

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where there are unchallenged findings that an aggregate mine presents no actual risk of contamination to groundwater wells, a county is not obligated to adopt findings addressing the possibility that potential users of groundwater wells may *perceive* a risk of contamination. The mere perception of a risk is too tenuous and indirect to constitute a “negative impact” that must be analyzed under OAR 660-016-0005 and 660-016-0010. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Under a local code provision that requires evaluation of the traffic impacts caused by “development of the property” being rezoned, in rezoning land to allow for a new aggregate mine the local government is not required to evaluate the cumulative traffic impacts of the new mine along with other mines the applicant operates. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A governing body’s interpretation of a code provision defining the study area for an aggregate mine, to exclude haul roads used to transport finished aggregate material off-site, is consistent with the text of the code provision and is not reversible under ORS 197.829(1). *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Remand is necessary where the local government’s approval of an asphalt batch plant fails to address issues raised regarding the impact of emissions on especially sensitive crops grown nearby. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

**31.3.4 Permits - Particular Uses - Mineral and Aggregate.** Where a county denies an application for a mineral and aggregate zoning overlay because the applicant failed to supply a certificate that the mine would not result in an increase in flood elevations, the county’s decision must identify the legal requirement that the certificate be submitted at the time the zoning overlay is approved. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

**31.3.4 Permits - Particular Uses - Mineral and Aggregate.** A local government reasonably viewed an engineer as a qualified expert, where the person had a degree in agricultural engineering and several engineering certifications, participated actively in the local proceedings regarding a mineral and aggregate overlay and presented models to predict performance of mining plans, and challenged assumptions of the applicant’s experts. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

**31.3.4 Permits - Particular Uses - Mineral and Aggregate.** The testimony of experts in assessing the risk of turbid water discharges from proposed aggregate mining in a river’s floodplain and the risk of avulsion is likely to be critical. Experts must collect and analyze the data and draw scientific conclusions to assess that risk and ultimately the issue will likely be which experts the decision maker finds more believable. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

**31.3.4 Permits - Particular Uses - Mineral and Aggregate.** Where there is conflicting expert testimony regarding the location of a river channel migration zone and the probability that the river channel might migrate to capture a proposed floodplain mining site causing river turbidity, the county's decision to believe the larger channel migration zone should apply is supported by substantial evidence. *Westside Rock v. Clackamas County*, 51 Or LUBA 264 (2006).

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

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A finding that a proposed mine will have adverse effects on the livability, value and enjoyment of residential uses within the impact area might play some role in the required considerations under OAR 660-023-0180, but that finding is not, in and of itself, either a proper consideration under OAR 660-023-0180 or a sufficient basis for denying the requested permit. *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A county's obligation under OAR 660-023-0180(4)(c) to consider reasonable measures to minimize conflicts associated with mining and its obligation under OAR 660-023-0180(4)(d) to consider economic, social, environmental and energy consequences of allowing, limiting or not allowing mining are "findings" obligations, and they do not place an obligation on the county to produce evidence regarding an application for mining. *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where a local government has repealed its Goal 5 inventory of aggregate sites, the owner of EFU-zoned property listed on the repealed inventory is not entitled to a conditional use permit to mine the site under ORS 215.298(2). *Copeland Sand & Gravel, Inc. v. Jackson County*, 46 Or LUBA 653 (2004).

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

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Notwithstanding that OAR 660-023-0180(3)(a) requires that aggregate samples meet ODOT specifications for sodium sulfate soundness, where it is undisputed that ODOT in fact has not promulgated any

such specifications, the failure of the applicant to test aggregate samples for sodium sulfate soundness does not provide a basis for reversal or remand. *Bryant v. Umatilla County*, 45 Or LUBA 653 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** OAR 660-023-00180(4) establishes different requirements for evaluating conflicts between mining and agricultural practices and between mining and other uses. Therefore a finding that proposed mining activities conflicts with nonagricultural uses will not be significant because air quality and traffic standards will be met does not necessarily establish that those conflicts will not either force a significant change in accepted agricultural practices or significantly increase the cost of those agricultural practices. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** The standard for reviewing conflicts between mining and accepted agricultural practices set out in OAR 660-023-0180(4)(c) is limited to “farm uses,” as that term is defined in ORS 215.203(2). Uses identified as non-farm uses permitted under ORS 215.213(1) are not farm uses or agricultural practices that must be evaluated under that standard. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where an applicant identifies groundwater as a “discharge” to be considered as a conflict pursuant to OAR 660-023-0180(4)(b)(A), that applicant may not argue on appeal to LUBA that (1) groundwater is not a “discharge” within the meaning of that rule; or (2) that the impact of mining on groundwater may only be considered under OAR 660-023-0180(4)(b)(D) if the mining site is located within a critical groundwater area and is designated as such on the county’s Goal 5 inventory of significant Goal 5 sites. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** OAR 660-023-0180(4) does not change an applicant’s evidentiary burden to demonstrate that measures proposed to minimize of the impacts of mining are reasonable, practical and achievable. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A county’s finding that proposed mining activities are not minimized sufficiently to avoid conflicts with identified riparian resources is not adequate, where the riparian area is located near water courses that will receive water diverted from mining cells and the county adopted other findings that mining will not affect identified wetlands that are located between the riparian area and presumably would be more susceptible to fluctuations in water levels than the riparian areas. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** The conflicts analysis that is mandated by OAR 660-023-0180(4)(b)(B) is limited to local roads that are used for access and egress. Where a proposed aggregate mine will use a state highway for access

and egress, there are no road conflicts to be considered under the rule. *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Goal 6 does not require that a local government anticipate and precisely duplicate state and federal environmental permitting requirements in approving a post-acknowledgment plan amendment for an aggregate mine. The local government is only required to establish that there is a reasonable expectation that the proposed mine will be able to comply with the applicable state and federal environmental quality standards. *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786 (2003).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A conditional use permit standard for aggregate extraction requiring that the applicant submit “sufficient information to allow the county to set standards” regarding the location, quality and quantity of resource available allows but does not obligate the county to set such standards in approving the permit. A local government’s interpretation to that effect is consistent with the express language of the standard and is not reversible under ORS 197.829(1) or *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992). *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** ORS 215.286 does not require a guarantee that aggregate mining on land zoned for exclusive farm use will cause no adverse impacts on the water table on surrounding lands. *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where a county approves aggregate mining in an airport overlay zone under a standard that allows water impoundments that do not significantly increase bird strike hazards, but the county does not address another local standard that appears to flatly prohibit such impoundments, LUBA will remand the decision to the county to resolve the apparent conflict between the two standards. *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Remand is appropriate where the local government approves an aggregate mine that appears to impact an inventoried Goal 5 groundwater resource without addressing issues raised below regarding whether the proposed mine complies with local provisions that were adopted to protect Goal 5 resources. *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A local government is not obligated to accept evidence that ODOT approved access onto a state highway as sufficient to satisfy a county criterion that the proposed quarry operation not impose an undue burden on public improvements, which include public roads. *Wild Rose Ranch Enterprises v. Benton County*, 37 Or LUBA 368 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** OAR 660-023-0180, which governs comprehensive plan amendments for mineral and aggregate resources, establishes the procedures required to comply with Goal 5 but does not obviate the

requirement to address other statewide planning goals. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** If a county has not yet amended its comprehensive plan and land use regulations to comply with OAR 660-023-0180, OAR 660-023-0180(7) requires that the county directly apply the substantive requirements and procedures of OAR 660-023-0180 to consideration of a post-acknowledgment plan amendment concerning mining authorization. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** OAR 660-023-0180(4)(b)(F), which allows the county to consider land use conflicts with a proposed mine if such conflicts must be considered under a county mining ordinance adopted pursuant to ORS 517.780, does not permit a county to apply its comprehensive plan and land use regulations as decisional criteria for the proposed mine, notwithstanding a general provision in the mining ordinance that requires compliance with the county comprehensive plan and land use regulations. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A conflict or inconsistency with a comprehensive plan or land use regulation provision is not the kind of conflict that may be considered under OAR 660-023-0180(4)(b). The conflicts that may be considered under the rule include conflicts between land uses. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where access to a mining site is via a “local road,” OAR 660-023-0180(4)(b)(B) allows a county to consider conflicts with that local road. However, where access to a mining site is via an arterial highway there are no local roads used for access and egress to the mining site and OAR 660-023-0180(4)(b)(B) does not permit the county to consider conflicts with other roads. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A local government may not expand the 1,500-foot impact area required by OAR 660-023-0180(4)(a) based on potential conflicts that exceed the scope of conflicts that may be considered under OAR 660-023-0180(4)(b). *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** OAR 660-023-0180(4)(d) directs that a county proceed to “determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site,” only where conflicts with a mining site are properly identified under OAR 660-023-0180(4)(b) and there are not “reasonable and practical measures” that would minimize those conflicts. *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** That a type of nonfarm use is listed in ORS 215.283(2) authorizes a county to allow such uses in an EFU zone, but carries no implication that a particular use is consistent with the purpose of the EFU zone

as a matter of law. ORS 215.283(2) does not prohibit the county from applying a local criterion that requires a proposal to mine high-value agricultural topsoil in an EFU zone not seriously interfere with the purpose of that zone. *MacHugh v. Benton County*, 37 Or LUBA 65 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Even assuming that a county cannot categorically prohibit all mining operations in the EFU zone, the county can apply a local standard requiring that conditional uses not seriously interfere with the purpose of the zone to deny a proposal to mine high-value agricultural topsoil, where the county's application of its standard is limited to mining operations that permanently remove agricultural topsoil. *MacHugh v. Benton County*, 37 Or LUBA 65 (1999).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where a comprehensive plan does not provide for a proposed expansion of a mining site, a conditional use permit is insufficient to permit the expansion. In that circumstance, OAR 660-023-0180 requires a post-acknowledgment plan amendment and Goal 5 analysis. *Trademark Construction, Inc. v. Marion County*, 34 Or LUBA 202 (1998).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Evidence of stockpiled rock in an otherwise unused and unmaintained quarry does not constitute an ongoing quarry operation, but supports a conclusion that the site has been discontinued or interrupted for the purposes of ORS 215.130. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Because abandonment is established through an active intent to discontinue the use, petitioner's lease of a quarry site to an unrelated business is evidence of intent to abandon the site as a quarry. *Tigard Sand and Gravel v. Clackamas County*, 33 Or LUBA 124 (1997).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** A decision to list a site on a plan aggregate resources inventory as a "1B" site simply indicates the possible existence of an aggregate resource site. Such a decision, of itself, neither plans for nor regulates the *development* of aggregate resources and, therefore, OAR 660-16-030(1) does not apply. *O'Rourke v. Union County*, 29 Or LUBA 303 (1995).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where a county decision adds a mineral and aggregate overlay zone to the site of a pre-existing conditional use asphalt batch plant within two miles of a planted vineyard, but does not expand or alter either the operation of or area subject to the conditional use permit, and the batch plant could continue to operate regardless of the challenged decision, the continuation of the batch plant is not prohibited by ORS 215.301. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** That an existing conditional use asphalt batch plant could be a permitted use under a county's mineral and aggregate overlay zone does not require that the county incorporate the conditional use into a decision approving application of the overlay zone to an area including the existing

conditional use or that the county re-approve the conditional use as part of the decision applying the overlay zone. *Mission Bottom Assoc. v. Marion County*, 29 Or LUBA 281 (1995).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where a comprehensive plan map amendment to allow a proposed concrete batch plant will result in all aggregate and concrete trucks entering the subject property via a road that provides the sole access to certain existing dwellings, Goal 12 requires the local government to demonstrate the amendment will result in use of the road being safe and adequate. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

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

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** That a DOGAMI permit was not obtained does not establish that at the time a quarrying operation became nonconforming, it was removing up to 5,000 cubic yards of rock per year (the level of activity at which a DOGAMI permit is required). *Mazeski v. City of Mosier*, 27 Or LUBA 100 (1994).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where a county failed to interpret ORS 215.213(2)(d)(C) as allowing an aggregate processing facility that conducts part of the processing on-site but completes the process of making aggregate into asphalt or portland cement off-site, and the party wishing to assign the county's interpretive failure as error did not appeal the county's decision to LUBA or file a cross-petition for review, LUBA will not consider the interpretive question. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** ORS 215.213(2)(d)(D) authorizes the processing of mineral resources *other than aggregate*. Therefore, that statute does not authorize an aggregate processing facility, notwithstanding that the final processing of aggregate into asphalt or portland cement occurs off-site. *McKay Creek Valley Assoc. v. Washington County*, 25 Or LUBA 238 (1993).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Under ORS 517.780(1), where a county surface mining ordinance in effect on July 1, 1972 has been amended, but not repealed, the county's surface mining ordinance and amendments thereto are not subject to the fee limitations established by ORS 517.780(4) and 517.800. *Oregon City Leasing, Inc. v. Columbia County*, 25 Or LUBA 129 (1993).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** All provisions of the act that created ORS 215.301 must be related to uses allowed in EFU zones. Therefore, ORS

215.301 applies only to asphalt plants sited in EFU zones, not to an application to site an asphalt plant in an industrial zone. *O'Mara v. Douglas County*, 25 Or LUBA 25 (1993).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where determining whether an existing quarry qualifies as a nonconforming use under applicable city code provisions requires a city to determine whether the existing quarry lawfully existed at the time the existing zoning was last amended and whether the use has been discontinued for a year, the nonconforming use determination involves the exercise of significant legal and factual judgment and is a "permit" as that term is used in ORS 227.160(2). *Hood River Sand v. City of Mosier*, 24 Or LUBA 381 (1993).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** The requirement of ORS 215.298(2) that permits for mining of aggregate on EFU-zoned land only be issued for sites included on an inventory in an acknowledged comprehensive plan became effective October 3, 1989 and does not apply to a pending application submitted prior to that date. *Clark v. Jackson County*, 19 Or LUBA 220 (1990).

**31.3.4 Permits – Particular Uses – Mineral and Aggregate.** Where 40 acres which produce only sparse forage of little value for grazing are generally unsuitable for grazing by themselves, but have historically been used for grazing in conjunction with the adjoining 400 acres, the adjoining 40 acres are not "generally unsuitable for farm use" within the meaning of ORS 215.213(3), 215.283(3) and county legislation implementing those statutes. *Clark v. Jackson County*, 19 Or LUBA 220 (1990).