfer will not significantly change or increase the cost of farming practices on the ranch is supported by substantial evidence, where the ranch manager testifies that in exchange for transferring water, the applicant will improve the ranch's irrigation system, and the ranch anticipates no change in the amount of irrigation water available or irrigation practices. *Oregon Coast Alliance v. Curry County*, 71 Or LUBA 297 (2015).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could find based on the evidence in the record that where only a modest increase in vehicle trips is created by a PUD, the PUD is "reasonably compatible with adjacent and nearby land uses," particularly given the inherently subjective nature of the criterion. *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132 (2014).

1.6.1 Administrative Law – Substantial Evidence – Generally. Based on evidence in the record that (1) no level of service deficiencies would occur based on new trips added to the area and (2) the PUD will not generate additional traffic above the threshold required for a TIA, A reasonable person could find, that a PUD will have minimal impact on traffic off-site, particularly given the inherently subjective nature of the criterion. *Oakleigh-McClure Neighbors v. City of Eugene*, 70 Or LUBA 132 (2014).

1.6.1 Administrative Law – Substantial Evidence – Generally. Land use proceedings are not governed by rules of evidence, and a local government may rely in part on a planner's testimony regarding a phone conversation with the fire district chief, among other evidence, to conclude that the water supply is sufficient for fire suppression, notwithstanding that the fire district chief did not submit direct testimony. *Foland v. Jackson County*, 70 Or LUBA 247 (2014).

1.6.1 Administrative Law – Substantial Evidence – Generally. Remand is necessary where the decision (1) approves a two-year intensification of a mining operation and (2) modifies extraction

limits to extend the life of the mining operation beyond the initial two-year period, but the only evidence regarding compliance with an approval standard requiring that the existing county road system be "adequate to accommodate the proposed use" addresses only the initial two-year period, not long-term impacts on the adequacy of the county road system. *Dion v. Baker County*, 70 Or LUBA 438 (2014).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence supports a finding that the value of proposed development outweighs the value of retaining rather than demolishing an historic structure, notwithstanding opponents' arguments that the city did not give weight to the architectural value of the structure, where the record indicates that the structure was designated only for its cultural, not architectural, significance. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

1.6.1 Administrative Law – Substantial Evidence – Generally. Under a historic demolition permit standard requiring a finding that the value of proposed development outweighs the value of retaining the historic resource, evidence that there are better sites in the city for the proposed development, a playground, is irrelevant to the question posed by the standard, which requires a comparison of the value of constructing the playground on the site against the value of retaining the historic resource. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

1.6.1 Administrative Law – Substantial Evidence – Generally. The city has discretion to rely on the evidence it chooses in making its decision, and the city's decision not to rely on evidence provided by an applicant that calculates slopes on a property using a method that differs from the method requested by the city is not a basis to reverse or remand the decision. *SE Neighbors Neighborhood Assoc. v. City of Eugene*, 68 Or LUBA 51 (2013).

1.6.1 Administrative Law – Substantial Evidence – Generally. A petitioner's mere disagreement with a city's conclusion that, as conditioned, a commercial truck repair home occupation located in an accessory structure is secondary to residential use of the property does not establish that the city's conclusion is not supported by substantial evidence. *Stevens v. City of Island City*, 68 Or LUBA 112 (2013).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is no dispute that the applicant's traffic impact study was prepared by a licensed traffic engineer or that two existing intersections will need to be signalized to avoid having a proposed development significantly affect those intersections, the fact that the traffic impact study in the record is a draft of the final traffic impact study, which lacks the stamp of the engineer and the warrants that justified the two traffic signals, does not mean the draft traffic impact study is not substantial evidence. *Lowery v. City of Portland*, 68 Or LUBA 339 (2013).

1.6.1 Administrative Law – Substantial Evidence – Generally. The technical support for level of service figures in a traffic impact study (TIS) is a critical part of the TIC and the fact that the draft TIS does not include that technical support in the TIS appendix might require remand so that the final TIS with the technical support appendix could be added to the record. However, where no issue was raised before the local government concerning the missing technical support appendix, the issue is waived. *Lowery v. City of Portland*, 68 Or LUBA 339 (2013).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings official's expressions of misgivings about the quality of evidence submitted by an applicant do not mean the hearings officer required the applicant to meet an impermissible "absolute certainty" burden of proof. *Teen Challenge v. Lane County*, 67 Or LUBA 300 (2013).

1.6.1 Administrative Law – Substantial Evidence – Generally. A governing body errs in relying upon the personal knowledge of its members who are farmers to resolve a disputed issue regarding whether proposed disturbances to topsoil would render the subject property unfit for future agricultural use. The effect of topsoil disturbance on agricultural productivity is an arcane subject, and even if the farmer/commissioners have expert personal knowledge of that subject, it is inappropriate to approve or deny an application based on the decision-makers' personal knowledge of disputed facts rather than on the evidence submitted during the evidentiary proceeding. *Hood River Valley PRD v. Hood River County*, 67 Or LUBA 314 (2013).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's decision that it has the required majority of consents to annex an area is supported by substantial evidence, where the contract consents have been executed and recorded and there is nothing on the face of the documents that calls their validity into question. Not-yet-litigated contentions of the consenting landowners that the contract consents are invalid because they were obtained through coercion or that the contract consents have been revoked do not so undermine the contract consents that they can no longer be viewed as substantial evidence. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will affirm a city decision that an applicant's methodology for estimating trip generation from a proposed discount superstore is consistent with the guidelines set out in an applicable traffic generation manual, where nothing in the manual requires that another method be used where no similarly situated store is located in the city, or calls into question the extrapolation method that the traffic engineer used. *Neighbors for Dallas v. City of Dallas*, 66 Or LUBA 36 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. Given the subjectivity of a criterion requiring that the proposed comprehensive plan map amendment be "in the public interest with regard to neighborhood or community concerns," a reasonable person could rely on the testimony of industrial businesses adjacent to the property that a proposed mixed-use apartment building located along a heavily used truck route could create conflicts between the residents and truck traffic to support a finding of that the proposed change is not in the public interest. *Vest v. City of Molalla*, 66 Or LUBA 155 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city decision maker may reasonably dismiss as not believable petitioner's non-expert testimony that proposed residential development could have a variety of negative environmental effects. *Rosenzweig v. City of McMinnville*, 66 Or LUBA 164 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence in the record supports a city's finding that a proposed cell tower location is the only feasible location

where the evidence demonstrates that (1) alternative sites are located outside of the search area identified by applicant for meeting its coverage objectives, (2) the tower cannot reasonably be located within a right-of-way because there is not sufficient area within the right-of-way to locate all of the necessary equipment, (3) co-location is not feasible because the heights of existing towers are inadequate, and (4) co-location on an existing rooftop facility is not feasible due to inadequate structural integrity of the rooftop. *Hill v. City of Portland*, 66 Or LUBA 250 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. Uncontradicted evidence that a legislative text amendment allowing for the expansion of existing landfills would not affect the county's transportation facilities, because traffic generated by landfill expansion is not a net increase but simply replaces traffic generated by portions of the existing landfill that are at capacity and will be closed, is sufficient to demonstrate that the text amendment does not "significantly affect" any transportation facility within the meaning of the Transportation Planning Rule at OAR 660-012-0060(1). *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could conclude, based on evidence that commercial farms near existing landfills are viable agricultural operations, that a text amendment allowing existing landfills to expand their geographic scope will not have additional impacts on nearby farm uses, and is consistent with a comprehensive plan policy providing that proposed rural development shall not substantially conflict with farm and forest uses. *Waste Not of Yamhill County v. Yamhill County*, 65 Or LUBA 142 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's decision that it is feasible for a proposed kennel operation to comply with DEQ's applicable noise standard is not supported by substantial evidence in the record, where an engineer's report concludes that noise from dogs barking in the outdoor kennel play area could exceed the DEQ hourly noise level limits on the property directly to the east and there is nothing in the record that rebuts that conclusion. *Butcher v. Washington County*, 65 Or LUBA 263 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that an 8.5-acre parcel with Class VI agricultural soils is not "suitable for grazing," and not "other lands" suitable for farm use, and hence not "agricultural land" as defined in OAR 660-033-0020, is supported by substantial evidence, where the undisputed evidence is that the parcel can accommodate only two animal units per month, equivalent to a lease value of $30 per month, yielding less revenue than the annual property taxes. *O'Brien v. Lincoln County*, 65 Or LUBA 286 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. Arguments that a proposed system for controlling odor and leachate will not in fact control odor and leachate generated by the proposed use are insufficient to demonstrate that the decision is not supported by substantial evidence where nothing in the record calls into question the efficacy of the proposed odor and leachate system. *Cottonwood Capital Property Mgmt. LLC v. City of Portland*, 65 Or LUBA 370 (2012).

1.6.1 Administrative Law – Substantial Evidence – Generally. Geotechnical reports, a storm water design report and a staff report amount to substantial evidence in the record to support the city's conclusion that a proposed stormwater drainage plan "fit[s] the topography, soil, geology,

and hydrology of hillsides and * * * ensure[s] hillside stability both during and after development. *Boucot v. City of Corvallis*, 64 Or LUBA 131 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. Maps based on a city's GIS database that do not differ in any material respect from the city's Goal 5 map and are not a smaller scale than the city's adopted Goal 5 map provide substantial evidence regarding the location of wetland boundaries. *Willamette Oaks LLC v. Lane County*, 64 Or LUBA 328 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an authorization to an applicant to apply on a city's and county's behalf for land use approval to construct improvements on city and county owned property includes a statement at the beginning that the person or persons executing it has the authority to do so, a reasonable decision maker could conclude that the persons signing the authorization had the authority to provide the authorizations, where there is no evidence in the record indicating that the persons who issued the authorizations did not have that authority. *Willamette Oaks LLC v. Lane County*, 64 Or LUBA 328 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city does not err in relying upon an authoritative trip generation manual to estimate the number of new trips generated by a proposed use, instead of conducting actual traffic counts, where the petitioner cites no authority requiring the city to conduct actual traffic counts, nor suggests any way for the city to do so with respect to new development. *Kane v. City of Beaverton*, 64 Or LUBA 351 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that the record reflects that the proposed development will generate 18 trips per day is not supported by substantial evidence, where nothing in the record indicates that the development will generate 18 trips per day except the finding itself and earlier proposed versions of that finding in a staff report. A finding or proposed finding is not evidence. *Poe v. City of Warrenton*, 64 Or LUBA 377 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that public facilities are adequate to accommodate the proposed conditional use, based on review of statements from the public works department and fire chief, is not supported by substantial evidence, where the record includes no statements from the public works department, and the fire chief's letter states that it is unknown whether the city water supply can accommodate the proposed use. *Poe v. City of Warrenton*, 64 Or LUBA 377 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a permit extension criterion requires a local government to find that the permit applicant was not responsible for its failure to complete the development authorized by the permit within the term of the permit, a local government errs in finding that its determination concerning whether the applicant was responsible for that failure need not be supported substantial evidence. And while an applicant's claim that it could not have completed development within the term of the term of the original permit due to a historic downturn in the economy might be substantial evidence if that is the only evidence in the record, that unsubstantiated claim is not substantial evidence if there is other evidence that the applicant was seeking an alternate development proposal during the term of the original permit. *Bard v. Lane County*, 63 Or LUBA 1 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the county's initial 2006 decision relies upon a traffic study to demonstrate compliance with the Transportation Planning Rule (TPR) at OAR 660-012-0060(1)(c), and the decision is remanded but the county takes no action on remand until 2010, the county need not require that the traffic study be updated to reflect current 2010 traffic conditions. The focus of OAR 660-012-0060(1)(c) is on the end of the planning period, based on projected traffic growth from a base condition, and for purposes of the rule it does not matter whether growth is projected from 2006 or 2010. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a decision maker is required to conduct a *de novo* review of the evidence in the record, but the decision maker erroneously believes that under the appropriate standard of review the decision maker is obligated to resolve all evidentiary conflicts in the applicant's favor absent overwhelming conflicting evidence, a decision based on that erroneous understanding would likely not constitute *de novo* review. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding expressing an erroneous understanding of the local decision-maker's standard of evidentiary review is harmless error at best, where no party identifies any findings addressing the approval criteria or evidence in which the decision-maker applied that erroneous standard of review. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. Well reports generated when wells were dug decades ago are substantial evidence that a reasonable decision maker could rely upon to conclude that the wells can supply sufficient water for a proposed destination resort, where there is no countervailing evidence in the record, and the county addresses the possibility that the well reports are no longer accurate by imposing a condition requiring prior to final master plan approval that the applicant conduct pump tests and, if necessary, dig new wells, to ensure sufficient water. *Oregon Coast Alliance v. Curry County*, 63 Or LUBA 324 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. Opinions given by members of a local decision-making body during deliberations do not constitute new evidence that the public has a right to respond to. *Siegert v. Crook County*, 63 Or LUBA 379 (2011).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could conclude from the plat of a neighboring subdivision showing a spur road ending in turnaround bordering the common property line with the proposed subdivision, and a notation that the roads are intended to "benefit this plat," that the spur road is not intended to be a connecting road between the two subdivisions. *Burness v. Douglas County*, 62 Or LUBA 182 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government decision that determines that an entire property is located on a foredune and denies an application for a dwelling based on that determination will be remanded where the findings do not explain why the local government reached the conclusion it reached and the conclusion is not supported by any evidence in the record identified by the local government. *Rudell v. City of Bandon*, 62 Or LUBA 279 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. DLCD's Goal 14 rule was amended in 2007 to require that the coordinated population projections required by ORS 195.025 and 195.036 must be "developed using commonly accepted practices and standards for population forecasting" and "based on current, reliable and objective sources and verifiable factual information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA). OAR 660-024-0030. A county may not simply rely on county population projections that were found to be valid when they were adopted in 1998 to adopt updated population projections in 2009. While the county is not required to use the OEA long range forecast, it must conduct a review of its 1998 assumptions to determine whether they remain reliable in light of actual population growth and the OEA forecast. *Meyer v. Douglas County*, 61 Or LUBA 412 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. DLCD's Goal 14 rule was amended in 2007 to require that the coordinated population projections required by ORS 195.025 and 195.036 must be "developed using commonly accepted practices and standards for population forecasting" and "based on current, reliable and objective sources and verifiable factual information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA)." OAR 660-024-0030. If in adopting a coordinated population projection under ORS 195.025 and 195.036 a county relies on a city's undocumented preference for a particular growth rate, the county forecast is not supported by an adequate factual base. *Meyer v. Douglas County*, 61 Or LUBA 412 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. DLCD's Goal 14 rule was amended in 2007 to require that the coordinated population projections required by ORS 195.025 and 195.036 must be "developed using commonly accepted practices and standards for population forecasting" and "based on current, reliable and objective sources and verifiable factual information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA)." OAR 660-024-0030. A county decision to apply its assumed population growth rate for unincorporated areas of the county to the unincorporated areas of the county located inside urban growth boundaries is not supported by an adequate factual base where there is no explanation for why that assumption is reasonable for urban areas around cities that project a much lower population growth rate. *Meyer v. Douglas County*, 61 Or LUBA 412 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. Even though the county relied on an erroneous calculation of potential mortgage carrying costs associated with attempting to farm the property, because even without the losses from mortgage costs, evidence in the record indicates that the property could not be profitably farmed, the county did not err in finding that the property could not be profitably farmed. *Wetherell v. Douglas County*, 60 Or LUBA 131 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's decision that a partition complies with common green recommended "width" standards is supported by substantial evidence when the width of the common green, as located and measured by the city, is within the recommended width. *Meade v. City of Portland*, 60 Or LUBA 265 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government's findings that an application for subdivision approval should be denied for failure to include a traffic study are inadequate, where there is no evidence that any of the circumstances that might require a traffic study under the local code were present and there was no suggestion during the local proceedings that planning staff believed a traffic study was necessary. *Montgomery v. City of Dunes City*, 60 Or LUBA 274 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. When an approval criterion requires that there be adequate water to serve the proposed use, it is not enough to demonstrate that there are sources of water available to the property. The amount of water needed to serve the proposed use must also be estimated. *Crocker v. Jefferson County*, 60 Or LUBA 317 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a small scale estuarine management unit map is ambiguous, even if the evidence in the record established that a tax lot was being mined in 1981 when estuary management unit designations were applied to the property, that would not conclusively establish an intent to place the tax lot in an estuary management unit that allows mining, as opposed to a management unit that does not allow mining, when the small scale map was adopted in 1981. However, such evidence would likely constitute substantial evidence of an intent to place the tax lot into an estuary management unit that allows mining, when the map was adopted in 1981. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. Comprehensive plan maps that are not tax lot specific and post-1981 aerial photographs are not substantial evidence that a small tax lot was being mined in 1981 when the comprehensive plan was first adopted. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

1.6.1 Administrative Law – Substantial Evidence – Generally. An applicant for approval of a cell tower may rely on letters from a school district director of communications and facilities and a special district property manager to establish that school district and special district property is not available as a site for a proposed cell tower. The applicant need not inquire beyond the districts' professional staff or contact the governing boards of the school district and special district. *McLaughlin v. City of Springfield*, 59 Or LUBA 275 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. Post-enactment statements by the Metro Council President and a Metro planner that when 308 acres were added to the urban growth boundary and designated for Industrial use Metro only expected that 120 of those acres would actually be put to industrial use are not substantial evidence of that expectation, where neither the Metro Council President nor the planner make any reference to the ordinances that added the property to the urban growth boundary or any attempt to explain how the 120-acre figure was computed. *Graser-Lindsey v. City of Oregon City*, 59 Or LUBA 388 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where Metro has designated 308 acres next to a city for industrial development, a market analysis is not substantial evidence that those 308 acres are not needed to meet the 20-year regional need for industrial land, where that market analysis concludes that under the right economic conditions only 150 acres of 308

acres will be developed but also concludes that there is a current shortage of industrial land to meet the region's 20-year need for industrial land. *Graser-Lindsey v. City of Oregon City*, 59 Or LUBA 388 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. In applying a destination resort approval standard that requires that destination resorts employ mitigation measures to ensure "no net loss of wildlife," a county may allow an applicant to utilize data developed in approval of a nearby destination resort that utilized seven indicator species to estimate the nature and extent of the damage that must be fully mitigated. A reasonable person would rely on such data unless opposing data is submitted to show the analysis that relies on indicator species missed or inadequately addressed some aspect of the wildlife resource. *Gould v. Deschutes County*, 59 Or LUBA 435 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. Arguments that a basis of value report that was prepared to support an application to vacate right-of-way does not constitute substantial evidence—because the basis of value report is not an appraisal and was not prepared by a person who is licensed to prepare commercial real estate appraisals—are not sufficient to show the challenged decision is not supported by substantial evidence, where the city standard that requires a determination of the special benefit that will result from the requested vacation does not require an appraisal or require that the person who supplies that estimate be a licensed commercial real estate appraiser. *Bowers v. City of Eugene*, 58 Or LUBA 51 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county does not err in relying on a 2007 soil study to conclude that a parcel is not agricultural land under Goal 3, notwithstanding the absence in the record of a 2001 soil study that the applicant's consultant cites, where the 2007 study is intended to stand on its own and petitioners do not identify any critical information missing from the 2007 study that might be found in the 2001 study. *Wetherell v. Douglas County*, 58 Or LUBA 101 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence does not support a city's finding that constructing a new elementary school on a parcel 10 miles from the original urban renewal area will benefit or serve that original urban renewal area, where there is no evidence that the school would serve any current or displaced residents of the renewal area. *Friends of Urban Renewal v. City of Portland*, 58 Or LUBA 148 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county does not err in concluding that, as conditioned, a personal use airport will not "significantly" impact a neighboring equine facility, where the only adverse impact identified by the facility owner is that guests are advised to delay mounting or dismounting horses until after planes land or take-off, and conditions of approval limit operations to 20 flights per month. *Johnson v. Marion County*, 58 Or LUBA 459 (2009).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could infer from photographs that show the front and two sides of a dwelling that the pictured dwelling has "intact exterior walls and roof structure," as required by ORS 215.283(1)(s)(A) for approval of a

replacement dwelling in an exclusive farm use zone. *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the evidence shows that a house had a kitchen sink, toilet and bathing facilities that were connected to a pipe that exited the house and traveled underground to a holding and disposal tank of some sort, that evidence is sufficient to establish that the dwelling had indoor plumbing that was connected to "a sanitary waste disposal system," as required by ORS 215.283(1)(s)(B) for approval of a replacement dwelling in an exclusive farm use zone. ORS 215.283(1)(s)(B) does not require that the applicant establish that the required "sanitary waste disposal system" qualifies as a "subsurface sewage disposal system," as defined by ORS 454.605(13). *Hegele v. Crook County*, 56 Or LUBA 156 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will affirm a county's finding that fire protection measures that typically apply to logging operations are sufficient to ensure that a proposed mining operation in a forest zone will not significantly increase fire hazards, notwithstanding that a permanent mining operation will have greater duration and intensity than a seasonal logging operation, where the petitioners cite to no evidence substantiating their assertion that the nature and intensity of the mining operation require more stringent fire protection measures than logging operations. *Comden v. Coos County*, 56 Or LUBA 214 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. A conclusion that the 374-foot elevation corresponds to the top of high bank, characterized by "an abrupt or noticeable change from a steeper grade to a less steep grade," is not supported by substantial evidence, where evidence in the record indicates that the 374-foot elevation is one point on a barely perceptible slope with no perceptible change in grade. *The Piculell Group v. City of Eugene*, 56 Or LUBA 298 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an applicant seeking to establish that a proposed mining site qualifies as a significant aggregate resource site does not argue to the county that opponents' data from off-site wells is consistent with data from the applicant's on-site wells or that the data from the off-site wells is unreliable because it was not collected under the supervision of a geologist, it is not unreasonable for the county to rely on the opponents' evidence to conclude that the two on-site borings were not sufficient to establish that a 117-acre mining site qualifies as a significant aggregate resource site. *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where two 25-foot test pits show an aggregate layer that is at least 20 feet deep and shows no sign of diminishing and the decision maker does not seem to have appreciated that the test pits were consistent with the first 25 feet of two deep borings located elsewhere on the site that showed an aggregate layer of far more than the 25-foot width required to qualify as a significant aggregate resource site under OAR 660-023-0180(3)(d)(B)(ii), remand is required so that the county can make it clearer that it understood the significance of the two 25-foot test pits. *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that rural residential development will have "minimal impact" on wildlife habitat is not supported by substantial evidence, where the only evidence relied upon is a study that addressed a different proposal under which one-fifth of the property would have been placed in a conservation easement, and the county fails to impose or require such a condition or easement, or explain why the proposed development satisfies the minimal impact standard without such a condition. *Lofgren v. Jackson County*, 55 Or LUBA 126 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city finding that the "top of the bank" is located entirely within 50 horizontal feet of the high water line is not supported by substantial evidence, where the applicant submitted a survey showing that at two points the top of the bank is further than 50 horizontal feet, and the city cites no specific evidence to the contrary. *Kingsley v. City of Portland*, 55 Or LUBA 256 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning staff report that takes the position that a proposed development is not in a fire hazard area can constitute substantial evidence that the development is not located in a fire hazard area, where the position in the planning staff report is unchallenged. *Pete's Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's conclusion that a fence between a public park and grazing land is sufficient to ensure compliance with ORS 215.296(1) is supported by substantial evidence, notwithstanding the possibility that dogs may exit the park through an unfenced boundary and travel across intervening parcels to harass cattle, where there are no reported incidents of trespass across the unfenced boundaries and only speculation to support the possibility. *Rural Thurston Inc. v. Lane County*, 55 Or LUBA 382 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. Remand is necessary where the city concludes based on petitioner's traffic impact analysis that proposed development will cause intersection performance to fall below the minimum standard, but the city misconstrues the analysis, which indicates that the proposed development will not cause the intersection to fall below the minimum performance standard. *Vista Construction LLC v. City of Grants Pass*, 55 Or LUBA 590 (2008).

1.6.1 Administrative Law – Substantial Evidence – Generally. An applicant's experience as a geologist does not necessarily qualify her to testify as an expert on the feasibility of constructing driveway access that complies with maximum finished grade requirements. *Lenox v. Jackson County*, 54 Or LUBA 272 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. That a conditional use permit application is deemed complete under ORS 227.178 does not necessarily mean that the application is supported by substantial evidence that demonstrates compliance with all applicable approval criteria. *Caster v. City of Silverton*, 54 Or LUBA 441 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A two-year old traffic study determining that the local transportation system will continue to operate within acceptable limits

after full build-out of property in the area is substantial evidence that a particular proposed commercial use will not impose an undue burden on the transportation system, where there is evidence that the assumptions that the study was based upon are still valid. *Western Express v. Umatilla County*, 54 Or LUBA 571 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's finding that land is not suitable for grazing is not supported by substantial evidence, where the land has a history of grazing, and is bordered by similarly sized parcels currently used for grazing that have the same soils and conditions. *Wetherell v. Douglas County*, 54 Or LUBA 678 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. An adjoining farmer's testimony that a parcel need not remain in farm zoning to allow their farm operations to continue, combined with the absence of any history of combined farm use, is substantial evidence supporting a county's finding that the parcel is not "agricultural land" under the OAR 660-033-0020(1)(a)(C) definition. *Wetherell v. Douglas County*, 54 Or LUBA 678 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could rely on evidence that there are 25 on-street parking spaces in the area that are only partially occupied during peak hours, to conclude that parking in the area is adequate, and thus that a variance to off-street parking requirements will not be "materially detrimental" to the purpose of the off-street parking requirement. *Grant v. City of Depoe Bay*, 53 Or LUBA 214 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A substantial evidence challenge may not be based on evidence that is not in the local record and was not before the final decision maker. *Lissner v. Washington County*, 53 Or LUBA 357 (2007).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's conclusion that the property is not suitable for commercial forest uses is supported by substantial evidence where the property owner prepared a study of the forestland productivity of the subject property, which was reviewed by a forester from the Department of Forestry (DOF), that indicated that the property is capable of producing only 1.8 cubic feet per acre per year of wood fiber, and the record includes letters from the DOF stating that any attempts to produce commercial stands on the property would be futile. *Hecker v. Lane County*, 52 Or LUBA 91 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. Because ORS 215.422(1)(c) explicitly limits the appeal fee that counties can charge for certain land use appeals, evidence that total annual revenues produced by over 200 county fees fall short of total planning department annual expenses is not sufficient to demonstrate that the fees collected for three types of appeals comply with ORS 215.422(1)(c). A more particularized evidentiary effort to focus on the costs and expenses associated with the three types of appeals subject to ORS 215.422(1)(c) is required. *Landwatch Lane County v. Lane County*, 52 Or LUBA 140 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the record reflects that 10 acres of irrigation rights were removed from two 20-acre parcels because irrigating with that water was extremely inefficient, (2) the nonfarm parcels consist of 85 percent bare ground, and (3) moving the irrigation rights back would provide no benefit, county's findings that returning

irrigation rights to the property would not render the nonfarm parcels generally suitable for the production of farm crops or livestock is supported by substantial evidence. *Peterson v. Crook County*, 52 Or LUBA 160 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. Under substantial evidence review, petitioners must do more than identify conflicting evidence the local government could have relied upon; they must explain why it was unreasonable for the local government to make the challenged the decision. *Burlison v. Marion County*, 52 Or LUBA 216 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. Under *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 752 P2d 312 (1988), the substantial evidence standard is not satisfied when "the credible evidence apparently weighs overwhelmingly in favor of one finding and the [decision maker] finds the other without giving a persuasive explanation." *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. The party who puts forth the larger effort to produce evidence regarding a land use application is not necessarily entitled to prevail under a substantial evidence review solely by virtue of that larger effort. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. The critical issue for the local decision maker will generally be whether any expert or lay testimony offered by permit opponents raises questions or issues that undermine or call into question the conclusions or supporting documentation that are presented by the applicant's experts and, if so, whether any such questions or issues are adequately rebutted by the applicant's experts. LUBA's role on review is to determine if a reasonable person would have answered those questions as the local decision maker did, in view of all of the evidence in the record. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local decision maker may assign some additional significance to the testimony of the city engineer or Oregon Department of Transportation engineers regarding transportation system impacts based on their neutrality regarding the merits of the development proposal itself. But that process of assigning any extra weight necessarily calls for a case by case determination by the local decision maker, with LUBA deferring to any such assignments of extra weight that are reasonable, based on the evidence in the whole record. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA frequently analyzes findings challenges and evidentiary challenges separately and generally analyzes findings challenges first, because LUBA's resolution of the findings challenge frequently affects its resolution of the evidentiary challenge or makes it unnecessary to decide the evidentiary challenge. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will affirm a hearings officer's finding that it is feasible to expand an existing stormwater facility without infringing on the neighboring petitioner's rights to the existing capacity of that facility, where there is no

evidence that the expansion will affect the capacity of the existing pond, and the hearings officer imposed conditions sufficient to ensure that the expansion will not infringe on the existing capacity. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government could reasonably accept as true an expert's testimony about the findings in a biological assessment, even though the biological assessment itself is not in the record. *Neighbors 4 Responsible Growth v. City of Veneta*, 52 Or LUBA 325 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government's decision is supported by substantial evidence despite the fact that a wetlands delineation report and a biological assessment that were discussed during the local proceedings are not included in the record, where parts of the wetlands delineation report are quoted in the application and there is a great deal of other evidence in the record that the local government relied on. *Neighbors 4 Responsible Growth v. City of Veneta*, 52 Or LUBA 325 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county hearings officer's identification of the "ordinary high water" line for purposes of determining a riparian setback area is supported by substantial evidence even though specific elevations were not identified on the property and then transferred to a map, where the planning staff and hearings officer conducted site visits to confirm the accuracy of the applicant's map indicating the location of the high water mark. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's determination that it is feasible for a proposed home occupation to comply with local code criteria prohibiting the creation of vibration, glare, fumes or odors detectable to normal sensory perception off the subject property with a condition relocating the parking area for diesel vehicles away from abutting properties and limiting idling time of diesel vehicles to 10 minutes is not supported by substantial evidence, where the evidence relied upon is a conclusory statement in a planning staff memorandum that fumes and odors could be eliminated by limiting idling time and providing a sufficient buffer. *Watts v. Clackamas County*, 51 Or LUBA 166 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government reasonably viewed an engineer as a qualified expert, where the person had a degree in agricultural engineering and several engineering certifications, participated actively in the local proceedings regarding a mineral and aggregate overlay and presented models to predict performance of mining plans, and challenged assumptions of the applicant's experts. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will affirm a hearings officer's conclusion that a standard requiring that development not "seriously interfere" with sensitive riparian habitat is not met, notwithstanding that the only evidence on that point is the testimony of the applicant's consultant, where that testimony is based on an assertion that the proposed campground and parking areas "stay well clear" of sensitive riparian habitat, but the site plan clearly shows that the proposed campground and parking area are located adjacent to the riparian habitat. *Horning v. Washington County*, 51 Or LUBA 303 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. An acoustic engineer's statement that the procedures followed in conducting a noise study for an aggregate mine were "generally consistent" with procedures required by state administrative rule is sufficient to demonstrate compliance with the rule, particularly where the petitioners do not identify any material difference between the procedures followed and those required the rule. *Ray v. Josephine County*, 51 Or LUBA 443 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's findings that chemicals are required in the future in order to make forest practices on a property practicable are not supported by substantial evidence where the record does not indicate whether chemicals were already applied to the property or that whatever applications might be necessary have not already occurred. *Anderson v. Coos County*, 51 Or LUBA 454 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's finding that aerial spraying of chemicals is necessary in order to make forest practices on a 20-acre property practicable is not supported by substantial evidence where the evidence in the record supports a conclusion that manual application is the preferred method of application for properties 40 acres or smaller and the findings do not provide other reasons that manual spraying is not practicable. *Anderson v. Coos County*, 51 Or LUBA 454 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. In order to prevail on a substantial evidence challenge, a petitioner must identify the challenged findings and explain why a reasonable person could not reach the same conclusion based on all the evidence in the record. *Stoloff v. City of Portland*, 51 Or LUBA 560 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a development code requires that a city find that transportation facilities will be available prior to or at the time of development of annexed property, testimony by an applicant's traffic engineer and the city engineer that traffic facilities needed to serve annexed property will be available prior to or at the time of development is substantial evidence supporting a city's finding that the development code requirement is satisfied. *Friends of Bull Mountain v. City of Tigard*, 51 Or LUBA 759 (2006).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city finding that an existing residential zone may be amended in ways that will reduce the development potential of that zone because development in that zone has historically been at the high end of 5 to 10 units per acre density allowed in the zone is not supported by substantial evidence, where the only relevant evidence in the record shows that development has averaged 5.6 units per acre in that zone. *4-J Land Co., LLC v. City of Sandy*, 50 Or LUBA 525 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer errs in approving a cul-de-sac under subdivision criteria that allow a cul-de-sac only where existing development on adjacent property prevents a street connection and a connected street pattern is not possible, where (1) the "existing development" is on the same property being subdivided, (2) there is evidence that a street connection is possible, and there are no findings explaining why a street connection is not possible. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's conclusion that a proposed nonfarm dwellings will not alter the stability of the land use pattern in the area is not supported by substantial evidence where that conclusion is based on an estimate that 4 or 5 additional nonfarm dwellings could be approved, and that estimate is not supported by any evidence in the record. *Peterson v. Crook County*, 49 Or LUBA 223 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. Absent any contravening evidence or need for more detailed analysis, staff testimony that proposed application fee increases accurately reflect increased costs and are less than the maximum amount that cities may charge under ORS 227.175(1) is substantial evidence supporting a finding of compliance with the statute. *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the decision maker adopts application fee increases but fails to recognize that doing so inadvertently increases local appeal fees, remand is necessary for the local government to take evidence and adopt findings demonstrating that the increased appeal fees are consistent with ORS 227.180(1). *Doty v. City of Bandon*, 49 Or LUBA 411 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. When the local record clearly shows and adequately describes the location of a proposed road project, a decision approving that project is supported by substantial evidence regarding the location of the proposed road even if the specific name for the project in the decision was not used in the local record. *1000 Friends of Oregon v. City of Dayton*, 49 Or LUBA 622 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. That cattle grazing occurs at some level on large tracts of BLM land with the same Class VII soils and vegetative characteristics as the subject property is some evidence that the much smaller subject property could also support some level of grazing. However, that indirect evidence does not compel a conclusion that the property is suitable for grazing, given countervailing evidence that the property is not suitable for farm use under the factors considered in OAR 660-033-0020(1)(a)(B). *Wood v. Crook County*, 49 Or LUBA 682 (2005).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings official decision that a proposed chiropractic home occupation that would generate eight client trips per day does not constitute "excessive traffic" on a short, dead-end unimproved residential street that serves a relatively small number of existing residences is supported by substantial evidence. *Revoal v. City of Eugene*, 47 Or LUBA 136 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that conclude access is available to an adjoining road, but do not explain how the road may be accessed, are not supported by substantial evidence where all of the evidence cited to LUBA indicates that access is not possible. *Seaton v. Josephine County*, 47 Or LUBA 178 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A code standard that requires preliminary staff approval of the location, design and capacity of a proposed subdivision sewage

disposal system does not require independent determination of adequacy of the city's sewer facilities. *Bauer v. City of Portland*, 47 Or LUBA 459 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. Testimony from a person who is unwilling to identify himself is suspect and absent any corroboration is not evidence a reasonable person would rely upon. *Lawrence v. Clackamas County*, 46 Or LUBA 101 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will reject a challenge to the evidentiary support for a finding that mining traffic will significantly conflict with agricultural practices, within the meaning of OAR 660-023-0180(4)(b)(E), where there is evidence that (1) truck traffic from the mine will cause the level of service for vehicles entering and exiting a nearby farm stand to be reduced from LOS C to LOS D, (2) truck traffic will interfere with the use of the road for the transport of agricultural equipment, and the applicant has not demonstrated that those conflicts will be minimized. *Eugene Sand and Gravel, Inc. v. Lane County*, 46 Or LUBA 254 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's finding that aerial photographs neither established the existence nor non-existence of a road in 1992 is supported by substantial evidence where the road was primitive and only used intermittently over the years. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's decision that a road existed in 1992 is supported by substantial evidence where the record includes conflicting expert and lay testimony regarding the existence of the road in 1992 and the road need not have been improved to any particular standard and was the kind of primitive road that a reasonable person might or might not have recognized as a road. *Bonnett v. Deschutes County*, 46 Or LUBA 318 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. An arborist's and professional engineer's testimony is not substantial evidence that it is impracticable to save two groves of mature trees in constructing a discount superstore and parking, where the arborist and professional engineer do not consider the practicability of reducing the building footprint or the area of the site that will be developed with parking. *Wal-Mart Stores, Inc. v. City of Hillsboro*, 46 Or LUBA 680 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. Expert testimony that is not in the record and that appears only as reported by the applicant to staff is not sufficient to establish the capacity of the subject property for farm and forest uses. *Friends of Douglas County v. Douglas County*, 46 Or LUBA 757 (2004).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government does not misconstrue a local ordinance requiring permanent legal access to a parcel by relying on easements entered into by prior landowners with government agencies providing reciprocal rights for access. *Sisters Forest Planning Comm. v. Deschutes County*, 45 Or LUBA 145 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is evidence that the subject property was separated from a larger parcel by virtue of a 1976 conveyance of an intervening parcel, a county's conclusion that the subject property was also created in 1976 is supported by substantial evidence. *Frazee v. Jackson County*, 45 Or LUBA 263 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Testimony by the city administrator that anticipated local appeal costs are likely to be similar to the cost of appeals from the city to LUBA is substantial evidence supporting imposition of a $500 local appeal fee, for purposes of establishing that the fee is not more than the average or actual cost of such appeals under ORS 227.180(1)(c), in the absence of contradictory evidence. *Friends of Linn County*, 45 Or LUBA 408 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where county code requires that "all owners" sign a subdivision application, a conclusion that that standard is met is supported by substantial evidence where the record includes a certificate signed by the applicant certifying that the applicant owns the property and other documents in the record name the applicant as the grantee or as a representative of the owner. *Neketin v. Washington County*, 45 Or LUBA 495 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision verifying the scope and intensity of a nonconforming racetrack operation is not supported by substantial evidence, where no party identifies supporting evidence in the record, and the decision's recitation of facts indicates that the use as verified exceeds the scope and intensity of the racetrack on the date it became nonconforming in at least some particulars. *Leach v. Lane County*, 45 Or LUBA 580 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. LUBA will not remand a county decision for failing to include a sample of light-green visqueen to support a finding that the material is nonreflective, where the challenged decision is not based on such a finding. *Lorenz v. Deschutes County*, 45 Or LUBA 635 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. The lack of specific evidence on whether aggregate samples tested by a laboratory were "representative," as required by OAR 660-023-0180(3)(a), does not provide a basis for reversal or remand, where the samples came from an existing quarry and there is no suggestion in the record that the sample was not representative or that the quality of rock in the existing quarry was not uniform. *Bryant v. Umatilla County*, 45 Or LUBA 653 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the evidence concerning whether a dwelling had been abandoned or interrupted before 1995 is conflicting and the hearings officer relies heavily on photographs of the dwelling that he mistakenly believed were taken in 1995 rather than years later to conclude that use of the dwelling use was abandoned or interrupted for more than one-year before 1995, the hearings officer's decision is not supported by substantial evidence and must be remanded so that the hearings officer can render a decision with a correct understanding of the date the photographs were taken. *Bradley v. Washington County*, 44 Or LUBA 36 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's finding that buried concrete reservoirs will not cause "significant detrimental impact" to the environment is supported by substantial evidence, where the city's code defines that term to mean development that disrupts or destroys ecological systems, and evidence in the record shows that the surface over the buried reservoirs will be restored and replanted and the reservoirs will not significantly affect underground hydrology. *Bauer v. City of Portland*, 44 Or LUBA 210 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioner's evidentiary challenge to a city's conclusion that an applicable criterion is satisfied provides no basis for reversal or remand, where the challenge is based on petitioner's interpretation of what the criterion requires, and that interpretation was not presented during the local proceedings. *Slepack v. City of Manzanita*, 44 Or LUBA 301 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a decision approving a subdivision that finds it is infeasible to extend a road from the proposed subdivision to an adjoining property and a petitioner at LUBA argues that the finding is not supported by substantial evidence, LUBA will remand where the respondent cites no evidence that supports the finding. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that an EFU parcel would contribute no productive farm acreage to any neighboring farm, and thus is generally unsuitable for farm use even if used in conjunction with neighboring dairy farms, is not supported by substantial evidence, where two neighboring dairy farmers offered to buy the parcel to use in conjunction with their farms. A property's usefulness as farmland, considered on its own, is not necessarily indicative of its usefulness when combined with an existing farm or ranch. *Ploeg v. Tillamook County*, 43 Or LUBA 4 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county decision establishing a one-half-mile radius impact area around proposed dwellings within a Goal 5 wildlife habitat area is supported by substantial evidence, where the county relies on studies that human impacts extend one-half mile from dwellings and elk prefer to be at least one-half mile from humans. *Doty v. Jackson County*, 43 Or LUBA 34 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence that a livestock operation is conducted on a parcel for part of the year is sufficient to establish that the property contains an "existing" livestock operation, for purposes of the requirements for siting a guest ranch on EFU-zoned land, where the record shows that rotation of cattle from the property during the wet months, to allow pasture to rest, is a matter of good animal husbandry. *Durdan v. Deschutes County*, 43 Or LUBA 248 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. In determining that an applicant failed to carry his burden to demonstrate that a proposed home occupation would be carried out inside a building and in a manner that would not unreasonably interfere with other uses, the county did not err by considering existing and past conditions on the property. *Hick v. Marion County*, 43 Or LUBA 483 (2003).

1.6.1 Administrative Law – Substantial Evidence – Generally. A memorandum explaining why one tax lot is not a feasible alternative to siting a radio transmission tower on EFU-zoned land and also addressing criticisms of an earlier memorandum explaining why another tax lot is infeasible is evidence a reasonable person could rely on to conclude that the second tax lot is not a feasible alternative. *Van Nalts v. Benton County*, 42 Or LUBA 497 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. In granting design approval for a highway interchange improvement project originally proposed as part of a larger project, a decision maker is not required to study and address interim impacts to existing facilities covered by the larger project other than the interchange, and the decision maker's failure to do so does not leave the evidence supporting approval of the interchange project something other than substantial evidence. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision that analyzes numerous aspects of a proposed alteration of a nonconforming use compared to the historic use of the property is sufficient to establish the scope and nature of the nonconforming use where the petitioner does not challenge that analysis. *Ankarberg v. Clackamas County*, 41 Or LUBA 504 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. A prior local government decision that a nonconforming use had not been discontinued may constitute substantial evidence in support of a subsequent land use decision that, as of the date of the prior decision, the nonconforming use had not been discontinued. *Ankarberg v. Clackamas County*, 41 Or LUBA 504 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. Draft transportation and parking demand plans for a proposed school are substantial evidence supporting a finding of compliance with a "safe streets" approval standard, notwithstanding that the conditions of approval require that the school submit and city staff approve *final* plans in which the city might impose additional or different terms. *Friends of Collins View v. City of Portland*, 41 Or LUBA 261 (2002).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning staff report that advises the city council that a riparian vegetation plan had been reviewed and found to be adequate by the Oregon Department of Fish and Wildlife is substantial evidence in support of a finding that a proposal will not result in "adverse impact to the fish and wildlife resources in the area." *Willhoft v. City of Gold Beach*, 41 Or LUBA 130 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the city's comprehensive plan locates the boundary of a Goal 17 overlay zone at the "top edge" of the bluff overlooking the ocean, but nothing in the record supports the city's conclusion that proposed expansion of a dwelling built into the bluff will occur outside the overlay zone, remand is necessary for the city to identify the "top edge" of the bluff and the existing dwelling's location in relation to the zoning boundary. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Conditions imposed to ensure that only *de minimis* traffic volumes from a proposed recycling facility impact nearby failing intersections during certain times are insufficient and unenforceable, where the county's decision fails to (1) define what *de minimis* traffic volumes are, (2) specify the times when the conditions apply, and (3) impose conditions or identify solutions that a reasonable person would find adequate to ensure that traffic associated with the facility uses a longer alternate route rather than the short direct route through failing intersections. *K.B. Recycling, Inc. v. Clackamas County*, 41 Or LUBA 29 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. The assumptions underlying the county's revenue projections and its conclusion that an urban renewal plan is "feasible" under ORS 457.095(6) and 457.085(3)(g) must be supported by substantial evidence, *i.e.*, evidence a reasonable person would rely upon. The local government need not demonstrate that projected new development is presently committed and certain to occur. *Zimmerman v. Columbia County*, 40 Or LUBA 483 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where nearly all the evidence in the record concerning potential groundwater pollution associated with a proposed aggregate mine is speculative and would support opposite conclusions concerning that potential, the local government's selection of which evidence to believe is reasonable. *Donnell v. Union County*, 40 Or LUBA 455 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. An unsupported assurance by the applicant's attorney that the entire septic system necessary to support a proposed church expansion can be located on a church-owned parcel is not substantial evidence supporting a finding to that effect, where all the other evidence in the record regarding the feasibility of the septic system assumes that part of it will be located on an adjoining parcel. *Weaver v. Linn County*, 40 Or LUBA 203 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that property that is to be rezoned from residential to commercial can be adequately served by sewer and fire districts is supported by substantial evidence, where the record shows that nine months earlier the districts indicated in a prior proceeding concerning the property that such services could be provided. *Swyter v. Clackamas County*, 40 Or LUBA 166 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that a proposed road width variance will not be materially detrimental to other property owners in the area are not supported by substantial evidence when they are based on a comparison to other substandard roads rather than the effect of the proposed variance itself. *Georgeff v. Curry County*, 40 Or LUBA 101 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Even though substantial evidence did not exist in a prior application to support a finding of need for additional seasonal farmworkers, additional evidence may be presented during a subsequent application to support a finding of need. *Durig v. Washington County*, 40 Or LUBA 1 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city governing body is not required to apply the Oregon Rules of Evidence in its land use proceedings and may rely on hearsay evidence in a planning staff report to reach a conclusion regarding representations that were made to a permit applicant. *Reagan v. City of Oregon City*, 39 Or LUBA 672 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's finding that a proposal will have no adverse effect on abutting property is not supported by substantial evidence when the decision does not address how all abutting property owners are affected. *ODOT v. City of Klamath Falls*, 39 Or LUBA 641 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a proposed aggregate extraction site must demonstrate compliance with a public need criterion and a criterion that requires consideration of alternative sites, but identified alternative sites are rejected without explanation and the only cited evidence regarding public need is testimony from the public works director that he would support a site anywhere in the county, the decision is not supported by adequate findings or substantial evidence. *Donnell v. Union County*, 39 Or LUBA 419 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government's determination that there is sufficient land designated multi-family residential to satisfy Goal 10 is supported by substantial evidence when the acknowledged Goal 10 housing inventory establishes that the city has a 238-acre surplus of land designated for multi-family development, and the proposal is to rezone only eight acres from multi-family residential to commercial. *Craig Realty Group v. City of Woodburn*, 39 Or LUBA 384 (2001).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning staff report may constitute substantial evidence upon which a local government may rely, and a planning staff report may summarize applicable portions of professional manuals, such as the Institute of Transportation Engineers Trip Generation Guide. *Chilla v. City of North Bend*, 39 Or LUBA 121 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning administrator's "unique knowledge" of additional information that is not contained in the record is not substantial evidence upon which a local government may rely in reaching its decision. *Hausam v. City of Salem*, 39 Or LUBA 51 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Although items of evidence, when viewed individually, might be sufficiently questionable that they would not be relied upon by a reasonable decision maker, when viewed together those same items of evidence might become evidence a reasonable person could accept in support of a challenged finding. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's finding that the portion of a dwelling exceeding a code-mandated height limit adversely affects the ocean view of a neighboring property is supported by substantial evidence where the record includes photographs, a videotape and drawings that show the subject dwelling blocking the view of ocean water from the neighboring property, notwithstanding that the photographs, videotape and drawings show that

the subject dwelling blocks only a tiny sliver of ocean water view. *Rivera v. City of Bandon*, 38 Or LUBA 736 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person with an understanding of the assumptions and limitations that underlie USDA soils data would not rely on those data to conclude that sites rated to have severe soils limitations for small commercial uses for that reason alone cannot accommodate any commercial use. *DLCD v. Douglas County*, 38 Or LUBA 542 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an existing adult video store seeks a conditional use permit to remain open past the normal 10 p.m. closing time required in the zoning district, evidence that a police prostitution sting operation at a nearby 24-hour adult video store resulted in numerous arrests after 10 p.m. and testimony by a business neighbor of vandalism and criminal activity outside another 24-hour adult video store operated by the permit applicant is substantial evidence that granting the requested conditional use permit would result in an increase of criminal activity and thereby violate a conditional use "compatibility" and "livability" standard. *Oregon Entertainment Corp. v. City of Beaverton*, 38 Or LUBA 440 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Absent a condition requiring a holding tank of sufficient size, a reasonable decision maker could not conclude that a well producing 1,200 to 2,400 gallons per day is adequate to serve a rural use without adversely affecting neighboring wells, when there is undisputed evidence that the peak demands of the proposed use exceed the estimated well capacity. *Spiro v. Yamhill County*, 38 Or LUBA 133 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government's findings determining that traffic generated by a proposed development will be mitigated by certain conditions of approval is not supported by substantial evidence, where the government's decision does not limit the maximum developable area to that established as the basis for the traffic impact analysis. *DLCD v. City of Warrenton*, 37 Or LUBA 933 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where petitioner challenges the adequacy and evidentiary basis for a local government's decision determining that a proposed development "is or will be compatible" with the land use development pattern in the vicinity of the request, LUBA will analyze the findings to determine (1) whether the findings are adequate; (2) whether there is substantial evidence in the record to support a finding that, absent some conditions of approval, the compatibility standard is met; and (3) if conditions of approval are necessary to establish compatibility, whether the local government adopted such conditions. *DLCD v. City of Warrenton*, 37 Or LUBA 933 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county may reasonably rely on a report based on consideration of a broad sample of native tree species to determine whether the predominant soils on the property are capable of producing more than 49 cubic feet per acre per year of wood fiber of any kind where there is not reasonable basis presented for believing that planting one or more nonnative tree species on the predominate soils would produce more than 49 cubic feet per acre per year of wood fiber. *Carlson v. Benton County*, 37 Or LUBA 897 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a county prohibits the refiling of a new or substantially similar application until two years after a final decision denying an application; the decision maker determines that a second application, filed less than a year after the first, was "substantially similar" because it involved the same use on the same property and the changes in the facts supporting the application were otherwise insufficient to demonstrate that the application is different; and the decision maker points to evidence in the record to support his conclusions, that decision is supported by substantial evidence. *Munn v. Clackamas County*, 37 Or LUBA 621 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence that industrial uses are occurring on industrially zoned property within two miles of the subject property is insufficient to demonstrate, as a matter of law, that a proposed excavation business located in a rural residential zone complies with a requirement that the use "will not interfere with existing uses on nearby land or with other used permitted in the zone in which the property is located." *Munn v. Clackamas County*, 37 Or LUBA 621 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the city council's review of a planning commission decision is limited to whether the lower decision is supported by substantial evidence, and petitioner argues that the city council exceeded its review authority by reweighing the evidence, LUBA will deny the assignment of error where it concludes that the city council understood and applied the substantial evidence standard correctly. *Ontrack, Inc. v. City of Medford*, 37 Or LUBA 472 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a hearings officer rejects a proposed stormwater control method as inadequate to ensure compliance with an approval criterion that requires reduction of flood flows below erosive capacity, but nonetheless finds compliance with the standard based on the hearings officer's unsupported opinion that more adequate methods are available, the finding of compliance is not supported by substantial evidence. *Mitchell v. Washington County*, 37 Or LUBA 452 (2000).

1.6.1 Administrative Law – Substantial Evidence – Generally. When a city's decision to annex territory is also a land use decision, the city must be able to demonstrate that the annexation decision complies with the statutory annexation requirements and is supported by substantial evidence in the record. A failure to demonstrate such compliance requires a remand. *Johnson v. City of La Grande*, 37 Or LUBA 380 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A bill to the property owner for spraying and planting of trees is substantial evidence that the required spraying was done on the property, notwithstanding that the bill refers to a different property, where the property owner explains during the local hearing that the reference to a different property is an error and LUBA concludes a reasonable person could have accepted that explanation. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A property owner's explanation that required plowing and cultivation occurred at the time Christmas trees were planted is

substantial evidence that required plowing and cultivation occurred, where the only contrary evidence is opponents' unsupported expressions of doubt that the required plowing and cultivation occurred. *Rochlin v. Multnomah County*, 37 Or LUBA 237 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local ordinance requiring feasible or adequate bicycle or pedestrian connections to adjacent and nearby planned unit developments is not met when the evidence fails to show where the bicycle and pedestrian connections are to be located, and the decision does not require the connections to be located in any particular place. *Highland Condominium Assoc. v. City of Eugene*, 37 Or LUBA 13 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's finding that it is feasible to comply with an approval standard requiring that public facilities can accommodate the proposed use is supported by substantial evidence, where the city conditions approval on the applicant making improvements to an intersection, including improvements that ODOT had imposed on a previous application for a more traffic-intensive use on the subject property. *Terra v. City of Newport*, 36 Or LUBA 582 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence supports a city's rezoning of land from multi-family to single-family residential uses, where the city's inventory indicates a need for 1,081 multi-family dwellings, and a reasonable person could conclude that the number of existing and approved multi-family dwellings exceeds 1,081 units, notwithstanding flaws in the city's analysis that render the exact number of those dwellings uncertain. *Herman v. City of Lincoln City*, 36 Or LUBA 521 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's finding that a proposed college pedestrian/bicycle path meets applicable safety standards is supported by substantial evidence notwithstanding concerns raised about the efficacy of proposed safety measures, where there is evidence the college has not historically experienced the kinds of criminal activity opponents speculate may occur as a result of construction of the path. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's ultimate finding that constructing a parking lot that will add pedestrians to a pedestrian/bicycle path complies with bicycle safety criteria is supported by substantial evidence, notwithstanding the lack of evidence in the record concerning how the relative mix of pedestrians and bicyclists will be affected by the parking lot, where petitioners fail to challenge the city's separate finding that co-existence of bicycles and pedestrians is "expected" on pedestrian/bicycle paths. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A city's decision to rely on estimates of traffic impacts based solely on student enrollment is supported by substantial evidence, notwithstanding the failure to separately account for traffic impacts that might be associated with a 90,000-square-foot expansion of school facilities, where the facility expansion will not increase student enrollment and the city explained that the traffic impact projections based on student enrollment were very conservative and overstated the likely actual traffic impacts. *Baughman v. City of Portland*, 36 Or LUBA 353 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a city interprets its zoning ordinance as requiring that a "recycling center" have the "primary purpose" of extracting recyclables from a waste stream, but not requiring that any particular percentage of the waste stream will be recycled, the city's conclusion that a proposed facility is a "recycling center" is supported by substantial evidence, notwithstanding the absence of evidence quantifying the percentage of recyclables in the waste stream. *Sequoia Park Condo. Assoc. v. City of Beaverton*, 36 Or LUBA 317 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A hearings officer's findings which rely on the absence of business records and the testimony of a neighbor to conclude that a nonconforming use was discontinued are supported by substantial evidence, where the findings address the conflicting evidence submitted by the applicant and explain why that evidence did not establish the continued existence of the nonconforming use. *Lawrence v. Clackamas County*, 36 Or LUBA 273 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the applicant bears the burden of demonstrating under a local provision that there is no reason to believe a potential hazard exists on the subject property, the absence of evidence regarding potential hazards on the property does not constitute substantial evidence of compliance with that provision. *Jebousek v. City of Newport*, 36 Or LUBA 124 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence supports a city's denial of a subdivision application based on a standard prohibiting cul-de-sacs longer than 400 feet, when the preliminary plat shows a cul-de-sac 427 feet in length. The city is not obligated to approve an application that does not comply with approval standards even if the approval could be conditioned on submitting a final plat that shows compliance with the applicable criteria. *Holland v. City of Cannon Beach*, 35 Or LUBA 482 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. That findings of noncompliance with an approval criterion are not supported by substantial evidence is not a basis for reversal or remand, where petitioner fails to challenge other findings of noncompliance with that criterion that are an independent basis for denial. *Holland v. City of Cannon Beach*, 35 Or LUBA 482 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where subdivision approval criteria do not require that the city determine whether a particular access route would be the "primary" access route, the city's failure to adopt such a finding and a lack of substantial evidence that the particular access route would be the primary access route provides no basis for reversal or remand. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that a proposed subdivision will be connected to the city's storm drainage system is not supported by substantial evidence, where the proposed drainage system stops short of the city's storm drainage system and a condition of approval requiring paved access to the subdivision is not adequate to ensure that the storm drainage connection will be constructed along with that paved access. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. The evidence supporting a decision denying a permit need not match the evidence supporting the permit application in a qualitative and quantitative sense. *Johns v. City of Lincoln City*, 35 Or LUBA 421 (1999).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's improper reliance on poor past management practices in concluding a property is not suitable for commercial forest use provides no basis for reversal or remand, where there is other evidence in the record that a reasonable person could rely on to reach that conclusion. *Dept. of Transportation v. Coos County*, 35 Or LUBA 285 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a site plan depicting setbacks was before the county decision maker, and was inadvertently not submitted to LUBA, testimony discussing the measurements and setbacks depicted on the site plan is evidence that may support the county's s findings regarding setbacks, notwithstanding that the site plan is itself absent from the record. *Thomas v. Wasco County*, 35 Or LUBA 173 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A staff report constitutes substantial evidence, where petitioner does not challenge the explanation and calculations contained in the report. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A condition requiring a drainage plan for a towing facility is supported by substantial evidence notwithstanding the owner's claim that towed vehicles would be drained of fluids, where the record showed the city council questioned the owner's claim and it was not clear where the drained fluids would be stored. *Williamson v. City of Arlington*, 35 Or LUBA 90 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a local government fails to find a proposal complies with a code requirement for two parking spaces per unit, the applicant's testimony that two parking spaces will be provided per unit is not evidence that clearly supports a finding of compliance with the parking requirement under ORS 197.835(11)(b). *Deal v. City of Hermiston*, 35 Or LUBA 16 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision maker may review certain types of land use permit applications more stringently than others, provided the higher burden of proof is not attributable to bias or some other legally impermissible reason. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioner's disagreement with the reasons specified by a local government for rejecting the evidence he submitted in support of a land use application provides no basis for reversal or remand. *Lee v. City of Oregon City*, 34 Or LUBA 691 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is no evidence that a property only functions as winter range between December 1 and March 31, the selection of that

time period for a condition of approval is not supported by substantial evidence. It is not within generally accepted knowledge that property only functions as winter range between December 1 and March 31. *Botham v. Union County*, 34 Or LUBA 648 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government's unsupported inference that ranching operations are 2-3 miles distant from the proposed nonfarm dwelling, and its reliance on the absence of evidence on which the applicant bears the burden of proof, do not constitute substantial evidence supporting a finding that the nonfarm dwelling is compatible with farm uses. *Wolverton v. Crook County*, 34 Or LUBA 515 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a county finds that the subject property's soils constitute "high-value farmland" as that concept is defined by statute, but there is no evidence in the record that supports that ultimate conclusion, the decision must be remanded. *Corp. of Presiding Bishop v. Klamath County*, 34 Or LUBA 131 (1998).

1.6.1 Administrative Law – Substantial Evidence – Generally. A planning "staff report" may provide an "adequate factual base" to support a legislative land use decision. *Buhler Ranch v. Wallowa County*, 33 Or LUBA 594 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an applicable criterion requires that a dwelling have the "least impact" on adjoining lands and the applicant does not show the dwelling could not be located on alternative sites on the property that would have fewer impacts, the applicant fails to demonstrate compliance with the criterion as a matter of law. *Evans v. Multnomah County*, 33 Or LUBA 555 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where, on remand, an applicant modifies a site plan for a gas station and car wash so that only the location of the gas pumps is carried forward from the original site plan to the modified site plan, a reasonable person could not conclude that the two plans are substantially similar. A finding that the plans are substantially similar does not adequately address the code requirements that apply to a site plan. *Sullivan v. City of Woodburn*, 33 Or LUBA 356 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Unsupported statements and assurances that a proposed dwelling will comply with local roof height and pitch standards do not constitute substantial evidence. *Pekarek v. Wallowa County*, 33 Or LUBA 225 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioner cannot challenge a moratorium extension by asserting that the city lacked substantial evidence to justify the initial moratorium; the relevant question is whether the record includes substantial evidence to support the moratorium extension. *Manning v. City of St. Paul*, 33 Or LUBA 193 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. In reviewing evidence, LUBA may not substitute its judgment for that of the local decision maker, but must consider and weigh all evidence in the record to determine if the local decision maker's conclusion is supported by substantial evidence. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. To demonstrate a nonconforming use was not interrupted under ORS 215.130, the evidence must establish that the business was operational on an ongoing basis. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioners fail to establish that a reasonable person could not reach the county's conclusion, based upon the facts before it, where petitioners disagree with the county's evaluation of the evidence, and present arguments as to how the facts could support a contrary conclusion. *Alliance for Responsible Land Use v. Deschutes County*, 33 Or LUBA 12 (1997).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where petitioners challenge the county's reliance on a traffic impact study that is three years old, but petitioners do not point to evidence in the record that undermines the conclusions of that study, petitioners fail to establish that the county's decision is not based on substantial evidence. *Richards-Kreitzberg v. Marion County*, 32 Or LUBA 76 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a petitioner challenges percentages relied upon by the county in support of a finding, the petitioner must provide citations to the record where the data upon which it relies to calculate its own percentages can be found. *Helvetia Community Assoc. v. Washington County*, 31 Or LUBA 446 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. There is no general requirement that survey evidence supporting a consultant's calculation of area be included in the record; instead, LUBA must determine whether, considering all relevant evidence in the record, a reasonable person could rely on the consultant's calculations. *Squires v. City of Portland*, 31 Or LUBA 335 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. In considering the substantiality of evidence supporting a Goal 3 reasons exception for realignment of a highway, LUBA must look at the evidence supporting the challenged decision for the entire four-mile stretch of highway and all the impacted properties, not just the evidence of effects on one of the properties. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. Petitioners' challenge of the reliability of an environmental impact statement (EIS) that was relied upon by the county in its decision is insufficient where the challenge is based solely on the age of the EIS, without identification of other evidence in the record which undermines the EIS.
Schrock Farms, Inc. v. Linn County, 31 Or LUBA 57 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. A finding that water for a proposed dwelling will come from a neighbor's property is not supported by substantial evidence when it has not been shown that the water can be legally provided through the appropriate grant of water rights. *Furler v. Curry County*, 31 Or LUBA 1 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. A county's denial of petitioners' application for a temporary special care permit is supported by substantial evidence in the record where the hearings officer finds that alternative housing exists close enough to petitioners' residence to provide necessary special assistance, and petitioners presented no evidence indicating that alternative housing is not available. *Lundy v. Clackamas County*, 30 Or LUBA 377 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a local criterion requires that the county find a proposed use will not significantly reduce or impair significant wildlife, a finding that compliance with fencing specifications will "help the request comply" does not factually address or establish compliance with the criterion. *Thomas v. Wasco County*, 30 Or LUBA 302 (1996).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence of resource preservation gathered on one property can be substantial evidence to support findings of resource preservation on adjacent properties. *Reeves v. Yamhill County*, 30 Or LUBA 135 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. In performing an alternative sites analysis under Goal 14 and its own zoning ordinance, a city may not assume that the cost of a previously developed site within the city limits is excessive or that forecasted redevelopment expenses will be prohibitive. *DLCD v. City of St. Helens*, 29 Or LUBA 485 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. An unsupported statement in an application is not evidence, and an estimate of a geologist as to resource quantity, made without reference to evidence of any kind, is not substantial evidence. *Palmer v. Lane County*, 29 Or LUBA 436 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person would not conclude that a code conditional use permit standard requiring a proposed development to be timely considering the adequacy of storm drainage systems is satisfied, where there is no evidence in the record concerning the existence or adequacy of storm drainage facilities to handle anticipated runoff from the proposed development. *Burghardt v. City of Molalla*, 29 Or LUBA 223 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. The mere existence of a survey or computer listing of a city's available industrial land, absent argument by petitioner that particular listed sites represent available, industrially designated sites in the vicinity of a proposed plan map amendment, does not refute other evidence relied on by the city to determine there are no suitable alternative sites within a reasonable area of a proposed plan map amendment. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that the impacts of a proposed livestock sales facility will be reduced because the livestock to be sold will be purebred, as opposed to animals of mixed ancestry, lack evidentiary support where there is no evidence distinguishing the impacts of these types of livestock. *Collins v. Klamath County*, 28 Or LUBA 553 (1995).

1.6.1 Administrative Law – Substantial Evidence – Generally. Findings that an orchard's accepted farming practices have not been significantly affected by trespassing golf balls are supported by substantial evidence where the evidence shows no orchard employees have been hit by golf balls, tree buffers are effective in deflecting golf balls and petitioner's testimony was discredited by video tape of petitioner collecting golf balls on the golf course property. *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a finding that the gravel extraction rate at a proposed site will not change from historic rates is not supported by substantial evidence, and the finding appears to play a significant role in the local government's finding of compliance with a code "compatibility" requirement, the challenged decision approving a conditional use permit for a gravel operation is not supported by substantial evidence. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. A lack of response from the county Road Master is not substantial evidence that a code provision requiring no undue impairment of traffic flow is met. *Mazeski v. Wasco County*, 28 Or LUBA 159 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could not conclude that a proposed forest dwelling satisfies a "necessary for forest use" standard because the subject property is "quite remote," where the evidence in the record shows only that the subject property is five miles from an urban growth boundary and a 35 minute drive from a city. *Furler v. Curry County*, 27 Or LUBA 546 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. Statewide Planning Goal 2 requires that planning decisions and actions have an adequate factual base, regardless of the legislative or quasi-judicial nature of the decision. The Goal 2 requirement for an adequate factual base is equivalent to the requirement for substantial evidence in the whole record. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. A determination that a nonconforming quarry occupied five acres at the time it became nonconforming is not supported by substantial evidence in the whole record where the only evidence cited by the parties as establishing the size of the quarry operation at the relevant time is an undated aerial photograph. *Mazeski v. City of Mosier*, 27 Or LUBA 100 (1994).

1.6.1 Administrative Law – Substantial Evidence – Generally. Testimony from an Oregon Department of Forestry (DOF) representative which suggests a proposed dwelling could be compatible with forest uses, but was clarified by the DOF representative to eliminate any suggestion of compatibility, is not evidence a reasonable decision maker would rely upon to establish a proposed nonforest dwelling is compatible with forest uses. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the record establishes only that a small portion of the subject parcel is unsuitable for forest uses, a reasonable person

could not conclude the entire parcel is generally unsuitable for farm or forest uses. *DLCD v. Lincoln County*, 26 Or LUBA 89 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Under ORS 197.830(13)(a), LUBA's review is limited to the record of the proceedings below. Statements in a local government comprehensive plan background and inventory document, that are not included in the record, cannot constitute substantial evidence in support of a challenged decision. *Fleck v. Marion County*, 25 Or LUBA 745 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where a reasonable decision maker could rely on information contained in a geotechnical report to determine there are engineering solutions available to solve identified landslide, drainage and other hazards associated with the subject property, the geotechnical report is substantial evidence to support the local government's determination that the proposal complies with relevant local code standards. *Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the governing body ratifies an act of another local government official in the challenged decision, that aspect of the challenged decision is itself substantial evidence that the local official possessed authority to accomplish the disputed act. *Choban v. Washington County*, 25 Or LUBA 572 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. An expression of belief that a local code standard imposing a specific decibel limitation will not be violated is not an adequate finding of compliance with that standard. Expressions by the applicant's attorney that noise generated by the proposed use will not be excessive or violate the standard are not substantial evidence that the standard will be met. *Weuster v. Clackamas County*, 25 Or LUBA 425 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. A staff report can contain evidence to support a decision challenged at LUBA. *Oregon Raptor Center v. City of Salem*, 25 Or LUBA 401 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government is free to disregard or give little weight to a party's allegations concerning the substance of a telephone conversation between that party and another person not present at the local hearing. *Decuman v. Clackamas County*, 25 Or LUBA 152 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Evidence in the local record that there are currently a certain number of approved mobile home subdivision lots within a local jurisdiction, is not undermined by a statement in the comprehensive plan that several years earlier, a different number of mobile home subdivision lots were approved, but had not been "finalized." *Mannenbach v. City of Dallas*, 25 Or LUBA 136 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the local decision maker determines the existence of a nonconforming personal use airport, but the evidence concerning the scope of that nonconforming use is nonspecific, LUBA will affirm the local decision maker's determination that the scope of the nonconforming use amounts to no more than one four-hour flight per year from such airport. *Warner v. Clackamas County*, 25 Or LUBA 82 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. In determining compliance with a local code standard that a proposed farm dwelling be on a parcel as large as the median commercial farm unit in the area, a local government may rely on evidence that farm operations on three adjoining parcels constitute one commercial farm operation for purposes of calculating the size of the median commercial farm unit in that area. *Walker v. Clackamas County*, 25 Or LUBA 6 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. There is substantial evidence to support a local government's determination that a parcel is in farm use, where the parcel is a pasture for livestock and poison oak is burned on the property to retain that pasture. *Leabo v. Marion County*, 24 Or LUBA 495 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. Substantial evidence is evidence a reasonable person would accept as adequate to support a conclusion. Absent some indication that the information provided by a traffic count at a single location is an unreliable indicator of the daily traffic on a road, the traffic count is substantial evidence of the daily traffic on that road. *Reeves v. Washington County*, 24 Or LUBA 483 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. There is no statutory requirement that legislative decisions be supported by substantial evidence. *Riverbend Landfill Company v. Yamhill County*, 24 Or LUBA 466 (1993).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government determination that a proposed nonresource dwelling "does not materially alter the stability of the overall land use pattern of the area" is not supported by substantial evidence, where the parties cite

no evidence in the record establishing the relevant area, the overall land use pattern of such area or the effect of the proposed dwelling on the stability of such land use pattern. *Todd v. Columbia County,* 24 Or LUBA 289 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is evidence in the local government record that the number of golf balls claimed to have landed in adjoining orchards is exaggerated, a decision approving a golf course and imposing a condition requiring the planting of trees to contain golf balls on-site and installation of a fence and screen to prevent golfers and golf balls from entering adjoining orchard property, is supported by substantial evidence. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the aerial application of chemicals on an orchard adjoining a proposed golf course will be rendered more difficult, although possible, in that at least one aerial sprayer indicates he would be willing to spray the affected orchard, and the decision approving the golf course requires the operator to close the golf course to facilitate such spraying, there is substantial evidence in the record that the golf course will not force a significant change in or significantly increase the cost of aerial spraying of the adjoining orchard. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. A decision that a golf course will not significantly change or increase the cost of ground spraying of an adjoining orchard is supported by substantial evidence, where there is conflicting evidence concerning the magnitude of ground spraying drift expected to travel onto adjoining properties, and the decision imposes a condition requiring that the golf course operator provide monitors to prevent golfers from coming into contact with ground spray drift. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where different reasonable conclusions could be drawn from the evidence in the record, the choice between the different reasonable conclusions belongs to the local government. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. A local government determination that a proposed development can be built without placing new construction within 25 feet of the centerline of a designated water feature is supported by substantial evidence where site plans in the record indicate the centerline of the water feature and display an acceptable design for the development that does not impinge on the 25-foot boundary. *Wilson Park Neigh. Assoc. v. City of Portland*, 24 Or LUBA 98 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is uncontradicted evidence that up to 70 percent of the waste material to be accepted at a proposed recycling facility will be recycled, and that some recycling facilities accept material that includes both solid waste that cannot be recycled as well as recyclable material, a local government's finding that the solid waste transfer component of the proposed facility is "customarily incidental" to the recycling component of the facility is supported by substantial evidence in the record. *Linebarger v. City of The Dalles*, 24 Or LUBA 91 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. A reasonable person could conclude that adequate water service can be provided to a proposed development, where the record contains evidence demonstrating that under a worst case scenario of high water demand and limited availability of water from existing water rights, sufficient water can be provided if a certain additional quantity of water is stored in impoundments on the subject property, and that impounding such quantity of water on the subject property is feasible. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where an applicable code criterion requires that an existing structure have been issued all necessary permits in the past and a party raises a substantial issue concerning whether such is the case, the local government is required to adopt findings explaining why the code criterion is met and those findings must be supported by substantial evidence. *Mercer v. Josephine County*, 23 Or LUBA 608 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the evidence indicates that there are two rock cairns on the subject property which may be Native American burial cairns eligible for listing on the National Register of Historic Places, and the function of the cairns cannot be determined without further archaeological evaluation, there is not substantial evidence in the record to support a determination that there are no significant archaeological sites on the property. *Larson v. Wallowa County*, 23 Or LUBA 527 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where there is expert evidence in the record that traffic systems in the area are inadequate to serve a proposed golf course, and only conclusory evidence to the contrary, a local government's finding of compliance with a code standard requiring adequate rural facilities to serve the proposed use is not supported by substantial evidence in the record. *Kaye v. Marion County*, 23 Or LUBA 452 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the only evidence supporting a finding that a site contains 1.5 million cubic yards of aggregate material is a page from a reclamation application with that figure filled in, with no supporting documentation, the finding is not supported by substantial evidence in the record and is inadequate to comply with the Goal 5 inventory requirements of OAR 660-16-000. *Calhoun v. Jefferson County*, 23 Or LUBA 436 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Comments made by individual local government decision makers during deliberation on an application cannot constitute *evidence* in support of, or in opposition to, a challenged decision approving or denying such application. *Forster v. Polk County*, 23 Or LUBA 420 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Where the only evidence cited in the record strongly suggests that sewer service is unavailable to the subject property, and the availability of water service and storm drainage systems to serve the subject property is uncertain, a determination that a UGB amendment complies with Goal 14 factor 3, requiring "[o]rderly and economic provisions for public facilities and services," is not supported by substantial evidence. *ODOT v. City of Newport*, 23 Or LUBA 408 (1992).

1.6.1 Administrative Law – Substantial Evidence – Generally. Even if the subject property is properly described as marginal farmland with poor drainage, where there is undisputed evidence in the record of the property's historic and current use for agricultural production and that the property has Class II and IV agricultural soils, a finding that the property "is not likely to be used for agricultural production" is not supported by substantial evidence. *Brandt v. Marion County*, 23 Or LUBA 316 (1992).