

20. Goal 16 – Estuarine Resources. Goal 16, Implementation Requirement 2 (allows dredging in the estuary based on a finding of demonstrated need (*e.g.*, a substantial public benefit), which necessarily requires consideration of the need for or public benefit of the land-based use that the dredging serves, because dredging in itself provides no public benefits apart from the uses that dredging serves. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. While Goal 16, Implementation Requirement 2 (IR2) requires a demonstration of need (*e.g.*, a substantial public benefit) for a proposed land use served by dredging estuarine waters, IR2 does not require that the decision-maker weigh potential benefits of the proposed use against potential detriments to arrive a “net” public benefit. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. A county errs in finding that the Goal 16, Implementation Requirement 2 “demonstrated need” standard is met based on the fact that the proposed water-dependent use is an allowed use in the estuarine zone, which generally allows only water-dependent uses, as that approach conflates the separate requirements for a “water-dependent” use and a “demonstrated need” for the use. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. Remand is necessary where a county finds that exclusion zones around liquefied natural gas tankers in a narrow estuary will not interfere with public trusts right to use the estuary based on the county’s understanding that the Coast Guard will allow “known” boats to traverse the exclusion zone without delay, but the expert evidence in the record does not support that finding. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. In reviewing a proposed liquefied natural gas (LNG) terminal, the “demonstrated need/substantial public benefits” requirement of Goal 16, Implementation Requirement 2, does not require a county to consider the adverse effects of greenhouse gases on climate change that could be attributed to overseas consumption of natural gas that is shipped to markets via the proposed LNG. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. The “clearly supports” standard at ORS 197.835(11)(b) does not authorize LUBA to affirm a decision notwithstanding inadequate findings, where the lack of adequate findings concern a subjective approval standard under Goal 16 requiring that the local government, in approving development in an estuary, identify the “public need [for] and gain” from the project warrant any modification or loss to estuarine values that would result from the development, and evaluate and minimize the adverse impacts of development. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. A local government errs in imposing a condition of approval deferring consideration of compliance with a comprehensive plan policy requiring the applicant and county to undertake a process to consult and resolve differences with local Native American tribes before approving development in an estuary, where the deferral is to an *ad hoc* proceeding without any assurances that the deferred proceeding will actually occur, and the deferral is not

supported by findings demonstrating that deferral is permissible under *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992), or *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009). *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. A liquefied natural gas export facility is a “terminal” for purposes of OAR 660-037-0040(6)(a)(C)(iii), and thus properly viewed as a use that qualifies as a “water-dependent use” allowed in estuarine zones. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. Deferral of compliance with an approval standard to a subsequent proceeding under *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992), or *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009), may not be permissible at all where the approval standard at issue invokes a particular process that is explicitly linked to submittal of the development application, requiring consultation and dispute resolution between the applicant, the local government, and a sovereign Native American Tribe before development approval. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

20. Goal 16 – Estuarine Resources. Comprehensive plan amendments must be consistent with both Goal 16 and city comprehensive plan policies that implement Goal 16. Where the comprehensive plan implements Goal 16 in identical language, there is no practical difference in the way that LUBA reviews findings that apply one rather than the other. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. Goal 16, Implementation Requirement 1 requires that actions that would potentially alter the estuarine ecosystem be preceded by a clear assessment of the impacts of the proposed alteration. Read in the context of Goal 16 itself, which requires protection of the environmental values of the estuary, Implementation Requirement 1 is best understood to require that the local government (1) review an impact assessment that adequately identifies potential adverse impacts on the estuary’s physical processes or biological values from development allowed under proposed comprehensive plan or zoning amendments, and (2) ensure that such impacts are avoided or minimized. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. A finding that development will have no “significant” adverse impacts on estuarine resources does not indicate that the decision maker misunderstood the applicable test under Goal 16, Implementation Requirement 1, which is focused on evaluation of “potential” adverse impacts, where other findings address the potential for adverse impacts. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. Under Goal 16, Implementation Requirement 1, a city errs in finding that development allowed under proposed residential zoning will not result in potential adverse impacts on adjacent estuarine resources, based on a comparison of potential impacts of hypothetical industrial uses that could be allowed under a former county zone. Goal 16, Implementation Requirement 1 requires evaluation and avoidance or minimization of impacts of development allowed under the proposed zoning, regardless of whether such impacts would be

greater or lesser compared to the impacts of hypothetical uses allowed in former zones. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. While the evaluation of impacts on estuarine resources required by Goal 16, Implementation Requirement 1 need not be prepared by an expert, the nature of some types of potential adverse impacts caused by development on estuarine resources may be such that some technical expertise is necessary to provide substantial evidence to support conclusions based on the evaluation. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. Where the record includes expert testimony that residential development may adversely impact endangered salmon species in an adjacent estuary through pollution from stormwater runoff, some level of scientific or professional expertise is necessary to rebut that testimony in order to provide supporting evidence for a contrary conclusion. A letter from the applicant’s attorney opining that stormwater runoff will not adversely impact salmon is not substantial evidence to support that conclusion. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. LUBA will remand for more adequate findings where a city finds that a stormwater conveyance system constructed to city standards will minimize potential adverse impacts of stormwater pollutants on estuarine fish resources, where the finding does not describe potential adverse impacts, address expert testimony regarding those impacts, or explain why compliance with city stormwater construction standards is sufficient to minimize potential adverse impacts. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. Remand is required where a city’s only finding responding to testimony that pesticides and herbicides runoff from residential development will harm fish in the adjacent estuary is that pesticides and herbicides will not be applied within a riparian buffer, but the finding does not address runoff from the residential development itself, and no condition is imposed that prohibits application of pesticides or herbicides within the riparian buffer. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. Goal 16, Implementation Requirement 1 requires evaluation of the impacts of development allowed under proposed zoning, but does not require the local government to evaluate potential adverse impacts of alterations approved in earlier land use decisions. *Oregon Coast Alliance v. City of Brookings*, 72 Or LUBA 222 (2015).

20. Goal 16 – Estuarine Resources. Findings are inadequate to establish that rezoning land adjacent to an estuary to allow for urban residential development is consistent with Goal 16, where federal agencies testified that development allowed under the rezone would adversely affect estuarine resources, but the findings do not address that testimony, or evaluate impacts of development on the estuary as Goal 16, Implementation Requirement 1 requires. *Oregon Coast Alliance v. City of Brookings*, 71 Or LUBA 14 (2015).

20. Goal 16 – Estuarine Resources. A finding that impacts of a proposed underwater pipeline on aquatic species will be “temporary and insignificant” is consistent with the Goal 16 obligation to “protect” estuarine resources. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

20. Goal 16 – Estuarine Resources. Where the applicant’s expert assumed that a particular species of native oyster is not found near a pipeline crossing, but opponents raised the issue below, based on a 2009 scientific article, that that species of oyster has recently repopulated the crossing area and may be impacted by the pipeline, the findings do not address that issue, and LUBA cannot tell from the record or findings whether additional measures may be necessary to protect the native oysters beyond those in place to protect other aquatic species, remand is necessary for more adequate findings. *Citizens Against LNG v. Coos County*, 63 Or LUBA 162 (2011).

20. Goal 16 – Estuarine Resources. LUBA will affirm a finding that a proposed mining operation will not add significantly to the cumulative impact of development activities within an estuary, based on findings that the mining operation will essentially replace an existing mining operation that is approaching its end point, and the proposed operation is conditioned to minimize adverse impacts on estuarine values. *Oregon Shores Cons. Coalition v. Curry County*, 61 Or LUBA 8 (2010).

20. Goal 16 – Estuarine Resources. When a local comprehensive plan provision that implements Goal 16 requires the local government to “protect” a resource, any development allowed is not consistent with the Goal 16 definition of “protect” unless there is at most a *de minimis* or insignificant impact on the resource that the provision requires to be protected. *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 96 (2010).

20. Goal 16 – Estuarine Resources. A comprehensive plan provision that implements Goal 16 and requires the local government to “protect” wildlife habitat within an estuary may be satisfied through off-site mitigation within the Goal 16 definition of “protect” if such mitigation results in no net loss to the protected habitat within the estuary, even if there is an impact at the development site. *Columbia Riverkeeper v. Clatsop County*, 61 Or LUBA 96 (2010).

20. Goal 16 – Estuarine Resources. Where the petitioner submits written testimony that the proposal is inconsistent with Goal 16, an argument that presumes Goal 16 is applicable, and the planning commission responds to that testimony with a finding that Goal 16 is inapplicable, the issue of whether Goal 16 is applicable has been sufficiently raised for purposes of ORS 197.763(1) and 197.835(3). The petitioner is not required to anticipate how the local government will respond in its findings to issues raised below. *Sommer v. Douglas County*, 60 Or LUBA 32 (2009).

20. Goal 16 – Estuarine Resources. LUBA will affirm a finding that an upland dredged material disposal site is not part of the estuary and therefore not subject to Goal 16, where the petitioner cites nothing in the county’s comprehensive plan or elsewhere indicating that the disposal site is within the estuary or otherwise subject to Goal 16. *Sommer v. Douglas County*, 60 Or LUBA 32 (2009).

20. Goal 16 – Estuarine Resources. Where a small scale estuarine management unit map is ambiguous, even if the evidence in the record established that a tax lot was being mined in 1981

when estuary management unit designations were applied to the property, that would not conclusively establish an intent to place the tax lot in an estuary management unit that allows mining, as opposed to a management unit that does not allow mining, when the small scale map was adopted in 1981. However, such evidence would likely constitute substantial evidence of an intent to place the tax lot into an estuary management unit that allows mining, when the map was adopted in 1981. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

20. Goal 16 – Estuarine Resources. Comprehensive plan maps that are not tax lot specific and post-1981 aerial photographs are not substantial evidence that a small tax lot was being mined in 1981 when the comprehensive plan was first adopted. *Oregon Shores Cons. Coalition v. Curry County*, 60 Or LUBA 415 (2010).

20. Goal 16 – Estuarine Resources. The Goal 16 obligation that comprehensive plans “maintain the diversity of important and unique environmental, economic and social features within the estuary” is an on-going obligation that is potentially applicable to a post-acknowledgement plan amendment, and is not merely applicable to the initial development and adoption of the comprehensive plan. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. Goal 16 Implementation Requirement 1 directs the local government to adopt land use regulations that require an impact assessment of proposed alterations in estuarine waters. Once the local government adopts such regulations, the local government is not required conduct an impact assessment when adopting plan amendments that allow a range of development uses in the estuary. Compliance with the Goal is assured by the fact that any specific development proposal will be evaluated under code standards that directly implement Implementation Requirement 1. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. The Goal 16 requirement that comprehensive plans “maintain the diversity” of important and unique economic features within the estuary does not require a local government to evaluate all potential negative economic consequences of particular uses allowed by post-acknowledgment plan amendments, or require that local governments protect existing economic uses against new, perhaps competing or conflicting economic uses. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. In adopting a plan amendment that redesignates a portion of the estuary from conservation to development to facilitate construction of a proposed Liquefied Natural Gas terminal, the city is not required to evaluate speculative concerns that the terminal will delay and inconvenience maritime traffic in order to comply with the Goal 16 requirement to “maintain the diversity” of important and unique economic features in the estuary. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. Where it is unknowable at the time the local government considers a post-acknowledgment plan amendment that allows a range of development in the estuary whether and the extent to which a specific use potentially allowed by the amendments will adversely affect maritime traffic in the estuary, it is appropriate to find that the plan amendment

complies with Goal 16, based in part on reliance that speculative issues raised regarding adverse impacts of particular uses will be adequately addressed under code standards that apply to such uses at the time of construction and that are designed to address such impacts. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. While it may be error to adopt findings of compliance with Goal 16 that consider only the positive economic benefits of the plan amendment without considering countervailing evidence of negative impacts, petitioners demonstrate no such error where the local government in fact considered the countervailing evidence and rejected it as unpersuasive and speculative. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. In adopting post-acknowledgment plan amendments that allow a range of uses in estuarine waters, a local government may adopt findings concluding that the types of uses allowed by the amendment are consistent with applicable Goal 16 requirements, while relying on specific permitting processes that implement the goal and that are designed to address and mitigate the possibility that particular development proposals may have more intense impacts than others, as an additional basis for concluding that the amendment complies with Goal 16. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. Loss of two acres of estuarine habitat is not necessarily inconsistent with Goal 16, where the Oregon Department of Fish and Wildlife regulations provide that the goal for the habitat is “no net loss of habitat quality or quantity,” there is expert testimony that potential mitigation sites are available in the vicinity, and any development allowed under the post-acknowledgment plan amendment that might result in loss of the two acres will be subject to federal, state and local permit requirements that will require mitigation. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. A code provision that encourages the city to expand local maritime activities is not a “minimum acceptable performance standard” for purposes of the OAR 660-012-0060(1)(c)(B) requirement that plan amendments not reduce a transportation facility’s performance below the minimum acceptable performance standard identified in the transportation system plan or comprehensive plan. *People for Responsible Prosperity v. City of Warrenton*, 52 Or LUBA 181 (2006).

20. Goal 16 – Estuarine Resources. While the Goal 16 conservation unit description does not mention riprap, the administrative rule implementing Goal 16 states that riprap is appropriate in conservation units, subject only to findings that riprap is consistent with the resource capabilities and the purpose of the management unit. *Oregon Shores Cons. Coalition v. Lane County*, 52 Or LUBA 471 (2006).

20. Goal 16 – Estuarine Resources. In an appeal of a post-acknowledgment plan amendment that redesignates an estuarine area from a natural management unit to a conservation management unit, the petitioner cannot argue that the acknowledged conservation unit provisions that allow riprap as a conditional use are inconsistent with Goal 16. *Oregon Shores Cons. Coalition v. Lane County*, 52 Or LUBA 471 (2006).

20. Goal 16 – Estuarine Resources. Goal 16 requires that, in adopting a post-acknowledgment plan amendment redesignating an estuarine area to a conservation management unit in order to allow riprap to be placed in an estuary, the local government must adopt plan language that evaluates the “potential cumulative impacts of alterations and development activities envisioned.” *Oregon Shores Cons. Coalition v. Lane County*, 52 Or LUBA 471 (2006).

20. Goal 16 – Estuarine Resources. A local government may rely on evidence that clam beds that partially justified a previous natural management unit designation have been smothered by erosion, and the reduced habitat value warrants redesignation of the area to a conservation management unit, notwithstanding conflicting evidence over the remaining habitat value. *Oregon Shores Cons. Coalition v. Lane County*, 52 Or LUBA 471 (2006).

20. Goal 16 – Estuarine Resources. A comprehensive plan policy that applies only to estuarine areas governed by Goal 16 does not apply to proposed development within a zone that includes only coastal shorelands governed by Goal 17. *Oregon Shores Cons. Coalition v. Coos County*, 49 Or LUBA 1 (2005).