

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A county fails to correctly apply the farm impacts test at ORS 215.296(1) where it concludes that there are only a few farm or forest uses in the area but does not identify and discuss each farm or forest use, where it does not describe the operations on each of the surrounding properties devoted to farm or forest use, where it does not identify evidence of the unmitigated impacts of the proposed nonfarm use, and where it concludes that such impacts will be reduced but does not identify evidence that significant impacts are avoided. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a local code provision provides that issuance of a conditional use permit requires a determination that “[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone,” an interpretation by the local government that it need not consider the impact of the proposed use on property values and neighbor peace of mind is not inconsistent with the provision’s express language or underlying policies. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a local code provision provides that issuance of a conditional use permit (CUP) requires a determination that “[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone,” a local government decision granting a CUP is not supported by substantial evidence where it does not identify and describe all of the existing and permitted uses on adjacent properties and where it fails to analyze or measure the extent of the potential impacts of the proposed use and instead proceeds straight to mitigation measures. *Currie v. Douglas County*, 79 Or LUBA 585 (2019).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. How to (1) plan and zone an inventoried significant mineral and aggregate resource site, and (2) plan and zone any adjoining areas that may be needed for processing or buffers or to otherwise mitigate identified conflicts are separate questions from what property is properly included on a comprehensive plan Statewide Planning Goal 5 inventory of significant aggregate sites. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. The OAR 660-023-0180(1)(b) requirement to minimize conflicts does not require an absolute guarantee that a proposed mining operation will never violate Oregon Department of Environmental Quality (DEQ) standards. A local government does not err by finding that DEQ noise standards will be met, based on the applicant’s sound study, and by imposing a condition of approval that mining be monitored for noise in the future and any changes in mining be made in the future to fully comply with DEQ noise standards, without requiring that mining cease until the mine fully complies with DEQ noise standards. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. OAR 340-225-0040 and OAR 340-225-0050 modeling requirements to determine whether a proposed mining operation will comply with ambient air quality and new source air particulate standards are not mere procedural requirements an applicant is free to ignore. The applicant and local government must either perform the required modeling or demonstrate that the modeling is unnecessary to demonstrate the

proposed mining will comply with the air particulate standards. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a county development ordinance requires that all permits and approval for an allowed primary use must be obtained before any accessory use may be established, the county errs by approving a proposal to process aggregate material as an accessory use where the primary use, aggregate mining, is not proposed or approved. *Rogue Advocates v. Jackson County*, 74 Or LUBA 214 (2016).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a county identifies three related reasons why introduction of inconsistent uses in an area is justified, but the petitioner challenges the findings and evidentiary support for only one reason, the failure to challenge the remaining two reasons is not a basis to reject petitioner’s challenge, where the three reasons are not stated as independent alternatives, and the challenged reason appears to underpins the other two reasons. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. OAR 660-023-0180(7) requires that a local government conduct an ESEE analysis to determine whether to allow, limit or prevent new conflicting uses within the impact area of a Goal 5 resource. Where a petitioner raised general issues of compliance with OAR 660-023-0180(7) during the proceedings below, but in its findings the county declined to conduct an ESEE analysis to determine whether to allow, limit or prevent new conflicting uses, on appeal to LUBA the petitioner may challenge the county’s finding that it need not conduct an ESEE analysis. The petitioner is not required to anticipate that the county will adopt findings concluding that no ESEE analysis is required. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Nothing in OAR 660-023-0180(7), which requires that a local government conduct an ESEE analysis to determine whether to allow, limit or prevent new conflicting uses within the impact area of a Goal 5 mining resource, allows a county to postpone the ESEE analysis to a future land use proceeding after it has approved the comprehensive plan and zoning changes to allow the mining use that triggers application of OAR 660-023-0180(7). *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Absent a land use regulation or other applicable law that requires a county to address compliance with state or federal archeological and cultural preservation laws in approving an application for a mining use, or to impose conditions requiring compliance with such laws if archeological or cultural sites are discovered during mining, the county does not err in failing to adopt such findings or impose such a condition. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A finding that mining will not conflict with deer and elk winter range on the subject property, because resident deer and elk will adjust to noise from mining and truck traffic on the property, is insufficient to address issues raised regarding impacts of truck traffic on deer and elk migration routes off the property, including the increased potential for collisions between trucks and deer and elk migrating across the county road. *Rogue Advocates v. Josephine County*, 72 Or LUBA 275 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A city is not required to defer to a permit applicant’s characterization of its proposal to remove up to 500,000 cubic yards of rock from a five-acre site as mere site preparation that is necessary for a possible future proposal for residential development. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A development ordinance that links the terms “mining” and “quarrying” suggests the term “mining” should not be limited to removal of minerals that exclude rock, where dictionary definitions of “quarrying” frequently define that term to include rock removal. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a development code states that “minerals” include three general categories: solids, liquids, and gases, but these general categories are followed by specific examples: “coal and ores,” “crude petroleum” and “natural gases,” the rule of statutory construction *ejusdem generis* lends some support for interpreting the word “minerals” to be a narrow category of precious and/or valuable substances, as opposed to mere rock or aggregate. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a development code definition of the term “excavation” separately lists removal of “minerals” and “rock” as possible examples of “excavation,” that suggests “minerals” and “rock” are different things and that “minerals” do not include “rock.” *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a development code definition of “surface mining” duplicates a statute that defines “surface mining” to include mining of “minerals,” without expressly incorporating the broad statutory definition of “minerals” or the statutory exceptions to that broad definition of “minerals” the development code definition of “surface mining” lends some support to the position that the enactors of the development code intended the word “minerals” to have a more narrow meaning than the statutory definition of that term. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. One possible inference when a development code definition of “surface mining” duplicates a statute that defines “surface mining” to include mining of “minerals,” is that the enactors of the development code intended the word “minerals” to have its statutory meaning, even if the enactors did not expressly incorporate the broad statutory definition of “minerals” or the statutory exceptions to that broad definition of “minerals” into the development code. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. There is nothing inherently inappropriate about a local government distinguishing between acceptable excavations that are necessary for development and excavations that are of a nature and extent that constitutes mining. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. While dictionaries are not always a reliable way to determine the intended meaning of an undefined term like “minerals,” where the

development codes expressly directs that undefined terms “have the normal dictionary meaning” it is appropriate to rely on dictionary definitions to interpret the word “minerals” to include basalt rock. *S. St. Helens LLC v. City of St. Helens*, 71 Or LUBA 30 (2015).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where applicable land use regulations require that a proposal to modify a previously approved conditional use must be “consistent” with previously approved conditional use, and the proposal would eliminate the previously approved composting operation and make minor changes to the previously approved topsoil mining operation, the modified conditional use is correctly viewed as “consistent” with the previously approved conditional use. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Remand is necessary where a conditional use permit approval standard requires a comparison of the adverse impacts of the proposed mining use on abutting properties with the impacts of development permitted outright on the abutting properties, but the local government findings compare only the impacts of proposed and existing mining and do not consider the impacts of uses permitted outright. *Dion v. Baker County*, 70 Or LUBA 438 (2014).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Remand is necessary where the decision (1) approves a two-year intensification of a mining operation and (2) modifies extraction limits to extend the life of the mining operation beyond the initial two-year period, but the only evidence regarding compliance with an approval standard requiring that the existing county road system be “adequate to accommodate the proposed use” addresses only the initial two-year period, not long-term impacts on the adequacy of the county road system. *Dion v. Baker County*, 70 Or LUBA 438 (2014).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A local government does not exceed its jurisdiction in attempting to determine whether the Department of State Lands or Department of Geology and Mineral Industries has jurisdiction to issue a state permit required for a riparian mining operation, so that the local government can find compliance with local standards and impose conditions requiring the applicant to obtain a permit from the appropriate agency. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Absent countervailing evidence, a letter from an applicant’s engineer relating the site visit and verbal agreement of representatives from the Department of State Lands (DSL) and Department of Geology and Mineral Industries (DOGAMI) that DOGAMI and not DSL has jurisdiction over a proposed riparian mining operation is substantial evidence a decision maker could rely upon to conclude that DOGAMI has jurisdiction over the operation. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where there is uncertainty regarding the exact location of the jurisdictional line between the Department of State Lands (DSL) and Department of Geology and Mineral Industries (DOGAMI), but agency representatives agree that a proposed mining area is upland of the jurisdictional line and therefore subject to DOGAMI’s jurisdiction, and as a precaution the county imposes a condition requiring that the applicant obtain

any permits required by either DSL or DOGAMI, any uncertainty regarding the location of the jurisdictional line does not undermine the county's finding that DOGAMI has jurisdiction. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. The lack of evidence in the record regarding depth or location of contaminated groundwater on a mining site and the possibility that groundwater might enter the adjacent river is not a basis to reverse or remand under a code provision requiring consideration of impacts on conflicting uses within 250 feet of the property, where the only conflicting use identified is a city water intake located 3,500 feet upstream of the mining site beyond the head of tide, and the petitioner cites no evidence or argument suggesting how contaminated groundwater from the site could migrate upstream above the head of tide to impact the municipal water intake. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where an applicant for a mining operation submits sufficient information to allow the local government to determine that a local water quality standard is satisfied, but the local government for extra assurance also requires the applicant to obtain a state agency water quality permit, the applicant is not required to submit its state agency application materials to the local government for review under the local approval standard. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a local government's Goal 5 Program to Achieve the Goal for a particular mineral and aggregate site requires "ongoing incremental reclamation (subject to [Department of Geology and Mineral Industries] review and approval)" the local government likely could interpret that requirement to allow it to write a condition requiring "ongoing incremental reclamation" but expressly providing that DOGAMI is free to determine whether "ongoing incremental reclamation" is possible or desirable and that DOGAMI may modify or waive that requirement altogether in its permitting process as DOGAMI sees fit. However, the county cannot simply abandon the requirement for "ongoing incremental reclamation" by claiming it lacks expertise in reclamation and does not understand the meaning of that requirement. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a zoning ordinance expressly prohibits a county from issuing a use permit as a precondition of commencing mining until the applicant secures a state agency approval for a reclamation plan, the local government's failure to include such a requirement in the conditions attached to its conditional use and site plan approval decision is harmless error. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Conditions of approval are not too vague under the Court of Appeals' reasoning in *Sisters Forest Planning Committee v. Deschutes Cty.*, 198 Or App 311, 108 P3d 1175 (2005), where the conditions of approval are not any more vague than many of the standards they were imposed to address. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where a zoning ordinance requires a mining permit applicant to demonstrate that a proposed mining operation can meet certain state

standards and a state standard prohibits mining “without taking reasonable precautions to prevent particulate matter from becoming airborne,” and a local government interprets that state standard to require that the applicant successfully prevent all particulate matter from becoming airborne, the local government erroneously interprets the state standard. The state standard only requires that the applicant take reasonable precautions; it does not require the elimination of all airborne particulate matter. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A condition requiring that the applicant for mining restrict rock blasting for up to three days after being notified of Native American cultural or religious visits to a nearby site is sufficient to ensure that noise from blasting will not conflict with such visits. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A county’s failure to first determine the degree of adverse effects of blasting-generated dust on a nearby residence before conducting its ESEE analysis, as required by OAR 660-023-0180(5)(d)(A), is not reversible error, where the county’s ESEE analysis finds that a condition of approval restricting blasting times to periods when the wind blows away from the residence will minimize or eliminate adverse impacts on the residence. That finding, if supported by the record, means that the county did not need to conduct an ESEE analysis at all with respect to impacts of dust on the residence. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A proposed aggregate resource site is significant if it meets any one of the criteria at subsections (a) through (c) of OAR 660-023-0180(3). *Delta Property Company v. Lane County*, 58 Or LUBA 409 (2009).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Even if an aggregate resource site is found to be “significant” under OAR 660-023-0180(3)(a) or (b), OAR 660-023-0180(3)(d) dictates that such aggregate resource sites are not “significant,” within the meaning of OAR 660-023-0180(3), if (1) more than 35 percent of the site’s soils are rated Class I by the Natural Resource and Conservation Service or (2) more than 35 percent of the site’s soils are rated Class II or a combination of Class I and II by the Natural Resource and Conservation Service and the average thickness of the aggregate layer does not exceed specified minimums in the rule. *Delta Property Company v. Lane County*, 58 Or LUBA 409 (2009).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. If a mineral and aggregate site is found to be significant under OAR 660-023-0180(3), then local governments must determine whether mining will be allowed. That in turn requires a number of additional determinations regarding: (1) an impact area, (2) conflicts, and (3) whether conflicts can be minimized. OAR 660-023-0180(5)(a) through (c). If all identified conflicts can be minimized, mining must be allowed. OAR 660-023-0180(5)(c). If all identified conflicts cannot be minimized, the local government must then determine the economic, social, environmental, and energy consequences of allowing mining notwithstanding that the conflicts cannot be minimized. OAR 660-023-0180(5)(d). *Delta Property Company v. Lane County*, 58 Or LUBA 409 (2009).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where OAR 660-023-0180(3)(d)(B) applies, and the requisite average thickness of the aggregate layer is not shown to

be present, an aggregate resource site is not “significant,” within the meaning of OAR 660-023-0180(3). *Delta Property Company v. Lane County*, 58 Or LUBA 409 (2009).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. A finding that a proposed aggregate site may have a large basalt outcrop in the middle of the site is not supported by substantial evidence, where the only evidence supporting the finding is data from an off-site well and that finding is inconsistent with a deep boring that is near the center of the site and between the center of the site and the off-site well that the finding relied on. *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. To qualify as a “significant” aggregate resource site under OAR 660-023-0180(3)(d)(B)(ii), “the average thickness of the aggregate layer within the mining area” must exceed 25 feet. Where a county’s findings suggest the county may have erroneously concluded that boulders should not be considered in determining whether the requisite 25-foot-thick layer is present on a proposed aggregate resource site, remand is necessary so that the county can either (1) adopt findings under OAR 660-0023-0180(3) that do not discount aggregate significance based on the possible presence of boulders or (2) explain why the presence of boulders properly affects the determination of significance under OAR 660-0023-0180(3). *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

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

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Two 25-foot-deep test pits that show an overburden of several feet on top of 20+ feet of aggregate material do not establish that there is an aggregate layer of more than 25 feet and they do not establish that the aggregate layer that is present on the site is less than 25 feet deep. The 25-foot-deep pit can only confirm the geology of the 25 feet below the surface where the test pit was dug. *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where LUBA determines that three county findings regarding the significance of an aggregate site are not supported by substantial evidence, are inadequately explained, or fail to appreciate the significance of certain evidence in the record, remand is required where LUBA cannot assume the findings were minor or unimportant parts of the county’s ultimate decision that the applicant failed to demonstrate that the aggregate site qualifies as “significant,” under OAR 660-023-0180(3). *Westside Rock v. Clackamas County*, 56 Or LUBA 601 (2008).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Specific code provisions that require imposition of a surface mining overlay zone on property within one-half mile of the mining site,

which are intended to protect the site from adverse uses, control over general code provisions requiring that owners of property being rezoned sign the application. The purpose of the overlay zone would be frustrated if nearby property owners could effectively veto a mining operation by refusing to sign the application. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. While an astronomer’s testimony regarding the impact of dust on an observatory’s telescopes is substantial evidence from which a reasonable decision maker could conclude that dust from an open-pit mining operation would significantly conflict with the observatory, the county could nonetheless rely on the distance between the site and the observatory and proposed measures to control dust to conclude that the mine would not significantly conflict with the observatory. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Reliance on Goal 5 zoning to protect habitat is an insufficient basis to conclude that there will be no “significant potential conflicts” with the habitat, where the findings fail to address evidence and testimony that mining will disrupt grouse flight patterns over the mining site to the Goal 5 protected habitat sites. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Findings excluding a cattle ranch four miles from the mining site from the impact area are inadequate, where the findings fail to address testimony that the ranch owns allotment land within one-half mile of the site and mining noise and impacts will displace cattle from the allotment to deeded land, increasing costs. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Under OAR 660-023-0180(5)(b), conflicts with residential uses “due to noise, dust, or other discharges” must be considered, even if those conflicts turn on “quality of life” or similar intangible values. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. The Goal 5 rule does not require a mining applicant to survey a buffer area to determine if there are unknown archeological sites within the buffer, when those sites are not inventoried Goal 5 resources. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Where testimony indicates that tribal members conduct religious and cultural ceremonies near ancient pictograms identified on the county’s Goal 5 inventory, the county must evaluate whether such visits are “existing” uses for purposes of OAR 660-023-0180(5)(b)(A) and if so evaluate alleged conflicts between proposed surface mining and those uses. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. For purposes of identifying conflicts with agricultural uses within the impact area under the second step of the Goal 5 process at OAR 660-023-0180(5)(b)(E), the rule is not concerned with the relative economic significance of the agricultural use, and the county errs in declining to evaluate impacts on grazing in the area simply

because that grazing is limited in scope or economic importance. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Findings that address impacts of a mine’s groundwater well on the regional aquifer are inadequate to address testimony that the mining pit itself will de-water perched aquifers in the area. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

31.3.4 Permits – Particular Uses – Mineral and Aggregate. Remand is necessary where the county’s ESEE findings evaluate impacts of dust from daily mining activities on nearby residences, but fail to evaluate dust generated by blasting or determine whether such impacts may be minimized or reduced. *Walker v. Deschutes County*, 55 Or LUBA 93 (2007).

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).