

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. When a county amends a zoning ordinance to require a particular study area when applying a maximum residential density standard within that zoning district, the county cannot rely on an earlier LUBA decision that allowed use of a similar study area in a quasi-judicial decision affecting a single property. Instead the county must establish in amending the zoning ordinance that mandating the particular study area in all cases in that zone in the future is consistent with the maximum residential density standard and Goal 5, which the maximum residential density standard was adopted to implement. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A county must justify its decision to replace an ambiguous existing maximum residential density standard with a similarly worded but much more methodologically precise maximum residential standard and may not simply rely on the similar wording to conclude that the new standard is consistent with the county’s comprehensive plan and Goal 5. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A post-acknowledgment plan amendment that makes only minor changes to a program to protect riparian areas may require little or no analysis under the Goal 5 rule, where the changes are consistent with Goal 5 safe harbor provisions for protecting riparian areas, or allow only types of public facilities that the safe harbor rules expressly allow in riparian areas. *Shamrock Homes LLC v. City of Springfield*, 68 Or LUBA 1 (2013).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. LUBA will deny an assignment of error that challenges the county’s decision that Goal 5 does not apply to a proposed post-acknowledgement plan amendment to amend the county’s map of lands eligible for a destination resort because the county failed to compare the location of “other inventoried Goal 5 resources” to the properties proposed to be included on the map where petitioners do not identify any inventoried Goal 5 resource that proposed plan amendment “would affect” under OAR 660-023-0250(3). *Root v. Klamath County*, 68 Or LUBA 124 (2013).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where the Metro Code requires that a city retain its Goal 5 protections for tree groves unless removing those protections “would allow no more than a *de minimis* increase in the amount of development that could occur in areas identified as upland wildlife habitat,” a city does not err in comparing the area of each tree grove where development would occur with the remaining area of each tree grove, rather than comparing the area of each tree grove where development would occur with the entire area identified as upland habitat Metro-wide or within the entire city. *Metro v. City of Lake Oswego*, 68 Or LUBA 136 (2013).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where the Metro Code requires that a city retain its Goal 5 protections for tree groves unless removing those protections “would allow no more than a *de minimis* increase in the

amount of development that could occur in areas identified as upland wildlife habitat,” a city erroneously applies the *de minimis* limitation by assuming, based on speculation that the owner of the large house will not want to further divide the property, that a one-acre lot with a large house on it in a zone that allows 7,500 square foot lots will not be divided and developed with additional residences. *Metro v. City of Lake Oswego*, 68 Or LUBA 136 (2013).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a comprehensive plan policy adopted to implement Goal 5 is just as open ended and aspirational as Goal 5 itself and in unchallenged findings the city explains Goal 5 has been fully implemented through the Goal 5 resource inventory and ESEE evaluation process, petitioner fails to establish that the policy must be considered directly in approving a conditional use permit. *Friends of the Hood River Waterfront v. City of Hood River*, 67 Or LUBA 179 (2013).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A city is not required to apply Goal 5 to a decision to annex property, where the annexation decision does not change the county planning and zoning designations of the property and does not make any of the changes specified in OAR 660-023-0250(3)(a)-(c) that would require application of Goal 5. *Roads End Water District v. City of Lincoln City*, 67 Or LUBA 452 (2013).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A county ordinance adopted solely to protect erodible soils and federally listed threatened species, neither of which are resources listed in the county’s Goal inventory, does not amend the county’s program to protect Goal 5 resources such as riparian areas, even if the ordinance would likely have the unintended effect of also protecting some inventoried Goal 5 resources. *Hatley v. Umatilla County*, 66 Or LUBA 265 (2012).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A condition specifying future use of a reclaimed mining site is not inconsistent with OAR 660-023-0180(5)(f), which limits post-mining uses to farm uses under ORS 215.203, uses listed under ORS 215.283(1), and fish and wildlife habitat uses, where the condition requires reclamation for “fish and wildlife habitat” and eventual use “as a public park, if allowed by law.” While ORS 215.203 and 215.283(1) do not currently allow public parks, the condition would only call for use as a public park if the statutes are amended to allow such a use. *Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291 (2012).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a local government amends its program to achieve Goal 5 with respect to inventoried natural resources, by adopting additional measures to protect those resources from an identified conflicting use, and thus adjusting the balance initially struck in its initial ESEE analysis to limit conflicting uses, the local government must address the requirements of the Goal 5 rule at OAR chapter 660, division 023, revisit portions of its ESEE analysis as necessary and adopt findings based on that ESEE analysis explaining

its choice to impose additional limitations on conflicting uses. *Cosner v. Umatilla County*, 65 Or LUBA 9 (2012).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Because OAR 660-023-0190(2) expressly authorizes counties to proceed on a case-by-case basis to complete the Goal 5 inventory process with respect to energy resources, a county is not obligated to undertake a county-wide inventory of wind energy resources as a precondition to adopting legislative amendments protecting other types of Goal 5 resources from development impacts of wind energy facilities. *Cosner v. Umatilla County*, 65 Or LUBA 9 (2012).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Before it is appropriate to consider the non-regulatory ESEE Consequences Determination portion of Goal 5 planning for a site as context for interpreting the regulatory Resource Protection Program there must first be an ambiguity in the Resource Protection Program. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where Goal 11 and 14 exceptions are necessary to complete a previously approved destination resort that is authorized under the county’s acknowledged comprehensive plan and land use regulations, and the resort as completed is substantially similar to the resort as originally approved, the Goal 11 and 14 exceptions do not propose “new uses” that could be conflicting uses with a significant Goal 5 resource site and thus the county does not err in failing to apply the requirements of Goal 5 and the Goal 5 rule. *Friends of Marion County v. Marion County*, 59 Or LUBA 323 (2009).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Under ORS 660-023-0250(3), a local government must consider Goal 5 if a post-acknowledgment plan amendment “would affect a Goal 5 resource.” The threshold question under ORS 660-023-0250(3) is whether the plan amendment would either (1) amend a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5 or (2) allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A post-acknowledgment plan amendment that allows additional categories of conflicting uses that were already allowed under the acknowledged comprehensive plan allows new conflicting uses within the meaning of ORS 660-023-0250(3)(b), and the decision adopting the post acknowledgment plan amendment must therefore apply Goal 5. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A local government with an acknowledged Goal 5 inventory is not required to update that inventory when adopting a post-acknowledgment plan amendment that does not itself

alter the acknowledged Goal 5 inventory. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a county adopted a comprehensive plan policy that called for a 160-acre minimum lot size to protect big game winter range, but subsequently amended its zoning ordinance to provide for an 80-acre minimum lot size in the same area, that inconsistency created a plan/zoning ordinance conflict. If the county wishes to eliminate the inconsistency in favor of the 80-acre minimum lot size, it must demonstrate that the 80-acre minimum lot size leaves the county's Goal 5 program to protect big game winter range consistent with Goal 5. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a county attempts to take advantage of the riparian corridor safe harbor authorized by OAR 660-023-0090(8) but defines “water dependent” and “water related” slightly differently than the statewide planning goal definitions of those terms, any ambiguity created by the different wording must be resolved consistently with the statewide planning goal definitions. *Johnson v. Jefferson County*, 56 Or LUBA 25 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Under ORS 660-023-0250(3), a local government must consider Goal 5 if a post-acknowledgment plan amendment “would affect a Goal 5 resource.” The threshold question under ORS 660-023-0250(3) is whether the plan amendment would either (1) amend a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5 or (2) allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Under OAR 660-023-0030(3), where a local government determines that it does not have adequate information about a potential Goal 5 site, the local government “shall not regulate land uses in order to protect such sites.” *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The additional new roadways and traffic that might be associated with a destination resort are properly viewed as a new use, notwithstanding that new roadways and traffic could also be generated by other uses. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The new roadways and traffic that might be associated with a destination resort could be a conflicting use with inventoried big game habitat, where the evidentiary record is insufficient to support a conclusion that such roadways and traffic would not conflict with inventoried big game habitat. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A local government with an acknowledged Goal 5 inventory is not required to update that inventory when adopting a post-acknowledgment plan amendment that does not itself alter the acknowledged Goal 5 inventory. *Johnson v. Jefferson County*, 56 Or LUBA 72 (2008).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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 does 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. OAR 660-023-0250(3)(a) identifies the circumstances in which a post acknowledgment plan amendment must address Statewide Planning Goal 5. Under that rule, Goal 5 must be addressed if the amendment either (1) “amends * * * a portion of an acknowledged plan or land use regulation [that was] adopted in order to protect a significant Goal 5

resource,” or (2) “allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list[.]” *Wood v. Crook County*, 55 Or LUBA 165 (2007).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a county limits application of its Goal 5 program to protect big game winter habitat to exclusive farm use zoned properties, a decision years later to remove exclusive farm use zoning amends an acknowledged land use regulation that was adopted to protect a Goal 5 resource, and under OAR 660-023-0250(3)(a) that rezoning decision must be justified under Goal 5. *Wood v. Crook County*, 55 Or LUBA 165 (2007).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. An argument that the Department of Land Conservation and Development erred in acknowledging the city’s riparian protection ordinance is a collateral attack on the acknowledgment that cannot be advanced in an appeal of a permit decision applying the acknowledged ordinance. *Brodersen v. City of Ashland*, 55 Or LUBA 350 (2007).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. If an exception area does not include land on the county’s acknowledged inventory of Goal 5 resources, the county need not adopt an exception to Goal 5. *Gordon v. Polk County*, 54 Or LUBA 351 (2007).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The extent to which a local government must undertake the standard Goal 5 process in adopting a post-acknowledgment plan amendment pursuant to OAR 660-023-0250(3) will depend on the nature of the amendment. For example, amendments that trigger the Goal 5 rule because they allow new uses that could conflict with significant Goal 5 resources under OAR 660-023-0250(3)(b) will not require the local government to redo the inventory process, the first step of the standard Goal 5 process. *NWDA v. City of Portland*, 50 Or LUBA 310 (2005).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a local government already has an acknowledged program to achieve Goal 5 with respect to a particular resource site, and is considering whether proposed new uses that could conflict with the site are consistent with Goal 5, the local government need not in all cases undertake all steps of the standard Goal 5 process, or fully engage in steps it undertakes. *NWDA v. City of Portland*, 50 Or LUBA 310 (2005).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where the local government already has an acknowledged program to achieve Goal 5 with respect to a particular resource site, it has already made key choices about the relative importance of the site and a range of conflicting uses. In adopting amendments to allow new uses that could conflict with the site, the local government need not reconsider or re-justify those key choices. Where the new uses have similar impacts to the site that were considered in adopting the acknowledged program, the local government may simply

choose to rely on its existing program to ensure compliance with Goal 5. *NWDA v. City of Portland*, 50 Or LUBA 310 (2005).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A local government’s failure to conduct an explicit ESEE (economic, social, environmental and energy) analysis is not a basis for reversal or remand, where the decision adopts extensive findings finding compliance with statewide planning goals and comprehensive plan provisions governing economic, social, environmental and energy matters, and those findings appear to constitute, in all but name, an ESEE analysis. *NWDA v. City of Portland*, 50 Or LUBA 310 (2005).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A county’s decision to amend its deer winter range map redesignating property from “critical” deer habitat to “impacted deer winter range” is supported by substantial evidence where the county makes a reasonable choice to rely on the applicant’s expert, who conducted only one site visit and reviewed data that had previously been prepared by the Oregon Department of Fish and Wildlife, and concluded that the proposal would not significantly impact deer winter range. *Anthony v. Josephine County*, 50 Or LUBA 573 (2005).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A city is not required to demonstrate that annexation of an open space area that includes Goal 5 resources is consistent with Goal 5, where the annexation decision does not rezone the area, amend the plan designation, or otherwise affect the uses allowed in the territory or the protection of open space and natural resources. *Cutsforth v. City of Albany*, 49 Or LUBA 559 (2005).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a post-acknowledgment plan amendment allows new uses that could conflict with significant Goal 5 resource sites, and thus triggers application of the Goal 5 rule under OAR 660-023-0250(3), the city need not in all cases repeat the entire Goal 5 process, including the ESEE analysis. In many cases no more is required than an explanation for why the existing program to protect Goal 5 resources continues to be sufficient to protect those resources. *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. OAR 660-023-0180 establishes a comprehensive regulatory scheme for reviewing mining applications. A county errs when it denies an application for mining in part because it does not comply with local approval criteria that are unrelated to OAR 660-023-0180. *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where LUBA cannot determine from the appealed decision or the record whether an approved parkway corridor crosses an inventoried Goal 5 significant vegetation and wildlife area, the decision must be remanded. *Friends of Eugene v. City of Eugene*, 44 Or LUBA 239 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The statement in OAR 660-016-0005(a) that a local government is not required to “justify in its comprehensive plan a decision not to include a particular site” in its Goal 5 inventory simply means that the local government need not amend its comprehensive plan to justify a decision not to include a site on its Goal 5 inventory. The rule does not relieve local governments of the obligation to adopt adequate findings justifying a quasi-judicial decision to deny an application to include a site on the Goal 5 inventory. *Hegele v. Crook County*, 44 Or LUBA 357 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. OAR 660-023-0180 prohibits application of local government standards to post-acknowledgment plan amendment to add a site to the plan inventory of significant aggregate sites, unless such standards (1) were adopted after 1989 and (2) provide “specific criteria” for proposals to amend the plan inventory of aggregate sites. A general agricultural policy requiring that nonagricultural development be based on demonstrated public need is not a “specific criteri[on]” regarding proposals to amend the aggregate inventory and therefore OAR 660-023-0180 prohibits application of the policy. *Hegele v. Crook County*, 44 Or LUBA 357 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. No reasonable person could interpret a plan policy stating that the county plans to participate with other counties in a regional aggregate needs analysis as imposing a requirement that an applicant seeking to amend the county’s aggregate inventory must establish a “public need” for aggregate. *Hegele v. Crook County*, 44 Or LUBA 357 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Goal 5 does not impose decisional criteria that are independent of the criteria set out in OAR chapter 660, division 23. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The obligation to review proposed amendments to comprehensive plan and land use regulation provisions to ensure compliance with Goal 5 is implicated only in the circumstances described in OAR 660-023-0250(3). *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A change in the level of review of a particular use from conditional use review to an allowed use does not mean that the use is a “new use” as that term is used in OAR 660-023-0250(3)(a) that must be considered as a potentially conflicting use subject to review to ensure that the existing program to protect Goal 5 resources remain effective. *No Tram to OHSU v. City of Portland*, 44 Or LUBA 647 (2003).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A statement that a party assumes for the sake of argument that a proposed mining area is subject to a Goal 5 rule governing lands that consist of more than 35 percent soils classified as Class I or II is insufficient to raise, with the required specificity, an issue regarding whether the proportion of Class I or II soils may be less than 35 percent, and therefore that

the rule does not apply to the proposed mining area. *Beaver State Sand and Gravel v. Douglas County*, 43 Or LUBA 140 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. An application to amend the county comprehensive plan list of non-significant aggregate sites to include a proposed new mining site is subject to review for compliance with any potentially applicable statewide planning goals. *Beaver State Sand and Gravel v. Douglas County*, 43 Or LUBA 140 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Other than to require that the county “maintain a record” of a determination that a mining site is non-significant, OAR 660-023-0030(6) does not address or provide any criteria with respect to a request to add a mining site to the county’s comprehensive plan list of non-significant sites, and does not authorize the county to approve or deny that request based on concerns regarding the impacts of mining. *Beaver State Sand and Gravel v. Douglas County*, 43 Or LUBA 140 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Read in context, the ORS 215.298 provision allowing a mining operation on EFU-zoned lands if the site is on an “inventory” in a comprehensive plan is a reference to a Goal 5 “inventory” of mineral sites. Because under the 1982 Goal 5 rule the term “inventory” referred to an inventory of *significant* mineral sites, ORS 215.298 allows mining in an EFU zone only if the site is on a comprehensive plan inventory of significant mineral sites, not if the site is on a separate list of nonsignificant sites. *Beaver State Sand and Gravel v. Douglas County*, 43 Or LUBA 140 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where a city’s tree preservation ordinance was identified during acknowledgment as an implementing measure to achieve compliance with Statewide Planning Goal 5, a decision that amends the tree preservation ordinance concerns the application of Goal 5 and is therefore a statutory land use decision subject to LUBA’s jurisdiction. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 453 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Absent a showing that amendments regulating natural resources not on the city’s acknowledged Goal 5 inventory are intended to create or amend or have the effect of creating or amending a Goal inventory, such amendments need not comply with Goal 5 or the Goal 5 rule. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Under OAR 660-023-0250(3), a local government cannot adopt a post-acknowledgment plan amendment that amends the program to protect significant Goal 5 resources without establishing that the amendment complies with Goal 5 and the Goal 5 rule, even if the amendment merely increases the level of protection afforded inventoried Goal 5 resources. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Code provisions that were previously acknowledged to comply with Goal 5 and are carried forward into a new code without substantive change do not constitute an “amendment” of a Goal 5 regulation and thus do not trigger an obligation to establish that those amendments comply with the Goal 5 rule. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A zoning classification that implements a Goal 5 plan designation and is applied to an inventoried Goal 5 resource site is among the regulations that “protect a significant Goal 5 resource” for purposes of OAR 660-023-0250(3). Therefore, a substantive amendment to such a zoning classification must be evaluated under the Goal 5 rule. *Home Builders Assoc. v. City of Eugene*, 41 Or LUBA 370 (2002).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where petitioners’ interpretational challenge of a city’s finding that proposed development complies with code provisions implementing Goal 5 is, in essence, an argument that the city’s code provisions are insufficient to implement Goal 5, LUBA will reject the challenge as an impermissible collateral attack on the city’s acknowledged Goal 5 regulations. *Crowley v. City of Bandon*, 41 Or LUBA 87 (2001).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. OAR chapter 660, division 23 generally supersedes OAR chapter 660, division 16, subject to specified exceptions. Therefore, a county does not err in considering whether a proposed use affecting an inventoried Goal 5 resource is consistent with OAR chapter 660, division 23, notwithstanding that the county’s unacknowledged Goal 5 regulations were adopted pursuant to division 16 rather than division 23. *Tylka v. Clackamas County*, 41 Or LUBA 53 (2001).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A “safe harbor” provision at OAR 660-023-0090(8) allowing local governments to adopt ordinances implementing Goal 5 that allow an “existing structure” in a riparian area to be repaired or replaced is not properly interpreted to require a threshold inquiry into whether the “existing structure” was lawfully approved or developed. *Tylka v. Clackamas County*, 41 Or LUBA 53 (2001).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Land use regulations may be adopted to comply with Goals 6 and 7 and related federal law requirements, without first complying with the Goal 5 planning requirements under OAR chapter 660, division 23, where the land use regulations are limited to those that may be required by Goals 6 and 7 and any related federal law requirements. *Rest-Haven Memorial Park v. City of Eugene*, 39 Or LUBA 282 (2001).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The text and context of OAR 660-023-0180(4)(a) establish that the impact area for purposes of identifying conflicting uses with proposed aggregate mining is the 1,500-foot ring around

the mining area, excluding the mining site itself. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Although ORS 215.296(10) allows a local government to impose additional standards on a conditional use permit for aggregate mining, it does not apply to a comprehensive plan amendment designating a significant resource site and establishing a surface mining overlay pursuant to the Goal 5 rules. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The conditional use approval criteria from local government ordinances do not apply to post-acknowledgement plan amendments pursuant to the Goal 5 rules. *Stockwell v. Benton County*, 38 Or LUBA 621 (2000).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. ORS 197.625(3)(b) requires that approval of a land use subject to an unacknowledged land use standard include findings of compliance with applicable goals. Until the land use standard is acknowledged to comply with applicable goals, the local government cannot rely solely upon the regulatory scope of that standard to avoid addressing compliance with potentially applicable goals. *Tylka v. Clackamas County*, 37 Or LUBA 922 (2000).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Petitioners' argument during local proceedings that OAR 660-023-0180 does not prohibit a county from applying its land use regulations to a proposed mining operation is not sufficient to raise an issue that LCDC's adoption of OAR 660-023-0180 is inconsistent with other statutory requirements. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The scope of additional conflicts that may be considered under OAR 660-023-0180(4)(b)(F), is a question of state law and a county's interpretation of OAR 660-023-0180(4)(b)(F) is not entitled to the deferential standard of review required by ORS 197.829(1) and *Clark*

v. Jackson County, 313 Or 508, 836 P2d 710 (1992). *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. LUBA will grant a city’s motion for a voluntary remand in order to reconsider its Goal 5 determinations in light of petitioner’s concerns, even though LUBA would owe no deference to the city’s interpretation and application of Goal 5. *Hribernick v. City of Gresham*, 35 Or LUBA 329 (1998).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. LUBA will reject an assignment of error alleging that a post-acknowledgment plan amendment violates Goal 5, where petitioner does not demonstrate that the decision affects a Goal 5

resource in one of the ways specified in OAR 660-023-0250(3). *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Goal 5 is not implicated by a city decision that merely adopts an existing acknowledged county airport plan. *Northwest Aggregates Co. v. City of Scappoose*, 35 Or LUBA 30 (1998).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The new Goal 5 rule applies to applications filed on or after September 1, 1996. Where an application was filed in March 1997 but the old Goal 5 rule was applied, the decision must be remanded. *Kelley v. City of Cascade Locks*, 34 Or LUBA 374 (1998).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The purpose of the boundary delineation and mapping required by the first step of the Goal 5 rule is to make both feasible and meaningful the next step of the Goal 5 analysis: identifying the mutual impacts of Goal 5 resource sites and conflicting uses. *Doty v. Jackson County*, 34 Or LUBA 287 (1998).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Because the three steps of the Goal 5 analysis are so sequentially dependent, a flaw at step one renders subsequent steps equally flawed. *Doty v. Jackson County*, 34 Or LUBA 287 (1998).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. 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).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. The Goal 5 rule does not mandate protection of resource use over conflicting uses. Implicit in the fact that the Goal 5 rule permits the local government to deny an application to mine a significant aggregate site is that in some circumstances, conflicting uses may prevail over resource use. *Trademark Construction, Inc. v. Marion County*, 34 Or LUBA 202 (1998).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Not every regulation that arguably furthers the objectives of Goal 5 applies Goal 5. *Ramsey v. City of Portland*, 30 Or LUBA 212 (1995).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where challenged post-acknowledgment comprehensive plan and land use regulation amendments do not directly affect a local government's acknowledged Goal 5 inventory, and petitioner does not identify any inventoried Goal 5 resources allegedly affected by the challenged amendments, petitioner provides no basis for reversal or remand. *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Goal 5 establishes a comprehensive planning process that requires a local government to (1) inventory the location, quality and quantity of listed resources within its territory; (2) identify conflicting uses for the inventoried resources; (3) determine the ESEE consequences of the conflicting uses; and (4) develop programs to achieve the goal of resource protection. *Gage v. City of Portland*, 28 Or LUBA 307 (1994).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where, during local comprehensive plan map amendment and zone change proceedings, petitioner advised the local government that Statewide Planning Goal 5 requires an analysis regarding only a nearby aggregate operation, petitioner affirmatively waived any Goal 5 issues unrelated to the nearby aggregate operation. *DLCD v. Curry County*, 28 Or LUBA 205 (1994).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. Where post-acknowledgment legislative land use regulation amendments make portions of a county's acknowledged program for wetlands protection inapplicable to rural wetlands, the county must demonstrate, either in the decision or through argument and citations to the record in its brief, that with regard to rural wetlands, the amendments result in a program that complies with Goal 5 and the Goal 5 rule. *Redland/Viola CPO v. Clackamas County*, 27 Or LUBA 560 (1994).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. In adopting exceptions to Goals 3 and 4 as post-acknowledgment plan amendments, a local government must also address Goal 5 if the exceptions concern or affect lands included on the local government's acknowledged inventory of Goal 5 resources. *1000 Friends of Oregon v. Yamhill County*, 27 Or LUBA 508 (1994).

9.1 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Generally. A local government operates within its interpretive discretion in finding that plan policies committing it to complete the Goal 5 process for 1B resource sites in the future refer to comprehensive legislative proceedings and do not obligate the local government to do so for individual sites in permit proceedings. Such an interpretation also is consistent with the Goal 5 rule. OAR 660-16-000(5)(b). *Zippel v. Josephine County*, 27 Or LUBA 11 (1994).