

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. 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).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where a local government determines that there are no conflicting uses allowed under the applicable zoning districts, the local government need not undertake an ESEE analysis, but must simply adopt appropriate policies and ordinance provisions, such as zoning, to ensure preservation of the resource site. *Cox v. Polk County*, 49 Or LUBA 78 (2005).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. The final steps in the analysis required under OAR 660-023-0180 to review requests for mining are limited and structured: (1) the county must determine whether there are any conflicts with the proposed mining, (2) if there are conflicts the county must consider whether there are measures that would minimize those conflicts, (3) if conflicts cannot be minimized, the county must determine the economic, social, environmental and energy consequences of allowing, limiting or not allowing mining. *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. 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).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. OAR 660-016-0005 does not limit the size of the impact area or the types of conflicting uses that may be considered. Under the rule, a local government may consider visual impacts of proposed mining on residential use in the area as a “conflicting use,” even if such conflicts do not rise to the level of nuisance or trespass claims. *Hegele v. Crook County*, 44 Or LUBA 357 (2003).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where a staff report and evidentiary hearings focus on an area within 500 feet of the subject property as the relevant “impact area” for purposes of conducting the conflicts identification and ESEE analysis required by OAR 660-016-0005 and 660-016-0010, the county may not deny an application under Goal 5 based on conflicts in a 15-square mile area that is identified for the first time in its final decision, without offering

the applicant an opportunity to submit evidence and argument responsive to the larger impact area. *Hegele v. Crook County*, 44 Or LUBA 357 (2003).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. In determining whether conflicting uses can be minimized pursuant to OAR 660-023-0180(4), a local government may draw reasonable inferences from expert testimony to determine that a numerical standard for minimization, such as for turbidity, cannot be satisfied. *Molalla River Reserve, Inc. v. Clackamas County*, 42 Or LUBA 251.

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Under OAR 660-023-0180(4)(b) and OAR 660-023-0180(4)(c) a local government may either determine that there are no potential conflicts associated with a proposed aggregate mining proposal or that, although there are potential conflicts associated with the proposed aggregate mining, the conflicts can be minimized. The options available under these two rules are separate and distinct, and a decision that does not make it clear which option is being selected must be remanded. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Until the county has adopted findings that determine precisely what inventoried Goal 5 resource areas are located on the subject property, it is not possible to identify which county Goal 5 resource protection programs affect all or parts of the subject property, and the county is in no position to adopt findings explaining whether a committed-exception zone-change is consistent with the county's existing Goal 5 resource protection provisions. *Pekarek v. Wallowa County*, 36 Or LUBA 494 (1999).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where a conflicting use is proposed on property within the boundaries of a Goal 5 resource site, it is not sufficient for the county to consider only the location and quality of the resource on the subject property. It must also consider the location and quality of the resource in the area that is potentially subject to impacts from conflicting residential uses on the subject property. *Doty v. Jackson County*, 34 Or LUBA 287 (1998).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where a local government fails to identify the location and quality of winter range habitat potentially affected by proposed residences in the area, it is impossible to meaningfully evaluate the impact of conflicting residential uses on winter range habitat. *Doty v. Jackson County*, 34 Or LUBA 287 (1998).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. A local government is required to consider all potential uses and their conflicts with a proposed Goal 5 use where the number of potential uses is limited. However, if it is evident that a use was effectively considered as part of a larger category of uses, the failure to specify the individual use by name or to relate it to a specific local code section is not an error. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. The level of precision required in the conflicting use analysis required by the Goal 5 rule is difficult to determine. The process is fluid and subject to refinement based on new information. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. In performing an ESEE consequences analysis, the local government is not required to quantify every conceivable conflict between the resource use and every conflicting use. The requirement is more general and is guided by *Columbia Steel Castings Co. v. City of Portland*, 314 Or 424, 840 P2d 71 (1992), which requires that the local government must be aware of the general nature and scope of the identified conflicts and their interplay. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Under ORS 215.296(1), a local government must identify farm and forest uses on land surrounding the subject parcel and examine the practices necessary to continue those uses. The absence of findings sufficient to demonstrate compliance with ORS 215.296(1) undermines the conclusion that there will be no conflicts with surrounding farm or forest uses under Goal 5. *Sanders v. Yamhill County*, 34 Or LUBA 69 (1998).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where a county comprehensive plan's Goal 5 ESEE analyses adequately describe the resource site and the conflicting uses, and their interaction, analysis of smaller parcels within the site is not required. *Buhler Ranch v. Wallowa County*, 33 Or LUBA 594 (1997).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. A county's Goal 5 ESEE analysis is sufficient if it addresses the uses identified by the county as conflicting. *Palmer v. Lane County*, 29 Or LUBA 436 (1995).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. A local government decision changing the comprehensive plan and zone designations of land with identified Goal 5 resources, must identify conflicting uses potentially allowable under the proposed new designations. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. A local government may not simply assume a new residential plan designation will have less impacts on identified Goal 5 resources on the subject property than are allowable under the existing industrial plan designation, without considering limitations on industrial activity on the subject property that are imposed by an overlay district. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).