

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where a post-acknowledgement plan amendment would increase the amount of impervious surfaces permitted on the subject property, resulting in increased runoff volume, and the city’s stormwater manual states that stormwater treatment facilities are designed to capture and treat only 80 percent of runoff volume, a conclusory finding that “the City standards will adequately collect and treat stormwater runoff” is inadequate to demonstrate, for purposes of OAR 660-023-0250(3)(b), that the city standards will eliminate the possibility of conflicts with a nearby creek which is a Goal 5 resource. *Nicita v. City of Oregon City*, 79 Or LUBA 22 (2019).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where an economic, social, environmental and energy (ESEE) analysis identifies conflicting uses as the commercial and high-density residential development allowed under a proposed post-acknowledgement plan amendment, and concludes that the greater development intensity and imperviousness may result in greater direct impacts on water quality and water temperature in a nearby creek which is a Goal 5 resource, arguments that the ESEE analysis does not specifically address pollution from stormwater provide no basis for reversal or remand because OAR 660-023-0040(2) does not require a more detailed identification of conflicting uses. *Nicita v. City of Oregon City*, 79 Or LUBA 22 (2019).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Petitioners fail to establish that the city erred in concluding that rezoning a property to neighborhood commercial is consistent with Statewide Planning Goal 5 when the rezoning the subject property constitutes a PAPA for purposes of applying Goal 5, which provides that local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource by allowing new uses that “could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list.” The city’s PAPA is a very limited one, that in relevant part simply applies the zones implementing the city’s comprehensive plan designations that the acknowledged comprehensive plan has already designated for the corresponding uses. Because the challenged PAPA simply implements that acknowledged plan designation choice with the exercise of little or no discretion, the PAPA does not authorize any “new uses” for purposes of OAR 660-023-0250(3) and Goal 5. *Renken v. City of Oregon City*, 79 Or LUBA 82 (2019).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Where a local code provision, which is acknowledged to comply with Goal 5, allows the construction of a reservoir for surface mining in conjunction with an irrigation district, but requires that sites proposed for that use be added to the local government’s inventory of non-significant mineral sites through a post-acknowledgment plan amendment (PAPA), such a PAPA does not allow “new uses that could be conflicting uses” with a Goal 5 resource, and therefore does not require further analysis under Goal 5, where the construction of a reservoir is otherwise allowed for a recreation-oriented facility without a PAPA. *Bishop v. Deschutes County*, 79 Or LUBA 380 (2019).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Under OAR 660-023-0040, in determining whether a post-acknowledgement plan amendment (PAPA) will allow uses that could conflict with a Goal 5 resource, a local government

must evaluate all uses allowed outright or conditionally in the zones applied to the subject property, not just those uses proposed by the applicant. In addition, while a local government may conclude that existing regulations are sufficient to eliminate the possibility of such conflicts, a local government errs by concluding the PAPA will not allow potentially conflicting uses merely because the applicant's development plan limits development to a certain extent. Such a determination must instead be based on the uses allowed outright or conditionally in the zones applied to the subject property, regardless of the property's ownership, limitations in specific proposed development, or limitations imposed in the PAPA approval. *Cattoche v. Lane County*, 79 Or LUBA 466 (2019).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Under OAR 660-023-0180(5)(b) a local government must determine existing or approved land uses that may be adversely affected by mining at an inventoried significant aggregate resource site, including conflicts with Statewide Planning Goal 5 resource sites that are shown on an acknowledged inventory of significant resource sites for which the requirements of Statewide Planning Goal 5 have been completed. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Based on an ESEE consequences analysis regarding conflicting uses, under OAR 660-023-0040(4) and (5), a county must develop a program to achieve Goal 5, and determine whether to allow, limit, or prohibit conflicting uses. A local government errs in its ESEE analysis and in its ultimate decision to modify its acknowledged Goal 5 program to eliminate the prohibition on churches in the Wildlife Area Combining Zone, when it relied in part on the cost of defending its existing Goal 5 program against a hypothetical Religious Land Use and Institutionalized Persons Act (RLUIPA) lawsuit to support its decision to achieve Goal 5 by allowing without limits a new conflicting use, without providing an analysis establishing the county's Goal 5 program would be legally vulnerable to losing a hypothetical RLUIPA lawsuit if one were brought. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. To allow a conflicting use without limit under OAR 660-023-0040(5)(c), a county's ESEE analysis must (1) demonstrate that the conflicting use is of sufficient importance relative to the resource site, and (2) must indicate why measures to protect the resource "to some extent should not be provided." OAR 660-023-0040(5)(c) does not prohibit the county from allowing a conflicting use without limit, if there is another option that would both fully protect the resource at issue and satisfy the motivations prompting the county to decide in favor of the conflicting use. Instead, OAR 660-023-0040(5)(c) requires the county to justify its choice to allow a conflicting use without limit, and that justification must include a demonstration that alternatives, such as imposing limits or measures to provide some protection for the resource consistent with OAR 660-023-0040(5)(b) should not be provided. Assuming that demonstration is made, OAR 660-023-0040(5) and Goal 5 do not compel the local government to choose alternatives that fully or partially protect the resource. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. In the context of a county’s Goal 5 analysis, LUBA will reject the county’s argument that there are no measures that the county could adopt to protect wildlife habitat from the negative impacts of churches without running afoul of a Religious Land Use and Institutionalized Persons Act (RLUIPA) requirement—that governments not impose a “substantial burden” on religious exercise—where the county’s ESEE analysis includes no evaluation of any measures or any findings on this point, and without actually evaluating any measures that would provide some protection to wildlife resources, it is difficult to understand how the county could reach a conclusion that no measures could be adopted to protect wildlife resources without also imposing a “substantial burden” on religious exercise. In such a circumstance, remand is necessary for the county to adopt an ESEE analysis that either does not rely on the mere threat of RLUIPA litigation, or that actually evaluates whether the county’s existing Goal 5 program is inconsistent with the RLUIPA Equal Terms or Substantial Burden requirements, so that the county can consider whether there are measures it can adopt pursuant to OAR 660-023-0040(5)(b) and (c) to reduce impacts on wildlife resources and include those evaluations in the revised ESEE analysis. As part of that analysis, the county may consider, if necessary, whether identified measures would impose a “substantial burden” on the free exercise of religion. *Central Oregon Landwatch v. Deschutes County*, 77 Or LUBA 395 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. The Goal 5 rule, at OAR chapter 660, division 23, includes a “standard” process for inventorying, evaluating and protecting natural resources, at OAR 660-023-0030 to 660-023-0050, that includes rules for evaluating the ESEE consequences for allowing, limiting, or prohibiting uses that conflict with a natural resource site. The Goal 5 rule also includes “special” standards and procedures for specific types of Goal 5 resources, including those that govern aggregate mineral resources, at OAR 660-023-0180. According to OAR 660-023-0020(1), sometimes both the standard process and a special process apply; sometimes the special process supersedes the standard process in whole, or in part, and in case of conflict the specific process controls. *Rogue Advocates v. Josephine County*, 77 Or LUBA 452 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. OAR 660-023-0180(5)(a) requires the local government to identify conflicts with existing and approved uses located within a determined “impact area” limited in size to 1,500 feet from the boundaries of the mining area, unless factual information indicates “significant potential conflicts” beyond 1,500 feet. After deciding to allow mining under OAR 660-023-0180(5), the county must also go on to consider whether to allow, limit, or prevent new or future conflicting uses within the impact area pursuant to OAR 660-023-0180(7). For this limited inquiry, the county must conduct the analysis pursuant to the standard ESEE process in OAR 660-023-0040 and-0050. OAR 660-023-0040(3) requires local governments to “determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource,” which means that unlike the impact area determined under OAR 660-023-0180(5)(a), the impact area determined under OAR 660-023-0040(3) is not initially limited to 1,500 feet and the geographic extent of the impact area is determined by evaluating whether “allowed uses could adversely affect the identified resource,” rather than evaluating whether there is factual information indicating “significant potential

conflicts” beyond an initial 1,500 feet. *Rogue Advocates v. Josephine County*, 77 Or LUBA 452 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. Petitioners have not established that a county’s failure to determine an impact area for purposes of OAR 660-023-0180(7) pursuant to the standard ESEE process at OAR 660-023-0040(3) is more than harmless error, where it is not clear that an impact area determined under OAR 660-023-0040(3) would be larger or different than the one the county established under OAR 660-023-0180(5)(a), petitioners have not identified any new conflicting uses within a more expansive impact area that could adversely impact the mining site and that therefore should have been limited or prevented based on the arguably more sensitive OAR 660-023-0040(3) test, compared to the “significant potential conflict” test that the county employed under OAR 660-023-0180(5)(a), and because the applicant is the only party that could possibly be harmed by employing a potentially smaller impact area as determined under OAR 660-023-0180(5)(a), and the applicant is not challenging that potentially smaller impact area but rather is actively defending it on appeal. *Rogue Advocates v. Josephine County*, 77 Or LUBA 452 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. In the context of a post-acknowledgment plan amendment to inventory a significant aggregate site and allow mining of that site under Goal 5, if the local government concludes based on its ESEE analysis that new conflicting uses should be allowed within the impact area under the existing comprehensive plan and land use regulations, the local government’s program to achieve the goal in that regard may consist of simply relying on its acknowledged comprehensive plan and land use regulations to protect the resource site from new conflicting uses pursuant to OAR 660-023-0040(2)(a). *Rogue Advocates v. Josephine County*, 77 Or LUBA 452 (2018).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. A county does not necessarily err by distinguishing between a large part of the county where few people live and a smaller part of the county where the majority of the county’s population lives as a basis for adopting programs with differing levels of protection for big game habitat. But a significant increase in permissible residential densities in the smaller more heavily impacted area must be justified. *Central Oregon Landwatch v. Crook County*, 76 Or LUBA 396 (2017).

9.3 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Conflicting Use Identification. OAR 660-023-0030 to 660-023-0050 call for a step by step planning process that results in an analysis of the consequences of allowing, limiting, or prohibiting uses that conflict with inventoried Goal 5 resource sites. But after that planning process is complete, the rule does not require separately considering the cumulative impacts of all identified conflicting uses. *Central Oregon Landwatch v. Crook County*, 76 Or LUBA 396 (2017).

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, conflicts, and (3) whether conflicts can be minimized. OAR 660-023-0180(5)(a) - (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 OAR 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 OAR 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 (2002).

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).