

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where the record includes only speculative testimony that mining would impact sage grouse causing them to relocate and conflict with grazing operations beyond the proposed one-half mile mining impact area, thus justifying a larger impact area, a county finding that mining would neither impact sage grouse nor cause them to relocate nor result in conflicts with distant farming operations is supported by substantial evidence, where the record includes testimony from the manager of a nearby grazing operation that there were no nearby sage grouse and the proposed mine would not have any impacts on grazing. *Central Oregon Landwatch v. Deschutes County*, 72 Or LUBA 45 (2015).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where a city’s acknowledged Goal 5 program to protect wetlands and natural resources already allows trails and bicycle and pedestrian ways in wetland and natural resources overlay districts, the city’s adoption of a transportation system plan that authorizes a regional trail through wetland and natural resource areas does not authorize a new “conflicting use” for purposes of OAR 660-023-0250(3)(b) and thus does not require further analysis under Goal 5 or the Goal 5 rule. *Terra Hydr Inc. v. City of Tualatin*, 68 Or LUBA 279 (2013).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** In determining the size of an impact area under OAR 660-023-0180(5)(a) and whether “factual information indicates significant potential conflicts beyond” the 1,500-foot impact area set out in the rule, a county reasonably concludes that the record does not include “factual information indicating significant potential conflicts” beyond one mile from the subject mine site, where the county reasonably relies on expert evidence from a hydrologist to conclude that blasting would not cause damage to wells either within or beyond one mile from the site. *Poto v. Linn County*, 67 Or LUBA 162 (2013).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** In determining the size of an impact area under OAR 660-023-0180(5)(a) and whether “factual information indicates significant potential conflicts beyond” the 1,500-foot impact area set out in the rule, nothing in ORS 215.301 obligates a county to expand the impact area to include a planted vineyard located within one mile of the mine site. ORS 215.301 is a law, and cannot reasonably be understood to be the “factual information” referenced in OAR 660-023-0180(5)(a). *Poto v. Linn County*, 67 Or LUBA 162 (2013).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** In considering conflicts with agricultural practices under OAR 660-023-0180(5)(b), nothing in ORS 215.301 mandates that the outcome of a county’s conflicts analysis must be that batching is a conflict that cannot be minimized. If the evidence showed absolutely no conflicts between a batching plant and a vineyard located closer than two miles from the property, under the Goal 5 rule the county could add the site to its inventory of Significant Resource Sites with All Conflicts Minimized, but would be

prohibited from approving batching *under ORS 215.301* unless the exemption in ORS 215.301(2) applies. *Poto v. Linn County*, 67 Or LUBA 162 (2013).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where there is no evidence in the record that diesel exhaust from trucks traveling to and from a proposed mining site on a public road will have a significant effect on berry farming on a nearby farm or will significantly increase the cost of berry farming, a local government reasonably concludes that there will be no significant effect on crops growing along the public road. *Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291 (2012).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where the local government relied on the applicant’s proposal to use a retrenching method to determine that dewatering from the mining operation will not affect groundwater levels of nearby wells and therefore not conflict with agricultural irrigation practices, but no condition of approval requires the retrenching method to be used, remand is required in order for the local government to condition its approval on use of the retrenching method. *Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291 (2012).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Floodwater that enters and leaves a mining operation during a flood event is not an “other discharge” as that phrase is used in OAR 660-023-0180(5)(b)(A). *Protect Grand Island Farms v. Yamhill County*, 66 Or LUBA 291 (2012).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Remand is necessary to address testimony from a neighboring rancher that noise from blasting operations at a proposed quarry will force a significant change in or significantly increase the cost of the neighboring ranching operations, where the county’s conclusion that cattle will not be grazing during the months when blasting occurs is based on a presumption in the applicant’s expert’s report that is not supported by anything in the record and that presumption is contradicted by other evidence in the record. *Nash v. Deschutes County*, 63 Or LUBA 27 (2011).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** A local government errs in concluding that it is not required to apply Statewide Planning Goal 5 to a post acknowledgement plan amendment (PAPA) that adds lands to the county’s map of lands eligible for a destination resort by relying on an ESEE analysis that was completed and adopted 16 years prior to the proposed PAPA and that does not include any analysis of the new lands proposed for inclusion on the destination resort map. *Root v. Klamath County*, 63 Or LUBA 230 (2011).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** The fact that the entire Goal 5 planning document that a local government adopted for a site was adopted as part of the comprehensive plan does not necessarily mean that the identification of conflicts and ESEE analysis portions of that document that

were not included in the Program to Achieve the Goal must be given regulatory effect. Whether those portions of the ESEE analysis have regulatory effect depends on the text of those portions of the ESEE analysis and their context. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where the zoning ordinance definition of “noise-sensitive uses” is ambiguous and could be interpreted to include the entire parcel where the use is located or more narrowly to include only the use’s structure, and there is some contextual support for limiting the use to the structure, LUBA will defer to the local government’s decision to adopt the more narrow interpretation. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** In determining the size of an impact area under OAR 660-023-0180(5)(a) and whether “factual information indicates significant potential conflicts beyond” the 1,500-foot impact area set out in the rule, a county must evaluate evidence submitted regarding land that is located beyond the 1,500-foot impact area and potentially some distance from the mining site. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Remand is necessary to address testimony from a neighboring rancher that noise from blasting rock at a proposed quarry will force a significant change in or significantly increase the cost of ranching practices, where the findings do not address that testimony or noise impacts in general, but instead rely on fencing and a 200-foot buffer area to conclude that mining would not impact nearby grazing operations. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where sage grouse habitat is not a significant resource shown on a county’s Goal 5 inventory of significant resources, the county need not consider impacts of a mining operation on sage grouse habitat, except to the extent impacts on habitat also result in impacts to a sage grouse breeding site that is listed in the county’s Goal 5 inventory. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** A county reasonably concludes that the record does not include “factual information indicating significant potential conflicts” with respect to whether a proposed quarry will disrupt sage grouse flights to and from a protected breeding site, where the only evidence suggesting that grouse flights come near the quarry site is a map the significance of which is subject to conflicting expert testimony. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** OAR 660-023-0180(5)(b)(A) requires a county to consider conflicts due to noise, dust, etc. with “existing” uses that are sensitive to such discharges. There is no

basis under the rule for a county to conclude that Native American cultural and religious visits to pictograms and native burial sites are not “existing” uses because those visits do not occur on a regular basis. *Walker v. Deschutes County*, 59 Or LUBA 488 (2009).

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

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

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

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** As part of its identification of uses that conflict with the Goal 5 resource, a reasonable decision maker could determine that, given the evidence of long term and consistent opposition to the mine, the impacts from the mine on nearby residents would engender legal action and social and economic pressure on the mine that would conflict with the Goal 5 resource. *Hegele v. Crook County*, 56 Or LUBA 1 (2008).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** The language of OAR 660-016-0005(1) and the Court of Appeals’ interpretation of that rule in *Hegele v. Crook County*, 190 Or App 376, 379, 78 P3d 1254 (2003) support the conclusion that conflicting uses may be uses that, while not specifically listed in the zoning district as allowed *land uses*, are nevertheless uses that could conflict with a Goal 5 resource. *Hegele v. Crook County*, 56 Or LUBA 1 (2008).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** A county errs in identifying “recreational visitors, motorists, and bicycles” that are not incidental to or associated with the nearby residential uses as uses that conflict with the Goal 5 resource, where the evidence in the record regarding those activities is limited to such activities as incidental to residential uses. *Hegele v. Crook County*, 56 Or LUBA 1 (2008).

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where there are unchallenged findings that an aggregate mine presents no actual risk of contamination to groundwater wells, a county is not obligated to adopt findings addressing the possibility that potential users of groundwater wells may *perceive* a risk of contamination. The mere perception of a risk is too tenuous and indirect to constitute a “negative impact” that must be analyzed under OAR 660-016-0005 and 660-016-0010. *Rickreall Community Water Assoc. v. Polk County*, 53 Or LUBA 76 (2006).

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

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

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** A county’s obligation under OAR 660-023-0180(4)(c) to consider reasonable measures to minimize conflicts associated with mining and its obligation under OAR 660-023-0180(4)(d) to consider economic, social, environmental and energy consequences of allowing, limiting or not allowing mining are “findings” obligations, and they do not place an obligation on the county to produce evidence regarding an application for mining. *Hellberg v. Morrow County*, 49 Or LUBA 423 (2005).

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

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** Where a staff report and evidentiary hearings focus on an area within 500 feet of the subject property as the relevant “impact area” for purposes of conducting the conflicts identification and ESEE analysis required by OAR 660-016-0005 and 660-016-0010, the county may not deny an application under Goal 5 based on conflicts in a 15-square mile area that is identified for the first time in its final decision, without offering the applicant an opportunity to submit evidence and argument responsive to the larger impact area. *Hegele v. Crook County*, 44 Or LUBA 357 (2003).

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

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

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

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

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

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

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

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

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

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

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

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

**9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification.** A local government may not simply assume a new residential plan

designation will have less impacts on identified Goal 5 resources on the subject property than are allowable under the existing industrial plan designation, without considering limitations on industrial activity on the subject property that are imposed by an overlay district. *Welch v. City of Portland*, 28 Or LUBA 439 (1994).