

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals two interrelated city ordinances
4 that amend the city comprehensive plan and zoning map
5 designations for property within the Columbia Corridor.

6 **FACTS**

7 In 1988, the city initiated the
8 "Industrial/Environmental Mapping Project," concerning
9 proposed legislative comprehensive plan and zoning map
10 amendments for property in the Columbia Corridor. After
11 informational meetings and public hearings, a planning
12 commission recommendation was forwarded to the city council
13 in the form of a five volume study entitled "Industrial/
14 Environmental Mapping Project (January 1989)." On May 4,
15 1989, after additional public hearings, the city council
16 adopted the challenged ordinances, together with four of the
17 Industrial/ Environmental Mapping Project volumes.¹

18 This appeal is before us on remand from the Oregon
19 Supreme Court.² Columbia Steel Castings Co. v. City of

¹The four volumes are entitled "1-Industrial Mapping and Annexation Rezoning for the Columbia Corridor;" "2-Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat Areas for the Columbia Corridor;" "3-Mapping for the Columbia Corridor;" and "4-Appendix to Inventory of Wetlands, Water Bodies, and Wildlife Habitat Areas for the Columbia Corridor." The city council adopted amendments to Volumes 1-3 before adopting those volumes. In this opinion, citations to the Mapping Project volumes adopted by the city council shall be in the form Vol. __, p. ____.

²Our initial decision affirmed the challenged city decision. Columbia Steel Castings Co. v. City of Portland, 19 Or LUBA 338 (1990). Petitioner appealed that decision to the court of appeals, which issued an opinion

1 Portland, 314 Or 422, ___ P2d ___ (1992) (Columbia Steel).

2 The court described the matters in dispute as follows:

3 "The area around which the present dispute centers
4 is a part of the Columbia Corridor, a 14,000-acre
5 area located primarily within Portland and running
6 east along the southern shore of the Columbia
7 River from the Willamette River to N.E. 185th
8 Avenue. The area includes natural resource areas,
9 existing industrial operations, and land that is
10 zoned for industrial use. In its present rezoning
11 action, City divided the Corridor into five
12 sub-areas.^[3] Pursuant to OAR 660-16-000, City
13 also identified and inventoried 36 'resource
14 sites' within the Corridor. [Petitioner's]
15 property lies within one of those resource sites,
16 Site 55. Site 55 contains 1,867 acres and
17 encompasses the Smith and Bybee Lakes, an
18 environmentally important wetland area.
19 [Petitioner] is located on the bank of a
20 watercourse called the Columbia Slough. The
21 Slough runs the length of the Corridor and is
22 connected to Smith and Bybee Lakes.

23 "[Petitioner] has not questioned the
24 permissibility of designating Site 55 as a
25 resource site. However, [petitioner] asserted
26 both to LUBA and to the Court of Appeals that City
27 had failed to perform properly the next steps in
28 the [Statewide Planning] Goal 5 resource
29 protection process after identification of the
30 resource, viz., identification of conflicting uses
31 and performance of an ESEE [economic, social,
32 environmental and energy] analysis of the impact
33 of the resource and the conflicting use on each
34 other, as required by OAR 660-16-005. * * *

reversing and remanding our initial decision. Columbia Steel Castings Co. v. City of Portland, 104 Or App 244, 799 P2d 1142 (1990). The city petitioned for review by the Supreme Court, which affirmed the decision of the Court of Appeals, in part on different grounds.

³The resource site at issue in this appeal, Resource Site 55, is in the Rivergate-Terminal 4 subarea.

1 "* * * * *

2 "LUBA ruled that City's conflicting use and ESEE
3 findings, although those findings were made on an
4 area, rather than on a
5 resource-site-by-resource-site, basis, nonetheless
6 were sufficiently detailed to meet the
7 requirements of OAR 660-16-005. The Court of
8 Appeals reversed, holding that City's ESEE
9 findings were not sufficiently location-specific
10 to satisfy the rule. [T]he Court of Appeals
11 remanded the case to LUBA to determine just how
12 specific City's findings would have to be to
13 satisfy the requirements of the rule." (Emphases
14 added; footnotes omitted.) Columbia Steel, 314 Or
15 at 426-28.

16 On review, the supreme court agreed with the city that
17 the references throughout OAR chapter 660, Division 16
18 (Goal 5 Rule) to "'resource sites,' 'sites,' 'particular
19 sites' and 'specific sites' all refer to resource sites, not
20 to smaller parcels (such as tax lots) within a resource
21 site." (Emphasis in original.) Id., at 428. However, the
22 court rejected the city's argument that area-wide ESEE
23 findings are adequate to explain why a decision was made for
24 a specific resource site, as required by OAR 660-16-005:

25 "* * * If a local jurisdiction is to be able to
26 'explain why' certain ESEE decisions were 'made
27 for specific sites,' the premise must be that
28 there was at some point a matchup between evidence
29 and the site, including conflicting use and ESEE
30 evidence. * * * OAR 661-16-005 requires that a
31 conflicting use and an ESEE analysis be done for
32 each resource site." (Emphasis added.) Id. at
33 430-31.

34 The court held the portion of our prior opinion stating
35 the city's area-wide conflicting use findings and ESEE

1 analyses were adequate to comply with Goal 5 and the Goal 5
2 rule was unlawful in substance. Id. at 432. However, the
3 court remanded the case to us for further proceedings,
4 because the city argued to the court that the challenged
5 decision's "analysis vis-a-vis Site 55 is sufficient to meet
6 the more exacting standard that a conflicting use and an
7 ESEE analysis be done for each resource site." Id. at 433.
8 The court stated the city's argument requires a judgment
9 which LUBA must make in the first instance.

10 **DECISION**

11 Petitioner and intervenor-petitioner (petitioners)
12 argue the only city findings specific to Resource Site 55
13 are found in the inventory of Resource Site 55 in Volume 2,
14 pages 105-07. According to petitioners, the information in
15 this section of the findings addresses only the resource
16 values of the site, except for the following statement:

17 "* * * The St. John's landfill, water control
18 structure, and various dikes and fill material are
19 the three most significant human influences on
20 this habitat complex." Vol. 2, p. 107.

21 Petitioners also point out the inventory refers to
22 "additional discussion" in "Appendix K." Appendix K is a
23 document entitled "History of the Lower Columbia Slough and
24 Smith and Bybee Lakes." Vol. 4, pp. 85-95. Petitioners
25 contend that other than describing the current status of the
26 St. Johns Landfill, Appendix K does not identify or
27 otherwise describe current or potential conflicting uses in

1 Resource Site 55.

2 Petitioners further argue the challenged decision makes
3 no mention of current industrial uses of Resource Site 55,
4 such as petitioner's uses of its property, or potential
5 conflicting industrial uses for Resource Site 55.
6 Petitioners also contend the challenged decision contains no
7 analysis of the ESEE consequences specific to Resource
8 Site 55. Petitioners conclude the above quoted statement
9 and the information on the status of the St. Johns landfill
10 in Appendix K are not sufficient to constitute an adequate
11 conflicting use identification and ESEE analysis for
12 Resource Site 55, as required by Goal 5 and OAR 660-16-005
13 and explained by the supreme court in Columbia Steel.

14 The city contends the challenged decision includes
15 findings adequate to constitute a conflicting use
16 identification and ESEE analysis for Resource Site 55, as
17 required by Goal 5 and OAR 660-16-005.⁴

18 We have reviewed the portions of the challenged
19 decision and supporting findings cited by the parties.
20 These portions include the mapping recommendations for the
21 Rivergate-Terminal 4 subarea (Vol. 1, pp. 33-36), the

⁴The city may also argue that the whole Columbia Corridor area, or the Rivergate-Terminal 4 subarea, should constitute the "resource site" for which Goal 5 and the Goal 5 rule require specific analysis. However, we believe the supreme court conclusively established in Columbia Steel, supra, that the challenged decision identifies 36 resource sites within the Columbia Corridor, and that Resource Site 55 (Smith and Bybee Lakes) is the "resource site" for which specific analysis is required.

1 inventory of Resource Site 55 (Vol. 2, pp. 105-07), the
2 inventory of Columbia Corridor Water Features (Vol. 2,
3 pp. 114, 118), the Analysis of ESEE Consequences (Vol. 2,
4 pp. 121-63), and the aforementioned Appendix K (Vol. 2,
5 pp. 83-95).⁵ We agree with petitioners that nothing to
6 which we have been cited in the challenged decision or its
7 supporting findings identifies conflicting uses, or analyzes
8 the ESEE consequences of such conflicts, specifically for
9 Resource Site 55.⁶ Therefore, we conclude the challenged
10 decision fails to comply with OAR 660-16-005.

11 The city's decision is remanded.

⁵We also note that Appendix L, entitled "Smith and Bybee Lakes, an Overview," appears to address only the physical characteristics and ecological values of the area. Vol. 2, pp. 97-112.

⁶The city's ESEE analysis does include a "conclusion" and a "recommendation" for Resource Site 55, but these provisions simply reiterate that the site is a significant wetland area and has tremendous wildlife habitat value and recommend application of protective zoning. Vol. 2, pp. 156, 163. They do not identify conflicting uses or analyze ESEE consequences.