

Appendices

Appendix A: An Overview of Oregon's Planning System

Oregon's system is built around a unique state and local partnership. In it, the state establishes general policies and rules for land use. Each city and county then applies those policies and rules through a local comprehensive plan and land-use regulations. There's no "state plan" or "state zoning." Rather, there are 240 city plans and 36 county plans, which together form a mosaic that covers the entire state. These local plans are diverse: each is a product of local values and ideas about land use and growth management. But all share a common foundation: all are based on Oregon's laws and statewide policies toward land use planning.

Those policies are found in 19 statewide planning goals adopted in the mid 1970's. The goals deal with matters such as farmland conservation (Goal 3), housing (Goal 10), and transportation (Goal 12). The goals are mandatory: they have the force and effect of law. Most are written broadly enough, however, to give local officials considerable discretion in interpreting them.

Most of the goals are accompanied by a set of administrative rules. The rules provide the details necessary to implement the broad policies expressed in the goals. The rules often are referred to as "O-A-R's," an abbreviation for "Oregon Administrative Rule." The rules on land use planning are found in OAR Chapter 660, which contains thirty divisions. The most important division with regard to aggregate mining is OAR Chapter 660, Division 23, the "new Goal 5 rule" adopted in 1996. The "old Goal 5 rule," OAR Chapter 660, Division 16, still governs planning for aggregate resources in some situations, but it is phasing out.

Under Oregon's planning system, each local government must adopt a comprehensive plan and the regulations necessary to carry it out. The plan then is reviewed by the state's Land Conservation and Development Commission (LCDC). When LCDC finds that a plan meets all applicable statewide goals, the commission approves it, a step known as "acknowledgment." After that, the acknowledged city or county plan becomes the controlling document for all land use decisions in that community.

All local plans and ordinances have been acknowledged. LCDC completed its initial review and acknowledgement of local plans for all of Oregon's cities and counties in 1986. The plans generally remain acknowledged today, but parts of a local plan or land use regulation may no longer comply with certain state laws or rules. That usually happens when a city or county fails to update its plan to reflect changes in state standards. ORS 197.646 says cities and counties must amend their plans and regulations to keep them consistent with changes in state land use laws. If they don't, the state laws may apply directly to local land use decisions.

That principle is especially important with regard to aggregate mining. Many local governments have not yet amended their plans and ordinances to incorporate changes brought by the 1996 amendments to Goal 5 and related rules. As a result, the requirements of the new Goal 5 rule thus apply directly to land use decisions that involve aggregate resources.

Updating local plans

Oregon law provides two ways by which a city or county may update or amend its acknowledged plan: *periodic review*, and *post-acknowledgement plan amendments*.

Periodic review is an evaluation and update of a local plan and land use regulations done in accordance with ORS 197.628-197.644. The cycle required for such periodic review is outlined in ORS 197.629. That statute requires the largest cities and counties to conduct a periodic review every five to ten years. Medium-sized communities are to conduct periodic reviews every five to fifteen years. Many small cities and less populous counties are exempted: the state doesn't require them to conduct a periodic review, but local officials may choose to do so (with LCDC's approval).

Within these statutory limits, the state's Department of Land Conservation and Development (DLCD) works with individual cities and counties to set a precise schedule for their periodic reviews. (DLCD is the agency that administers Oregon's statewide planning program, under the direction of the Land Conservation and Development Commission.)

The periodic review statutes require a thorough and public evaluation. DLCD works closely with the local government in doing that. If the evaluation reveals that the local plan and ordinances are up-to-date and working well, then periodic review stops there. DLCD issues an order to that effect, and the local plan remains unchanged.

If the evaluation reveals a need for revisions to the plan, the local government, DLCD, and other agencies collaborate to develop a *work program*. ORS 197.628(3) specifies four statutory criteria for determining whether revisions are needed. The factor common to all four is *change*: if significant changes in state laws, regional conditions, or local circumstances have occurred, then the plan must be amended to reflect them.

The work program describes a series of *work tasks* to be accomplished over the next one to three years. For example, one task in a work program might be for a county to update its ordinances on aggregate mining. Once the county completes that task, it submits the new material to DLCD and notifies interested parties of their opportunity to object. After DLCD completes its review, it issues a report and either approves the work or sends it back. If the work is approved, DLCD issues a formal order declaring that, and the new ordinance provisions become part of the county's acknowledged plan.

If the county or an interested party wants to challenge DLCD's decision, it must appeal the matter to the Land Conservation and Development Commission. LCDC conducts a hearing, at which parties with "standing" (a legal right to participate) may testify in the case. The commission then issues an order affirming or reversing DLCD's initial decision. Any challenge to such an order goes to the state Court of Appeals.

Not many of DLCD's decisions on periodic review work tasks get appealed to LCDC, and only a handful of LCDC's periodic review orders have been taken on up to the Court of Appeals.

What is a "plan amendment"?

The other way to change an acknowledged local plan is through a process known as *plan amendment*. The full legal phrase for this type of land use decision is a "post-acknowledgment plan amendment" or *PAPA*. Procedures for plan amendment are set forth in ORS 197.610 – 197.625. Note that the term includes amendments to land-use regulations (a zoning ordinance, for example) as well as to a plan.

A local government can initiate a PAPA at any time. When it does, it usually must notify

DLCD at least 45 days before the first local "evidentiary hearing" on the proposal. Only if a plan amendment does not involve any of the statewide planning goals is a local government free from the obligation to notify DLCD before adopting it. This exemption rarely would apply in an aggregate case, however, since aggregate resources are covered by Goal 5.

When notified of a proposed plan amendment, DLCD in turn notifies any parties who have asked to be informed about such proposals. The agency then decides whether to participate in the plan amendment. "Participation" means to notify the local government of any concerns about the proposal at least 15 days before the first hearing on it.

Local governments propose thousands of PAPA's each year. Often, DLCD chooses not to participate. In such cases, the local government may go on to adopt the proposal, and the PAPA becomes a part of the acknowledged local plan. But what happens if DLCD or some other party does participate and raise objections to the proposal?

At that point, the local government has three options. It may proceed to adopt the proposal, in which case the local government runs the risk of having its decision appealed to the Land Use Board of Appeals (LUBA). It may modify the proposal to meet objections raised by DLCD or other parties. Or, it may drop the proposal.

If a local government takes the first option (adopting the PAPA without addressing concerns raised by DLCD or others), those who raised the concerns have 21 days to file notice of intent to appeal at LUBA. If the 21 days pass without an appeal being filed, the adopted PAPA is considered to be acknowledged. If a timely appeal is filed, the PAPA is considered to be acknowledged only after the appeal has run its course.

The law on PAPA's generally is intended to limit a local government's exposure to appeals. It sets a brief period in which appeals can be filed; it specifies that only persons who participated in the local decision-making may appeal; and it limits issues that can be raised at LUBA to those raised locally. But those protective limits have two important exceptions: if a local government fails to provide a proper initial notice to DLCD, or if it adopts a PAPA substantially different from what was described in the notice, opportunities for appeal become more numerous and continue far beyond the normal 21-day appeal period.

DLCD doesn't appeal many plan amendments to LUBA. Of the ones it has

appealed, few have dealt with aggregate mining. For example, during the ten years from 1990 through 1999, DLCD took only one such case to LUBA, and it joined with ODOT to appeal one other. Of course, other parties can and do appeal PAPA's. Of the 55 aggregate cases that went to LUBA during the 1990's, half involved PAPA's. About a third involved conditional use permits. The remainder dealt with miscellaneous legal issues such as a local government's decision to "grand-father in" a quarry, thereby permitting it to operate as a nonconforming use.

The differences between the plan amendment and periodic review processes are significant. PAPA's are unscheduled; they don't occur as part of work program. PAPA's often are narrow in scope; they may deal with only a single property or one sentence in a plan, but may involve larger portions of the plan, whereas periodic review may involve an overhaul of the entire plan. PAPA's can usually be processed in a few months, but may take longer; a periodic review may take years. Across the state in any given year, there are hundreds of PAPA's but only a few periodic reviews. Appeals of PAPA's go to LUBA; appeals of periodic review tasks go to LCDC, then the Court of Appeals.

More aggregate mining decisions are made through PAPA's than in periodic review.

How are state planning laws enforced?

As noted above, procedures for periodic review and plan amendments present various ways for state agencies and interested parties to participate and to ensure that state land use laws are upheld. But every year across Oregon, thousands of local land use decisions are made that don't involve any changes to the local plan. These "quasi-judicial" decisions include partitions, variances, subdivisions, and conditional use permits.

They are known as "quasi-judicial" because they *apply* planning law to a particular piece of property. The planning commission, hearings officer, or governing body that makes such a decision isn't creating law or policy. Instead, the decision makers are applying law, as a judge might in court.

In doing so, decision makers must make unbiased, reasoned decisions, supported by substantial evidence and findings of fact. Oregon's planning laws—ORS 197.763 is the most notable—hold such decision makers to high standards for procedural matters such as public notice. The same laws enable local land use decisions to be challenged through an appeal to the state's Land Use Board of Appeals.

On average, LUBA decides about 200 such cases a year, with half a dozen involving aggregate. See Appendix E for a list of LUBA cases that involve aggregate mining.

The other legal tool for enforcing Oregon's planning laws is the "enforcement order." Such an order is issued by LCDC to compel a local government or state agency to comply with planning laws. For example, LCDC has issued enforcement orders against some counties to temporarily bar them from issuing building permits for new dwellings in farm zones until county officials adopted suitable farmland zoning. The law on enforcement orders also gives LCDC authority to withhold state shared revenues from a city or county temporarily, until it complies with the goals.

Enforcement order proceedings may be initiated by LCDC itself, or its staff (DLCD) may request such an order. Also, citizens may petition LCDC to undertake enforcement proceedings. Oregon's statutes give LCDC fairly broad powers to adopt such orders, but it has done so sparingly. In its 26 years of existence, LCDC has adopted twenty-nine enforcement orders. Only one, a 1990 order against Crook County, involved surface mining.

An important difference between appeals and enforcement orders is that appeals focus on decisions already made. An appeal usually results in a local land use decision being upheld, overturned, or sent back. In contrast, enforcement orders are prospective: they are intended to influence actions not yet taken by a city or county.

DLCD and LCDC

The state agency that administers the statewide planning program is the Department of Land Conservation and Development, or DLCD. Its main office is located near the state Capitol, at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301. The agency's main telephone number is 503.373.0050. DLCD has an extensive website at www.lcd.state.or.us. There, you can find up-to-date information on current activities, a roster of staff and LCDC members, and links to the complete text of all statewide planning goals, administrative rules, and key statutes.

The citizen commission that oversees the operation of the statewide planning program is the Land Conservation and Development Commission, or LCDC. Its members are appointed by the governor and confirmed by the state's senate. Each member can serve no more than two four-year terms. State law specifies that each of the state's main regions must be represented by at least one commissioner.

Appendix B: Goal 5

NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces.

Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability. The following resources shall be inventoried:

- a. Riparian corridors, including water and riparian areas and fish habitat;
- b. Wetlands;
- c. Wildlife Habitat;
- d. Federal Wild and Scenic Rivers;
- e. State Scenic Waterways;
- f. Groundwater Resources;
- g. Approved Oregon Recreation Trails;
- h. Natural Areas;
- i. Wilderness Areas;
- j. Mineral and Aggregate Resources;
- k. Energy sources;
- l. Cultural areas.

Local governments and state agencies are encouraged to maintain current inventories of the following resources:

- a. Historic Resources;
- b. Open Space;
- c. Scenic Views and Sites.

Following procedures, standards, and definitions contained in commission rules, local governments shall determine significant sites for inventoried resources and develop programs to achieve the goal.

GUIDELINES FOR GOAL 5

A. PLANNING

1. The need for open space in the planning area should be determined, and standards

developed for the amount, distribution, and type of open space.

2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.

3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected; reservoir sites should be identified and protected against irreversible loss.

4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.

6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.

7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710(23).

B. IMPLEMENTATION

1. Development should be planned and directed so as to conserve the needed amount of open space.

2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality location, rate and type of growth in the planning area.

3. The efficient consumption of energy should be considered when utilizing natural resources.

4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.

5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.

6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological,

and recreational needs for significant natural areas.

7. Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.

8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.

9. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization as well as for the primary use.

A footnote about the history of Goal 5 and its rules

Statewide Planning Goal 5 was adopted in December 1974. It has been amended twice since then, most recently in 1996. When LCDC amended the goal in 1996, the commission also adopted a new division of administrative rules (OAR Chapter 660, Division 23), often referred to as "the new Goal 5 rule." The complete text of new rule begins on the next page, in Appendix C. The amendments to Goal 5 and the new rules took effect on August 30, 1996. Together, they are the main state policies that guide local planning and zoning for aggregate resources.

The original administrative rules governing the application of Goal 5 were adopted in 1981. This set of rules, OAR Chapter 660, Division 16, is known as "the old Goal 5 rule." It still applies to some aggregate mining situations, but it is fading slowly out of existence, by design: LCDC wrote the new rule so that it would gradually displace the old one over the course of several years. Appendix D summarizes the key provisions of the old Goal 5 rule. It also contains an explanation of the alphanumeric jargon associated with Goal 5 under the old Goal 5 rule. You may find that to be helpful in understanding odd terms such as "1b site."

Appendix C: The New Goal 5 Rule

OAR Chapter 660, Division 23:

Procedures And Requirements For Complying With Goal 5

660-023-0000: Purpose and Intent

This division establishes procedures and criteria for inventorying and evaluating Goal 5 resources and for developing land use programs to conserve and protect significant Goal 5 resources. This division explains how local governments apply Goal 5 when conducting periodic review and when amending acknowledged comprehensive plans and land use regulations.

660-023-0010: Definitions

As used in this division, unless the context requires otherwise:

(1) **“Conflicting use”** is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.

(2) **“ESEE consequences”** are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.

(3) **“Impact area”** is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

(4) **“Inventory”** is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features associated with such sites. As a verb, “inventory” means to collect, prepare, compile, or refine information about one or more resource sites. (See *resource list*.)

(5) **“PAPA”** is a **“post-acknowledgment plan amendment.”** The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

(6) **“Program”** or **“program to achieve the goal”** is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

(7) **“Protect,”** when applied to an individual resource site, means to limit or prohibit uses that conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-0180, and 660-023-0190). When applied to a resource category, “protect” means to develop a program consistent with this division.

(8) **“Resource category”** is any one of the cultural or natural resource groups listed in Goal 5.

(9) **“Resource list”** includes the description, maps, and other information about significant Goal 5 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive plan or as a land use regulation. A “plan inventory” adopted under OAR 660-016-0000(5)© shall be considered to be a resource list.

(10) **“Resource site”** or **“site”** is a particular area where resources are located. A site may consist of a parcel or lot or portion thereof or may include an area consisting of two or more contiguous lots or parcels.

(11) **“Safe harbor”** has the meaning given to it in OAR 660-023-0020(2).

660-023-0020: Standard and Specific Rules and Safe Harbors

(1) The standard Goal 5 process, OAR 660-023-0030 through 660-023-0050, consists of procedures and requirements to guide local planning for all Goal 5 resource categories. This division also provides specific rules for each of the fifteen Goal 5 resource categories (see OAR 660-023-0090 through 660-023-0230). In some cases this division indicates that both the standard and the specific rules apply to Goal 5 decisions. In other cases, this division indicates that the specific rules supersede parts or all of the standard process rules (i.e., local governments must follow the specific rules rather than the standard Goal 5 process). In case of conflict, the resource-specific rules set forth in OAR 660-023-0090 through 660-023-0230 shall supersede the standard provisions in OAR 660-023-0030 through 660-023-0050.

(2) A “safe harbor” consists of an optional course of action that satisfies certain requirements under the standard process. Local governments may follow safe harbor requirements rather than addressing certain requirements in the standard Goal 5 process. For example, a jurisdiction may choose to identify “significant” riparian corridors using the safe harbor criteria under OAR 660-023-0090(5) rather than follow the general requirements for determining “significance” in the standard Goal 5 process under OAR 660-023-0030(4). Similarly, a jurisdiction may adopt a wetlands ordinance that meets the requirements of OAR 660-023-0100(4)(b) in lieu of following the ESEE decision process in OAR 660-023-0040.

660-023-0030: Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;
- (b) Determine the adequacy of the information;
- (c) Determine significance of resource sites; and
- (d) Adopt a list of significant resource sites.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal

5 sites, local governments shall, at a minimum:

- (a) Notify state and federal resource management agencies and request current resource information; and
- (b) Consider other information submitted in the local process.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site’s value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

- (a) The quality, quantity, and location information;
- (b) Supplemental or superseding significance

criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

660-023-0040: ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the

standard ESEE process are as follows:

(a) Identify conflicting uses;

(b) Determine the impact area;

(c) Analyze the ESEE consequences; and

(d) Develop a program to achieve Goal 5.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant

Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

660-023-0050: Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-

0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

660-023-0060: Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances.

660-023-0070: Buildable Lands Affected by Goal 5 Measures

[This section omitted because it does not directly involve aggregate resources.]

660-023-0080: Metro Regional Resources

(1) For purposes of this rule, the following definitions apply:

(a) “Metro” is the Metropolitan Service District organized under ORS Chapter 268, and operating under the 1992 Metro Charter, for 24 cities and certain urban portions of Multnomah, Clackamas, and Washington counties.

(b) “Regional resource” is a site containing a significant Goal 5 resource, including but not limited to a riparian corridor, wetland, or open space area, which is identified as a regional resource on a map adopted by Metro ordinance.

(2) Local governments shall complete the Goal 5 process in this division for all regional resources prior to or during the first periodic review following Metro’s adoption of a regional resources map, unless Metro adopts a regional functional plan by ordinance to establish a uniform time for all local governments to complete the Goal 5 process for particular regional resource sites.

(3) Metro may adopt one or more regional functional plans to address all applicable requirements of Goal 5 and this division for one or more resource categories and to provide time limits for local governments to implement the plan. Such functional plans shall be submitted for acknowledgment under the provisions of ORS 197.251 and 197.274. Upon acknowledgment of Metro’s regional resource functional plan, local governments within Metro’s jurisdiction shall apply the requirements of the functional plan for regional resources rather than the requirements of this division.

660-023-0090: Riparian Corridors

(1) For the purposes of this rule, the following definitions apply:

(a) “Fish habitat” means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

(b) “Riparian area” is the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

(c) “Riparian corridor” is a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

(d) “Riparian corridor boundary” is an imaginary line that is a certain distance upland from the top bank, for example, as specified in section (5) of this rule.

(e) “Stream” is a channel such as a river or creek that carries flowing surface water, including

perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

(f) “Structure” is a building or other major improvement that is built, constructed, or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components, that are not customarily regulated through zoning ordinances.

(g) “Top of bank” shall have the same meaning as “bankfull stage” defined in OAR 141-085-0010(2).

(h) “Water area” is the area between the banks of a lake, pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

(2) Local governments shall amend acknowledged plans in order to inventory riparian corridors and provide programs to achieve Goal 5 prior to or at the first periodic review following the effective date of this rule, except as provided in OAR 660-023-0250(5).

(3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

(a) Oregon Department of Forestry stream classification maps;

(b) United States Geological Service (USGS) 7.5 minute quadrangle maps;

(c) National Wetlands Inventory maps;

(d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;

(e) Federal Emergency Management Agency (FEMA) flood maps; and

(f) Aerial photographs.

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

(a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.

(b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.

(c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

(d) In areas where the top of each bank is not clearly defined, or where the predominant terrain consists of steep cliffs, local governments shall apply OAR 660-023-0030 rather than apply the safe harbor provisions of this section.

(6) Local governments shall develop a program to achieve Goal 5 using either the safe harbor described in section (8) of this rule or the standard Goal 5 ESEE process in OAR 660-023-0040 and 660-023-0050 as modified by section (7) of this rule.

(7) When following the standard ESEE process in OAR 660-023-0040 and 660-023-0050, a local government shall comply with Goal 5 if it identifies at least the following activities as conflicting uses in riparian corridors:

(a) The permanent alteration of the riparian corridor by placement of structures or impervious surfaces, except for:

(A) Water-dependent or water-related uses; and

(B) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area; and

(b) Removal of vegetation in the riparian area, except:

(A) As necessary for restoration activities, such as replacement of vegetation with native riparian species;

(B) As necessary for the development of water-related or water-dependent uses; and

(C) On lands designated for agricultural or forest use outside UGBs.

(8) As a safe harbor in lieu of following the ESEE process requirements of OAR 660-023-0040 and 660-023-0050, a local government may adopt

an ordinance to protect a significant riparian corridor as follows:

(a) The ordinance shall prevent permanent alteration of the riparian area by grading or by the placement of structures or impervious surfaces, except for the following uses, provided they are designed and constructed to minimize intrusion into the riparian area:

(A) Streets, roads, and paths;

(B) Drainage facilities, utilities, and irrigation pumps;

(C) Water-related and water-dependent uses; and

(D) Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area.

(b) The ordinance shall contain provisions to control the removal of riparian vegetation, except that the ordinance shall allow:

(A) Removal of non-native vegetation and replacement with native plant species; and

(B) Removal of vegetation necessary for the development of water-related or water-dependent uses;

(C) Notwithstanding subsection (b) of this section, the ordinance need not regulate the removal of vegetation in areas zoned for farm or forest uses pursuant to statewide Goals 3 or 4;

(d) The ordinance shall include a procedure to consider hardship variances, claims of map error, and reduction or removal of the restrictions under subsections (a) and (b) of this section for any existing lot or parcel demonstrated to have been rendered not buildable by application of the ordinance; and

(e) The ordinance may authorize the permanent alteration of the riparian area by placement of structures or impervious surfaces within the riparian corridor boundary established under subsection (5)(a) of this rule upon a demonstration that equal or better protection for identified resources will be ensured through restoration of riparian areas, enhanced buffer treatment, or similar measures. In no case shall such alterations occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor.

660-023-0100: Wetlands

(1) For purposes of this rule, a “wetland” is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(2) Local governments shall amend acknowledged plans and land use regulations prior to or at periodic review to address the requirements of this

division, as set out in OAR 660-023-0250(5) through (7). The standard inventory process requirements in OAR 660-023-0030 do not apply to wetlands. Instead, local governments shall follow the requirements of section (3) of this rule in order to inventory and determine significant wetlands.

(3) For areas inside urban growth boundaries (UGBs) and urban unincorporated communities (UUCs), local governments shall:

(a) Conduct a local wetlands inventory (LWI) using the standards and procedures of OAR 141-086-0110 through 141-086-0240 and adopt the LWI as part of the comprehensive plan or as a land use regulation; and

(b) Determine which wetlands on the LWI are “significant wetlands” using the criteria adopted by the Division of State Lands (DSL) pursuant to ORS 197.279(3)(b) and adopt the list of significant wetlands as part of the comprehensive plan or as a land use regulation.

(4) For significant wetlands inside UGBs and UUCs, a local government shall:

(a) Complete the Goal 5 process and adopt a program to achieve the goal following the requirements of OAR 660-023-0040 and 660-023-0050; or

(b) Adopt a safe harbor ordinance to protect significant wetlands consistent with this subsection, as follows:

(A) The protection ordinance shall place restrictions on grading, excavation, placement of fill, and vegetation removal other than perimeter mowing and other cutting necessary for hazard prevention; and

(B) The ordinance shall include a variance procedure to consider hardship variances, claims of map error verified by DSL, and reduction or removal of the restrictions under paragraph (A) of this subsection for any lands demonstrated to have been rendered not buildable by application of the ordinance.

(5) For areas outside UGBs and UUCs, local governments shall either adopt the statewide wetland inventory (SWI; see ORS 196.674) as part of the local comprehensive plan or as a land use regulation, or shall use a current version for the purpose of section (7) of this rule.

(6) For areas outside UGBs and UUCs, local governments are not required to amend acknowledged plans and land use regulations in order to determine significant wetlands and complete the Goal 5 process. Local governments that choose to amend acknowledged plans for areas outside UGBs and UUCs in order to inventory and protect significant wetlands shall follow the requirements of sections (3) and (4) of

this rule.

(7) All local governments shall adopt land use regulations that require notification of DSL concerning applications for development permits or other land use decisions affecting wetlands on the inventory, as per ORS 227.350 and 215.418, or on the SWI as provided in section (5) of this rule.

(8) All jurisdictions may inventory and protect wetlands under the procedures and requirements for wetland conservation plans adopted pursuant to ORS 196.668 et seq. A wetlands conservation plan approved by the director of DSL shall be deemed to comply with Goal 5 (ORS 197.279(1)).

660-023-0110: Wildlife Habitat

(1) For purposes of this rule, the following definitions apply:

(a) “Documented” means that an area is shown on a map published or issued by a state or federal agency or by a professional with demonstrated expertise in habitat identification.

(b) “Wildlife habitat” is an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range, and nesting and roosting sites.

(2) Local governments shall conduct the inventory process and determine significant wildlife habitat as set forth in OAR 660-023-0250(5) by following either the safe harbor methodology described in section (4) of this rule or the standard inventory process described in OAR 660-023-0030.

(3) When gathering information regarding wildlife habitat under the standard inventory process in OAR 660-023-0030(2), local governments shall obtain current habitat inventory information from the Oregon Department of Fish and Wildlife (ODFW), and other state and federal agencies. These inventories shall include at least the following:

(a) Threatened, endangered, and sensitive wildlife species habitat information;

(b) Sensitive bird site inventories; and

(c) Wildlife species of concern and/or habitats of concern identified and mapped by ODFW (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, and pigeon springs).

(4) Local governments may determine wildlife habitat significance under OAR 660-023-0040 or apply the safe harbor criteria in this section. Under the safe harbor, local governments may determine that “wildlife” does not include fish, and that significant wildlife habitat is only those sites where one or more of the following conditions exist:

- (a) The habitat has been documented to perform a life support function for a wildlife species listed by the federal government as a threatened or endangered species or by the state of Oregon as a threatened, endangered, or sensitive species;
- (b) The habitat has documented occurrences of more than incidental use by a species described in subsection (a) of this section;
- (c) The habitat has been documented as a sensitive bird nesting, roosting, or watering resource site for osprey or great blue herons pursuant to ORS 527.710 (Oregon Forest Practices Act) and OAR 629-024-0700 (Forest Practices Rules);
- (d) The habitat has been documented to be essential to achieving policies or population objectives specified in a wildlife species management plan adopted by the Oregon Fish and Wildlife Commission pursuant to ORS Chapter 496; or
- (e) The area is identified and mapped by ODFW as habitat for a wildlife species of concern and/or as a habitat of concern (e.g., big game winter range and migration corridors, golden eagle and prairie falcon nest sites, or pigeon springs).

(5) For certain threatened or endangered species sites, publication of location information may increase the threat of habitat or species loss. Pursuant to ORS 192.501(13), local governments may limit publication, display, and availability of location information for such sites. Local governments may adopt inventory maps of these areas, with procedures to allow limited availability to property owners or other specified parties.

(6) As set out in OAR 660-023-0250(5), local governments shall develop programs to protect wildlife habitat following the standard procedures and requirements of OAR 660-023-0040 and 660-023-0050. Local governments shall coordinate with appropriate state and federal agencies when adopting programs intended to protect threatened, endangered, or sensitive species habitat areas.

660-023-0120: Federal Wild and Scenic Rivers

[This section omitted because it does not directly involve aggregate resources.]

660-023-0130: Oregon Scenic Waterways

[This section omitted because it does not directly involve aggregate resources.]

660-023-0140: Groundwater Resources

(1) For purposes of this rule, the following definitions apply:

(a) “Delineation” is a determination that has been certified by the Oregon Health Division pursuant

to OAR 333-061-0057, regarding the extent, orientation, and boundary of a wellhead protection area, considering such factors as geology, aquifer characteristics, well pumping rates, and time of travel.

(b) “Groundwater” is any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir, or other body of surface water.

(c) “Protect significant groundwater resources” means to adopt land use programs to help ensure that reliable groundwater is available to areas planned for development and to provide a reasonable level of certainty that the carrying capacity of groundwater resources will not be exceeded.

(d) “Public water system” is a system supplying water for human consumption that has four or more service connections, or a system supplying water to a public or commercial establishment that operates a total of at least 60 days per year and that is used by 10 or more individuals per day.

(e) “Wellhead protection area” is the surface and subsurface area surrounding a water well, spring, or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach that water well, spring, or wellfield.

(2) Local governments shall amend acknowledged plans prior to or at each periodic review in order to inventory and protect significant groundwater resources under Goal 5 only as provided in sections (3) through (5) of this rule. Goal 5 does not apply to other groundwater areas, although other statewide Goals, especially Goals 2, 6, and 11, apply to land use decisions concerning such groundwater areas. Significant groundwater resources are limited to:

(a) Critical groundwater areas and groundwater-limited areas designated by the Oregon Water Resources Commission (OWRC), subject to the requirements in section (3) of this rule applied in conjunction with the requirements of OAR 660-023-0030 through 660-023-0050; and

(b) Wellhead protection areas, subject to the requirements in sections (4) and (5) of this rule instead of the requirements in OAR 660-023-0030 through 660-023-0050.

(3) Critical groundwater areas and groundwater-limited areas designated by order of the OWRC pursuant to ORS 537.505 et seq. are significant groundwater resources. Following designation by OWRC, and in coordination with the Oregon Water Resources Department (WRD), local plans shall declare such areas as significant groundwater resources as per OAR 660-022-0030(5). Following the requirements of OAR 660-

023-0040 and 660-023-0050 and this rule, local governments shall develop programs to protect these significant groundwater resources.

(4) A local government or water provider may delineate a wellhead protection area for wells or wellfields that serve lands within its jurisdiction. For the delineation of wellhead protection areas, the standards and procedures in OAR Chapter 333, Division 61 (Oregon Health Division rules) shall apply rather than the standards and procedures of OAR 660-023-0030.

(5) A wellhead protection area is a significant groundwater resource only if the area has been so delineated and either:

(a) The public water system served by the wellhead area has a service population greater than 10,000 or has more than 3,000 service connections and relies on groundwater from the wellhead area as the primary or secondary source of drinking water; or

(b) The wellhead protection area is determined to be significant under criteria established by a local government, for the portion of the wellhead protection area within the jurisdiction of the local government.

(6) Local governments shall develop programs to resolve conflicts with wellhead protection areas described under section (5) of this rule. In order to resolve conflicts with wellhead protection areas, local governments shall adopt comprehensive plan provisions and land use regulations, consistent with all applicable statewide goals, that:

(a) Reduce the risk of contamination of groundwater, following the standards and requirements of OAR Chapter 340, Division 40; and

(b) Implement wellhead protection plans certified by the Oregon Department of Environmental Quality (DEQ) under OAR 340-040-0180.

660-023-0150: Approved Oregon Recreation Trails

[This section omitted because it does not directly involve aggregate resources.]

660-023-0160: Natural Areas

[This section omitted because it does not directly involve aggregate resources.]

660-023-0170: Wilderness Areas

[This section omitted because it does not directly involve aggregate resources.]

660-023-0180: Mineral and Aggregate Resources

(1) For purposes of this rule, the following definitions apply:

(a) “Aggregate resources” are naturally occurring concentrations of stone, rock, sand and gravel,

decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials used in road building.

(b) “Conflicting use” is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site (as specified in sections 4(b) and (5) of this rule).

(c) “Existing site” is a significant aggregate site that is lawfully operating, or is included on an inventory in an acknowledged plan, on the applicable date of this rule.

(d) “Expansion area” is an aggregate mining area contiguous to an existing site.

(e) “Mining” is the extraction and processing of mineral or aggregate resources, in the manner provided under ORS 215.298(3).

(f) “Minimize a conflict” means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels) to “minimize a conflict” means to ensure conformance to the applicable standard.

(g) “Mining area” is the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.

(h) “Processing” means the activities described in ORS 517.750(11).

(i) “Protect” means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site and to limit or prohibit new conflicting uses within the impact area of the site.

(j) “Width of aggregate layer” means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and nonaggregate overburden.

(k) “Willamette Valley” means Benton, Clackamas, Columbia, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties and the portion of Lane County east of the summit of the Coast Range.

(2) Local governments are not required to amend acknowledged inventories or plans with regard to mineral and aggregate resources except in response to an application for a PAPA, or at periodic review as specified in OAR 660-023-0180(7). The requirements of this rule either modify, supplement, or supersede the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, as follows:

(a) A local government may inventory mineral and aggregate resources throughout its jurisdiction, or

in a portion of its jurisdiction. When a local government conducts an inventory of mineral and aggregate sites in all or a portion of its jurisdiction, it shall follow the requirements of OAR 660-023-0030 as modified by subsection (b) of this section. When a local government is following the inventory process for a mineral or aggregate resource site filed under a PAPA, it shall follow only the applicable requirements of OAR 660-023-0030, except as provided in sections (3) and (6) of this rule;

(b) Local governments shall apply the criteria in section (3) of this rule rather than OAR 660-023-0030(4) in determining whether an aggregate resource site is significant;

(c) Local governments shall follow the requirements of section (4) of this rule in deciding whether to authorize the mining of a significant mineral or aggregate resource site; and

(d) For significant mineral and aggregate sites where mining is allowed, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

(3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

(a) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley;

(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; **or**

(c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule.

(d) Notwithstanding subsections (a) through (c) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996 had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or

(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule, unless the average width of the aggregate layer within the mining area exceeds:

(i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;

(ii) 25 feet in Polk, Yamhill, and Clackamas counties; or

(iii) 17 feet in Linn and Benton counties.

(4) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving a significant aggregate site, the process for this decision is set out in subsections (a) through (g) of this section. For a PAPA involving a significant aggregate site, a local government must complete the process within 180 days after receipt of a complete application that is consistent with section (6) of this rule, or by the earliest date after 180 days allowed by local charter. The process for reaching decisions about aggregate mining is as follows:

(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.

(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;

(B) Potential conflicts to local roads used for

access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments. This paragraph shall not apply after the effective date of commission rules adopted pursuant to Chapter 285, Oregon Laws 1995;

(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;

(E) Conflicts with agricultural practices; and

(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;

(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:

(A) The degree of adverse effect on existing land uses within the impact area;

(B) Reasonable and practicable measures that could be taken to reduce the identified adverse

effects; and

(C) The probable duration of the mining operation and the proposed post-mining use of the site.

(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:

(A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;

(B) Not requested in the PAPA application; or

(C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.

(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.

(5) Local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (4) of this rule, the local government decides that mining will not be authorized at the site.)

(6) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the

requirements of this section rather than OAR 660-023-0030(3). An application for a PAPA concerning a significant aggregate site shall be adequate if it includes:

(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;

(b) A conceptual site reclamation plan;

(NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780)

(c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (4)(b)(B) of this rule;

(d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and

(e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

(7) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:

(a) Such regulations were acknowledged subsequent to 1989; and

(b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review, except as provided under OAR 660-023-0250(7).

660-023-0190: Energy Sources

[This section omitted because it does not directly involve aggregate resources.]

660-023-0200: Historic Resources

[This section omitted because it does not directly involve aggregate resources.]

660-023-0220: Open Space

[This section omitted because it does not directly involve aggregate resources.]

660-023-0230: Scenic Views and Sites

[This section omitted because it does not directly involve aggregate resources.]

660-023-0240: Relationship of Goal 5 to Other Goals

(1) The requirements of Goal 5 do not apply

to the adoption of measures required by Goals 6 and 7. However, to the extent that such measures exceed the requirements of Goals 6 or 7 and affect a Goal 5 resource site, the local government shall follow all applicable steps of the Goal 5 process.

(2) The requirements of Goals 15, 16, 17, and 19 shall supersede requirements of this division for natural resources that are also subject to and regulated under one or more of those goals. However, local governments may rely on a Goal 5 inventory produced under OAR 660-023-0030 and other applicable inventory requirements of this division to satisfy the inventory requirements under Goal 17 for resource sites subject to Goal 17.

660-023-0250: Applicability

(1) This division replaces OAR 660, Division 16, except with regard to cultural resources, and certain PAPAs and periodic review work tasks described in sections (2) and (4) of this rule. Local governments shall follow the procedures and requirements of this division or OAR 660, Division 16, whichever is applicable, in the adoption or amendment of all plan or land use regulations pertaining to Goal 5 resources. The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.

(2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR 660, Division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section “initiated” means that the local government has deemed the PAPA application to be complete.

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

(4) Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise

acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR 660, Division 16.

(5) Local governments are required to amend acknowledged plan or land use regulations at periodic review to address Goal 5 and the requirements of this division only if one or more of the following conditions apply, unless exempted by the director under section (7) of this rule:

(a) The plan was acknowledged to comply with Goal 5 prior to the applicability of OAR 660, Division 16, and has not subsequently been amended in order to comply with that division;

(b) The jurisdiction includes riparian corridors, wetlands, or wildlife habitat as provided under OAR 660-023-0090 through 660-023-0110, or aggregate resources as provided under OAR 660-023-0180; or

(c) New information is submitted at the time of periodic review concerning resource sites not addressed by the plan at the time of acknowledgement or in previous periodic reviews, except for historic, open space, or scenic resources.

(6) If a local government undertakes a Goal 5 periodic review task that concerns specific resource sites or specific Goal 5 plan or implementing measures, this action shall not by itself require a local government to conduct a new inventory of the affected Goal 5 resource category, or revise acknowledged plans or implementing measures for resource categories or sites that are

not affected by the work task.

(7) The director may exempt a local government from a work task for a resource category required under section (5) of this rule. The director shall consider the following factors in this decision:

(a) Whether the plan and implementing ordinances for the resource category substantially comply with the requirements of this division; and

(b) The resources of the local government or state agencies available for periodic review, as set forth in ORS 197.633(3)(g).

(8) Local governments shall apply the requirements of this division to work tasks in periodic review work programs approved or amended under ORS 197.633(3)(g) after September 1, 1996. Local governments shall apply OAR 660, Division 16, to work tasks in periodic review work programs approved before September 1, 1996, unless the local government chooses to apply this division to one or more resource categories, and provided:

(a) The same division is applied to all work tasks concerning any particular resource category;

(b) All the participating local governments agree to apply this division for work tasks under the jurisdiction of more than one local government; and

(c) The local government provides written notice to the department. If application of this division will extend the time necessary to complete a work task, the director or the commission may consider extending the time for completing the work task as provided in OAR 660-025-0170.

Appendix D: The Old Goal 5 Rule

OAR Chapter 660, Division 016, is widely known as “the old Goal 5 rule” (although technically it is a division containing six rules). LCDC adopted it in 1981. Although most aggregate resources are subject to the “new Goal 5 rule” adopted in 1996 (and printed above in Appendix C), the old rule still applies to some aggregate resources. Because of that limited application, the complete text of the old rule is not reprinted here. The old rule remains important, however, because it shaped the entire Goal 5 process. For that reason, its history is recounted briefly here.

Goal 5 is unique among Oregon’s 19 statewide planning goals in its breadth. The twelve resources it addresses are quite diverse, and that caused some problems in the early days of the statewide planning program. The goal offered little direction to local governments on just how they were to plan and zone land in such a way as to protect all those resources.

LCDC responded to that problem in 1981 by adopting a set of detailed administrative rules: OAR Chapter 660, Division 16. Together, the goal and those rules established a “Goal 5 process” consisting of the main steps summarized below. The parenthetical references in the summary are a sort of shorthand based on numbering used in the original administrative rule. That rule was long ago renumbered by the Secretary of State’s office, but the outdated references shown below live on in the jargon of Oregon’s planners.

The old Goal 5 rule required five main steps of city and county planning officials:

1. Inventory resources.

Inventory Goal 5 resources in the community. Where adequate information on the quality, quantity, and location of a resource at a given site is available, evaluate the significance of the resource there. If a resource at a certain site is not significant, leave that site off the plan’s inventory and do not apply Goal 5 to it. (These are “1A” sites.) Where there is partial information suggesting a certain site *may* be significant, put it in a special category of “1B” sites for future study, and postpone application of Goal 5 to those sites. Put the significant “1C” sites on an inventory in the plan, and apply Goal 5 to those sites as described below.

2. Identify conflicting uses.

At each site with a significant Goal 5 resource, identify “conflicting uses” that exist or could occur within some “impact area” at each site. This

analysis is based on zoning. For example, if the area around a significant aggregate site were zoned “Rural Residential-5-Acre,” then county planners would identify houses on five-acre lots as a conflicting use, even if those lots had not yet been developed. If no conflicts are found, the resource site must be fully protected under Goal 5. Such conflict-free sites are called “2A” sites.

3. Analyze conflicts.

Analyze the economic, social, environmental, and energy (ESEE) consequences of allowing or restricting conflicting uses at the site. For example, what would be the ESEE consequences of prohibiting all residential development within a quarter-mile of an important aggregate site?

4. Choose the appropriate policy.

Based on the ESEE analysis, choose the most appropriate of three policy options regarding conflicting uses at each site:

- Protect the Goal 5 resource fully by prohibiting conflicting uses in the impact area (a “3A decision”);
- Allow the conflicting uses fully, which implies that the Goal 5 resource may be lost (a “3B decision”);
- Strike a compromise by allowing the conflicting uses with limits that provide at least some protection for the Goal 5 resource (a “3C decision”).

5. Adopt a “program to achieve the goal.”

Adopt the zoning or other measures needed to carry out the policy choice made in step 4.

The fundamental purpose of the complex process described above is to identify and protect significant natural resource sites. In the case of aggregate, that would mean identifying sites where valuable deposits of rock exist and then protecting them so they could be mined. But local governments often have been unable to get beyond the first step, of inventorying the resource. They have lacked adequate information on the location, quantity, and quality of aggregate resources in their community.

Goal 5 requires local governments only to gather and use information that is already available. It does not require local governments to *develop* new information on natural resources. For example, it doesn’t compel a county to hire a team of geologists to comb the entire county looking for valuable aggregate deposits.

The lack of readily available information on aggregate led to a sort of impasse in applying Goal 5 to that resource during the early days of the statewide planning program. Many cities and counties took the process as far as they could by putting key aggregate sites in a special “1B” inventory. That amounted to a placeholder in the plan. In effect, it said, “We’ll apply Goal 5 to this site when and if we get further information indicating it’s important.”

Many people expressed concern about that to LCDC. The commission responded by overhauling Statewide Planning Goal 5 in 1996 and adopting the “new Goal 5 rule.” A major part of that new rule is a detailed set of provisions on aggregate resources (OAR 660-023-180).

The main effect of those new provisions was to greatly reduce the burden on local governments to inventory aggregate sites. Under the new rule, local governments no longer must attempt to determine where significant aggregate resources may be located and then try to plan and zone all of those sites in accordance with Goal 5. Rather, local officials may wait until a landowner or aggregate operator requests a conditional use permit or post-acknowledgment plan amendment to mine aggregate at a specific site.

Appendix E: LUBA Cases

Decisions on Aggregate Mining by Oregon's Land Use Board of Appeals (LUBA), 1990-2000			
Citation	Name of Case	Action	Website (URL)
LUBA 00-033	<i>Stockwell v. Benton County</i>	Affirmed 09/07/2000	http://luba.state.or.us/pdf/2000/sep00/00033.htm
37 Or LUBA 738 (2000)	<i>Jorgeson v. Union County</i>	Remanded 03/09/2000	http://luba.state.or.us/pdf/2000/mar00/99126.pdf
37 Or LUBA 368 (1999)	<i>Wild Rose Ranch v. Benton County</i>	Affirmed 12/17/99	http://luba.state.or.us/pdf/dec99/99034.pdf
37 Or LUBA 324 (1999)	<i>Turner Community Ass'n v. Marion Co.</i>	Remanded 12/16/99	http://luba.state.or.us/pdf/dec99/99024.pdf
37 Or LUBA 85 (1999)	<i>Morse Bros. v. Columbia County</i>	Reversed 10/25/99	http://luba.state.or.us/pdf/oct99/99017.pdf
37 Or LUBA 65 (1999)	<i>MacHugh v. Benton County</i>	Affirmed 10/18/99	http://luba.state.or.us/pdf/oct99/99085.pdf
36 Or LUBA 715 (1999)	<i>Mulford v. Lakeview</i>	Remanded 09/28/99	http://luba.state.or.us/pdf/sep99/99074.pdf
36 Or LUBA 666 (1999)	<i>ODOT v. City of Mosier</i>	Remanded 09/21/99	http://luba.state.or.us/pdf/sep99/97251.pdf
36 Or LUBA 473 (1999)	<i>City of Newberg v. Yamhill County</i>	Remanded 07/29/99	http://luba.state.or.us/pdf/jul99/98141.pdf
LUBA 98-104	<i>Schaffer v. City of Turner</i>	Affirmed 12/09/98	http://luba.state.or.us/pdf/1998/dec98/98104.pdf
34 Or LUBA 202 (1998)	<i>Trademark Const. v. Marion Co.</i>	Affirmed 03/24/98	http://luba.state.or.us/pdf/1998/mar98/97188.pdf
34 Or LUBA 69 (1998)	<i>Sanders v. Yamhill County</i>	Remanded 02/05/98	http://luba.state.or.us/pdf/1998/feb98/96173.pdf
LUBA 97-025	<i>McCurdy v. Multnomah County</i>	Remanded 09/30/97	http://luba.state.or.us/pdf/1998/mar98/97025.pdf
33 Or LUBA 392 (1997)	<i>Epling v. Washington County</i>	Dismissed 07/31/97	http://luba.state.or.us/pdf/1997/jul97/97045.pdf
33 Or LUBA 124 (1997)	<i>Tigard Sand & Gravel v. Clackamas Co.</i>	Affirmed 04/09/97	http://luba.state.or.us/pdf/1997/apr97/96182.pdf
32 Or LUBA 447 (1997)	<i>O'Rourke v. Union Co. ("O'Rourke III")</i>	Affirmed 02/27/97	http://luba.state.or.us/pdf/1997/feb97/96166.pdf
32 Or LUBA 168 (1996)	<i>Brown v. Union County</i>	Remanded 11/05/96	http://luba.state.or.us/pdf/1996/nov96/95246.pdf
32 Or LUBA 56 (1996)	<i>Mission Bottom Ass'n v. Marion Co.</i>	Affirmed 09/26/96	http://luba.state.or.us/pdf/1996/sep96/96057.pdf

31 Or LUBA 174 (1996)	<i>O'Rourke v. Union Co. ("O'Rourke II")</i>	Remanded 05/20/96	http://luba.state.or.us/pdf/1996/may96/95188.pdf
31 Or LUBA 126 (1996)	<i>Mazeski v. Wasco County</i>	Dismissed 04/29/96	http://luba.state.or.us/pdf/1996/apr96/95021.pdf
LUBA 95-151	<i>Philp v. Jackson County</i>	Affirmed 02/16/96	http://luba.state.or.us/pdf/1996/feb96/95151.pdf
30 Or LUBA 349 (1996)	<i>Bennett v. Polk County</i>	Dismissed 01/26/96	http://luba.state.or.us/pdf/1996/jan96/95232.pdf
30 Or LUBA 272 (1996)	<i>Tognoli v. Crook County</i>	Remanded 01/03/96	http://luba.state.or.us/pdf/1996/jan96/95074.pdf
LUBA 95-040	<i>Turner Gravel v. Marion County</i>	Affirmed 09/13/95	http://luba.state.or.us/pdf/1995/sep95/95040.pdf
29 Or LUBA 436 (1995)	<i>Palmer v. Lane County</i>	Remanded 07/21/95	http://luba.state.or.us/pdf/1995/jul95/94260.pdf
29 Or LUBA 303 (1995)	<i>O'Rourke v. Union Co. ("O'Rourke I")</i>	Remanded 06/14/95	http://luba.state.or.us/pdf/1995/jun95/94227.pdf
29 Or LUBA 281 (1995)	<i>Mission Bottom Ass'n v. Marion Co.</i>	Remanded 06/09/95	http://luba.state.or.us/pdf/1995/jun95/94196.pdf
28 Or LUBA 279 (1994)	<i>Holsheimer v. Columbia County</i>	Reversed 11/15/94	http://luba.state.or.us/pdf/1994/nov94/94119.pdf
28 Or LUBA 205 (1994)	<i>DLCD v. Curry County</i>	Remanded 10/26/94	http://luba.state.or.us/pdf/1994/oct94/94075.pdf
28 Or LUBA 178 (1994)	<i>Mazeski v. Wasco County</i>	Remanded 10/20/94	http://luba.state.or.us/pdf/1994/oct94/94091.pdf
28 Or LUBA 56 (1994)	<i>Strauss v. Jackson County</i>	Dismissed 09/15/94	http://luba.state.or.us/pdf/1994/sep94/93118.pdf
27 Or LUBA 715 (1994)	<i>Salem Golf Club v. City of Salem</i>	Remanded 01/25/95	http://luba.state.or.us/pdf/1995/jan95/92239.pdf
27 Or LUBA 602 (1994)	<i>Williams v. Clackamas County</i>	Affirmed 08/11/94	http://luba.state.or.us/pdf/1994/aug94/93046.pdf
27 Or LUBA 100 (1994)	<i>Mazeski v. City of Mosier</i>	Remanded 04/06/94	http://luba.state.or.us/pdf/1994/apr94/93220.pdf
27 Or LUBA 45 (1994)	<i>Mazeski v. Wasco County</i>	Remanded 03/18/94	http://luba.state.or.us/pdf/1994/mar94/94001.pdf
27 Or LUBA 11 (1994)	<i>Zippel v. Josephine County</i>	Remanded 03/08/94	http://luba.state.or.us/pdf/1994/mar94/93172.pdf
26 Or LUBA 382 (1994)	<i>Nathan v. City of Turner</i>	Remanded 01/10/94	http://luba.state.or.us/pdf/1994/jan94/93107.pdf
26 Or LUBA 375 (1994)	<i>City of Barlow v. Clackamas County</i>	Affirmed 01/07/94	http://luba.state.or.us/pdf/1994/jan94/93110.pdf
26 Or LUBA 226 (1993)	<i>Mazeski v. Wasco County</i>	Remanded 12/08/93	http://luba.state.or.us/pdf/1993/dec93/93100.pdf
25 Or LUBA 312 (1993)	<i>Murphy Citizens v. Josephine County</i>	Remanded 05/11/93	http://luba.state.or.us/pdf/1993/may93/93024.pdf
25 Or LUBA 288 (1993)	<i>ODOT and DLCD v. Klamath County</i>	Remanded 05/10/93	http://luba.state.or.us/pdf/1993/may93/92099.pdf

25 Or LUBA 238 (1993)	<i>McKay Creek Ass'n v. Washington Co.</i>	Remanded 04/22/93	http://luba.state.or.us/pdf/1993/apr93/92238.pdf
25 Or LUBA 25 (1993)	<i>O'Mara v. Douglas County</i>	Remanded 03/10/93	http://luba.state.or.us/pdf/1993/mar93/92166.pdf
24 Or LUBA 381 (1993)	<i>Hood River Sand & Gravel v. Mosier</i>	Remanded 01/04/93	http://luba.state.or.us/pdf/1993/jan93/92039.pdf
24 Or LUBA 362 (1992)	<i>Leonard v. Union County</i>	Dismissed 12/30/92	http://luba.state.or.us/pdf/1992/dec92/91202.pdf
24 Or LUBA 251 (1992)	<i>Gonzalez v. Lane County</i>	Remanded 11/20/92	http://luba.state.or.us/pdf/1992/nov92/92108.pdf
23 Or LUBA 436 (1992)	<i>Calhoun v. Jefferson County</i>	Remanded 07/01/92	http://luba.state.or.us/pdf/1992/jul92/92049.pdf
23 Or LUBA 408 (1992)	<i>ODOT v. City of Newport</i>	Remanded 06/29/92	http://luba.state.or.us/pdf/1992/jun92/91160.pdf
22 Or LUBA 188 (1991)	<i>Pilling v. Crook County</i>	Dismissed 10/17/91	http://luba.state.or.us/pdf/1991/oct91/91098.pdf
22 Or LUBA 27 (1991)	<i>Eckis v. Linn County</i>	Remanded 09/11/91	http://luba.state.or.us/pdf/1991/sep91/90132.pdf
21 Or LUBA 313 (1991)	<i>Simonson v. Marion County</i>	Affirmed 06/21/91	http://luba.state.or.us/pdf/1991/jun91/90171.pdf
19 Or LUBA 394 (1990)	<i>Keudell v. Union County</i>	Affirmed 08/03/90	http://luba.state.or.us/pdf/1990/aug90/90054.pdf
19 Or LUBA 220 (1990)	<i>Clark v. Jackson County</i>	Remanded 05/25/90	http://luba.state.or.us/pdf/1990/may90/90004.pdf

Appendix F: DOGAMI Mined Land Reclamation Program Overview

Note: The program information contained in Appendix F was furnished by Gary Lynch, Supervisor of the Department of Geology and Mineral Industries' (DOGAMI) Mined Land Reclamation Program (MLRP).

Mining in Oregon creates both important public benefits and at times deep public concerns. The vast majority of mining sites in this state are aggregate mines. Aggregate is the main ingredient in concrete and asphalt pavement and is used as a base on which roads and buildings are placed. Other important uses include gravel roads, dams, landscaping, drainage control, landfills, mortar, sanding icy roads, and railroad ballast. Total annual aggregate production in Oregon is approximately 52,000,000 cubic yards.

At the same time population growth has increased demand, a variety of resource concerns have affected the location and operation of mine sites. In-stream gravel removal, for example, is decreasing as the need for protection of salmon increases. Available aggregate sources located within floodplains now require more stringent environmental regulation to protect adjacent resources such as wetlands and wildlife habitat and floodplain stability. Agricultural areas along rivers previously used for round rock aggregate production are being reduced to conserve prime farmlands. Quarries that are located above the floodplain and away from urban areas encounter steep, potentially unstable slopes, wildlife and fishery habitat concerns. As the size of new and existing sites increases, groundwater is more frequently encountered which requires monitoring and protection. The flooding and landslides experienced during 1996 – 97 point out that as the industry moves to new locations, quality of life issues and new environmental challenges must be addressed.

Over the recent years the Mined Land Reclamation Program (MLRP) has become the lead agency for mine regulation in Oregon. The program is a fee-based statewide (except Columbia County and tribal lands) program with authority to regulate all upland and underground mining on all lands by issuing an Operating Permit. In addition, the program implements the federal Clean Water Act general Stormwater Permit and the state Water Pollution Control Facility Permit (WPCF) at aggregate mine sites based upon an agreement with the Department of Environmental Quality (DEQ).

The program is staffed with 8 full-time employees and several temporary staff. The MLRP currently has 816 active DOGAMI permits and 201 Stormwater and WPCF permits. The budget for the program is \$1.2 million for the biennium. Staff conducted over 2000 inspections in 1999-01 biennium.

As mentioned above, the vast majority of the minerals produced in Oregon are sand and gravel and quarry rock. There is significant diatomaceous earth production, an industrial mineral with a variety of commercial uses. There are no active commercial metal or coal mines in the state.

Over the course of the last biennium, the program opened ~80 sites and closed ~60. Currently 5807 acres (~ 9 square miles) are under reclamation bond and 2560 acres have been reclaimed to a variety of uses since the program was initiated in 1972.

In Oregon the eligibility for a parcel of land to be mined rests with land-use authority, most commonly a county. The land-use authority establishes the secondary beneficial use to which the land must be reclaimed. The DOGAMI-MLRP permit has two main functions. One, it insures that when mining occurs, off-site impacts are minimized and two, the site is mined in a way that guarantees the reclamation will be completed.

To receive a permit, a company or individual submits an application that contains a mine plan, a reclamation plan, appropriate baseline information characterizing the existing environment, and an application fee. Once an application is received it is reviewed for completeness. If it is complete, it is reviewed for adequacy to determine where the application is deficient. The deficiencies are addressed as draft permit conditions and the draft permit along with pertinent application materials is circulated to appropriate natural resource agencies for comment. Comments received from agencies are addressed and a final reclamation bond amount is calculated based on the actual cost of reclamation. Upon receipt of the bond by the department, the permit is issued.

The program has an effective field and recent aerial photo inspection program that is critical to maintaining compliance and maintaining a positive working relationship with the regulated community. In addition, the MLRP has two important non-regulatory tools: the Best Management Practices Manual and the Annual Awards Program.

The industry provides the raw material for road building and maintenance as well as construction materials. The MLRP is a field-oriented regulatory program that works with the industry and the public to minimize the impacts of mining and optimize the opportunities for reclamation.

The number one issue for the program is floodplain mining and its relationship to off-site resources including the potential for habitat restoration.