9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where comprehensive plan provisions provide, using mandatory language, that certain resource plan and zoning designations shall be used to conserve or protect fish and wildlife habitat from conflicting uses and that land use proposals that have undesirable impacts on those resources shall be reviewed during the plan and zone amendment processes, a local governing body errs in interpreting those provisions to conclude that it may apply nonresource plan and zoning designations to property mapped as fish and wildlife habitat and that any impacts may be evaluated and, if necessary, mitigated during subsequent review of development proposals. *1000 Friends of Oregon v. Linn County*, 81 Or LUBA 338 (2020).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a significant resource overlay zone provision requires that (1) resource sites not be altered or impacted to a degree that destroys their significance, (2) the proposed development not result in the loss of habitat for threatened or endangered species, (3) all feasible alternatives to the development that would not result in a substantial adverse impact on identified resource values be considered and rejected, (4) the development be sited on the property in such a manner that minimizes adverse impacts on identified resources, and (5) documentation be provided regarding requirements for state or federal permits or licenses and that appropriate resource management agencies have reviewed the development proposal against their plans, policies, and programs, the local government does not err in concluding that that provision applies at the development stage rather than the PAPA stage. *VanSickle v. Klamath County*, 80 Or LUBA 241 (2019).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. How to (1) plan and zone an inventoried significant mineral and aggregate resource site, and (2) plan and zone any adjoining areas that may be needed for processing or buffers or to otherwise mitigate identified conflicts are separate questions from what property is properly included on a comprehensive plan Statewide Planning Goal 5 inventory of significant aggregate sites. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. In determining whether a local government inventoried elk habitat as a significant Statewide Planning Goal 5 resource and adopted a program to protect that inventoried significant elk habitat, or instead determined not to inventory the elk habitat as significant or to defer adopting a protection program, LUBA considers what the local government actually adopted rather than the labels or terminology the local government used in adopting the comprehensive plan. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. The OAR 660-023-0180(1)(b) requirement to minimize conflicts does not require an absolute guarantee that a proposed mining operation will never violate Oregon Department of Environmental Quality (DEQ) standards. A local government does not err by finding that DEQ noise standards will be met, based on the applicant's sound study, and by imposing a condition of approval that mining be monitored for noise in the future and any changes in mining be made in the future to fully comply with DEQ noise standards, without requiring that mining cease until the mine fully complies with DEQ noise standards. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. OAR 340-225-0040 and OAR 340-225-0050 modeling requirements to determine whether a proposed mining operation will comply with ambient air quality and new source air particulate standards are not mere procedural requirements an applicant is free to ignore. The applicant and local government must either perform the required modeling or demonstrate that the modeling is unnecessary to demonstrate the proposed mining will comply with the air particulate standards. *Save TV Butte v. Lane County*, 77 Or LUBA 22 (2018).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. In adopting a post-acknowledgment plan amendment, under OAR 660-023-0250(3)(b) a city is not required to apply Goal 5 directly "unless the [amendment] affects a Goal 5 resource." In changing the comprehensive plan and zoning map designations to allow higher intensity uses, a city may not assume the overlay protections that were previously applied to protect the Goal 5 resources from lower intensity uses will be adequate to ensure that no Goal 5 resource will be affected. *Nicita v. City of Oregon City*, 75 Or LUBA 38 (2017).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. LUBA will reject an interpretation of a county Wildlife Area overlay zone, which implements Statewide Planning Goal 5 to protect winter range in part by prohibiting new churches in winter range, to the effect that the WA overlay zone prohibits churches in winter range areas only where the underlying base zone categorizes churches as a conditional use, but that interpretation would allow churches in winter range areas if the underlying base zone categorizes churches as something other than a conditional use, given that conflicts between churches and winter range are the same whether churches are categorized as permitted or conditional uses. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A hearings officer Misconstrues the text and context of a county's Wildlife Area (WA) overlay zone, in concluding that prohibitions on certain new uses, including churches, in winter range areas are limited exclusively to areas where the underlying base zone categorizes such uses as conditional uses, where other provisions of the WA overlay zone make it clear that the prohibition on new uses in winter range is not limited to uses categorized as conditional uses in the underlying base zone. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 284 (2017).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. To address a historic design standard requiring that new construction be "compatible with the appearance and character of the historic district," adequate findings must, at a minimum, (1) describe the appearance and character of the historic district, as relevant, (2) describe the appearance and character of the proposed structure, and (3) explain why the proposed structure is or is not compatible with the appearance and character of the historic district. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. To address a historic design standard requiring that new construction be "compatible with the appearance and character of the historic district," the decision-maker is not required to reference the description of the appearance and character of a historic district included in the nomination to the federal historic register, but that description is a relevant and convenient source. Because the decision-maker must base the compatibility analysis on something, unless the decision-maker duplicates some of the descriptive work in the federal register nomination, there may be no practical substitute for considering the federal register nomination. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Remand for more adequate findings is required where a historic design standard requires a finding that the relationship of new construction to the street and open space between buildings is compatible with the adjacent historic buildings and the historic character of the surrounding area, but the findings address only compliance with code setback requirements, and fail to identify or address compatibility with adjacent historic buildings and the historic character of the surrounding area. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A finding that the height of new construction is "similar" to dwellings within a historic district is insufficient to establish compliance with a standard requiring that new construction not exceed the height of historic buildings in the surrounding area, where the surrounding area includes both historic and non-historic buildings, and the findings do not identify what buildings the height is compared to, or find that the height of new construction does not exceed the height of the tallest historic building in the surrounding area. *Kliewer v. City of Bend*, 73 Or LUBA 321 (2016).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. ORS 197.015(10)(b)(H)(iii) excludes from LUBA's jurisdiction a land use compatibility statement (LUCS) that identifies required local land use reviews that the applicant must obtain in order to carry out the proposed activity. However, where a LUCS suggests that the applicant could seek an exception to Statewide Planning Goal 5 in order to eliminate the requirement to obtain a permit to develop within a Goal 5 resource area, the suggestion to obtain a Goal 5 exception does not identify a type of required local land use review for purposes of ORS 197.015(10)(b)(H)(iii). *Todd v. Clackamas County*, 73 Or LUBA 369 (2016).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A computer-generated map that is based on adopted Goal 5 paper maps may be used as a convenient starting point for determining whether property is within a Goal 5 resource area,

although if there is conflict between the digital map and the adopted Goal 5 paper maps, the latter control. *Todd v. Clackamas County*, 73 Or LUBA 369 (2016).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A finding that taking an exception to Goal 4 is warranted to allow adaptive reuse of Goal 5 historic structures located on forest lands because allowed uses under Goal 4 will not raise sufficient revenue to offset the cost of maintaining those structures, if supported by substantial evidence, is a sufficient reason why the policy embodied in Goal 4 should not apply to the exception area. *King v. Clackamas County*, 72 Or LUBA 143 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Goal 5 imposes obligations on local governments with respect to the preservation of historic resources and requires a local government to act in a way to help willing property owners achieve actual and not merely nominal preservation of historic resources. Such obligations can constitute a demonstrated need based on the requirements of Goal 5 as a basis for taking a reasons exception. *King v. Clackamas County*, 72 Or LUBA 143 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Under OAR 660-004-0022, a county does not err in finding that a proposed adaptive reuse of a historic structure has special features or qualities that necessitate its location because the proposed use, adaptive reuse of a historic structure, must occur within the structure and cannot occur elsewhere. *King v. Clackamas County*, 72 Or LUBA 143 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Under OAR 660-004-0020(2)(b), a county does not err in finding that an analysis of alternative non-resource sites for a proposed adaptive reuse of a Goal 5 historic structure is not required because reuse of a particular historical structure dictates that no alternative site not requiring an exception can reasonably accommodate the adaptive reuse. *King v. Clackamas County*, 72 Or LUBA 143 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. OAR 660-023-0040(1) provides that an ESEE analysis "should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected" when developing a program to protect Goal 5 resources. A challenge to this "clear understanding" requirement that challenges the summary of the ESEE analysis rather than the adopted ESEE analysis itself provides no basis for reversal or remand, where the ESEE analysis identifies conflicts and consequences and identifies possible mitigation measures. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. OAR 660-023-0040(5)(b) requires that when allowing conflicting uses fully the local government must show why measures to protect the resource to some extent should not be provided. Where a local government adopts a lengthy discussion regarding the extremely poor quality of a site for wildlife habitat and how wildlife that may be attracted to the site pose a serious risk of danger to airplanes landing and taking off from the airport, the decision adequately explains why the site should not be protected to some extent for wildlife habitat under Goal 5. *ODFW v. Crook County*, 72 Or LUBA 316 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. OAR 660-023-0180(5)(g) requires the local government to allow "a currently approved" aggregate processing operation at a site that was previously included on the county's inventory of significant aggregate sites to process material from a new or expansion site without requiring a reauthorization of the existing processing operation, except in limited circumstances where limits on processing of material from a different site were established at the time the existing site was approved by the local government. *Pioneer Asphalt, Inc. v. Umatilla County*, 71 Or LUBA 65 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where OAR 660-023-0180(5)(g) does not define "currently approved," a county's interpretation of the phrase as meaning that a permit authorizing an existing aggregate processing operation was issued and remains effective is not inconsistent with the rule. *Pioneer Asphalt, Inc. v. Umatilla County*, 71 Or LUBA 65 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Evidence in the record consisting of (1) a permit issued in 1992 authorizing an aggregate processing operation on a site that is included on the county's inventory, and (2) subsequent annual review letters from the county confirming that the conditions of the permit are met and renewing the permit are substantial evidence supporting a county's conclusion that the aggregate processing operation is "currently approved" within the meaning of OAR 660-023-0180(5)(g). *Pioneer Asphalt, Inc. v. Umatilla County*, 71 Or LUBA 65 (2015).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. ORS 197.772(3) is silent regarding what procedure should be followed when a property owner requests removal of a property from a Goal 5 inventory of historic resources, pursuant to the statute. Because such removal constitutes a comprehensive plan amendment, the local government does not err in following the code procedures applicable for a comprehensive plan amendment, including local appeals to the governing body. *Lake Oswego Preservation Society v. City of Lake Oswego*, 70 Or LUBA 103 (2014).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a local government approves an asphalt parking lot under a historic site review standard requiring that proposed development conform with the "character" of the historic district, LUBA will affirm the local government's interpretation that an asphalt parking lot conforms to the character of the district, because asphalt is a common building material in the district, even if asphalt paving is not itself a described feature of the historic district. *Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Substantial evidence supports a finding that the value of proposed development outweighs the value of retaining rather than demolishing an historic structure, notwithstanding opponents' arguments that the city did not give weight to the architectural value of the structure, where the record indicates that the structure was designated only for its cultural, not architectural, significance. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Under a historic demolition permit standard requiring a finding that the value of proposed development outweighs the value of retaining the historic resource, evidence that there are better sites in the city for the proposed development, a playground, is irrelevant to the question posed by the standard, which requires a comparison of the value of constructing the playground on the site against the value of retaining the historic resource. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A city's finding that a historic resource is not capable of generating a reasonable economic return is supported by substantial evidence, where the applicant submitted detailed studies showing that the cost of rehabilitating the structure to meet current building codes would far exceed the reasonable rental value, notwithstanding conflicting testimony by opponents that rehabilitation costs could be lower, and rental returns higher, than the applicant's experts estimated. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. LUBA will affirm a city council's determination that a good faith effort to lease an historic building is sufficient to satisfy a historic resource demolition permit standard requiring the applicant to demonstrate a good faith effort to "sell" the resource, where the city's findings explain that only the structure, and not the underlying land, is a designated historic resource, the city lacks authority to require the owner to sell the land, and the structure cannot be relocated intact. *Rushing v. City of Salem*, 70 Or LUBA 448 (2014).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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 23, 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where in an initial appeal LUBA concluded that the ESEE Consequences Determination portion of Goal 5 planning for a site was not part of the regulatory Resource Protection Program, any attempt in the decision on remand from LUBA to give regulatory effect to parts of that ESEE Consequences Determination portion of Goal 5 planning for a site will be rejected on appeal to LUBA. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Representations by a former owner that it only intended to mine 25 acres of an 80-acre site are insufficient legislative history to establish that the acknowledged Resource Protection Program for the site limits mining to 25 acres, where the programs for other sites expressly limited mining geographically but the program for the 80-acre site zoned all 80 acres for mining and imposed no express geographical limits. *Mark Latham Excavation Inc. v. Deschutes County*, 65 Or LUBA 32 (2012).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A decision that merely adds an aggregate site to a comprehensive plan inventory of significant aggregate resource sites may not trigger application of the transportation planning rule (TPR) in any of the ways described in OAR 660-012-0060(1). But when the county decides to allow mining of the site and places an overlay zone on the site to allow mining, that zone change authorizes a new, more traffic-intensive use of the property and may trigger application of the TPR. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A local government's interpretation of its code to allow the setback distance from a wetland to be measured from the city's Goal 5 maps is correct where the applicable language allows the setback to be measured from either the Goal 5 map or a wetland delineation that is provided by the property owner, where a wetland delineation is submitted by an applicant who is

not a property owner and is later withdrawn. *Willamette Oaks LLC v. Lane County*, 64 Or LUBA 328 (2011).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Maps based on a city's GIS database that do not differ in any material respect from the city's Goal 5 map and are not a smaller scale than the city's adopted Goal 5 map provide substantial evidence regarding the location of wetland boundaries. *Willamette Oaks LLC v. Lane County*, 64 Or LUBA 328 (2011).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where the challenged decision approves (1) a comprehensive plan amendment adding a site to the county's Goal 5 inventory of significant sites, and (2) a zone change to allow mining of the site, because the zone change application is consolidated with, and dependent upon, the plan amendment, the goal-post rule at ORS 215.427(3) does not operate to "freeze" the standards that apply to the zone change to those applicable on the date the application was filed. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Because the end of the planning period plays an important role under the Transportation Planning Rule (TPR) at OAR 660-012-0060(1) in determining whether proposed plan or zone amendments significantly affect transportation facilities, when the county amends its transportation system plan to change the planning period from 2020 to 2030, the county must apply the new planning period in determining whether the proposed plan/zone change complies with the TPR. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where in its initial decision the county applies the old Goal 5 rule at OAR chapter 660, division 16, instead of the new Goal 5 rule, and no issue was raised about that position in the first appeal to LUBA, the county is arguably constrained on appeal of its decision on remand from arguing that the old Goal 5 rule does not apply and instead the new Goal 5 rule applies. *Setniker v. Polk County*, 63 Or LUBA 38 (2011).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a site is included on a local government's Goal 5 inventory based on one type of mineral resource, a local government's decision that mining of a different non-inventoried mineral resource on the site may proceed without an amended ESEE analysis under Goal 5 will be remanded where the quantity of the non-inventoried mineral resource is five times the amount of the inventoried mineral resource and the mining of the non-inventoried resource may leave a significantly larger and more visible headwall that will conflict with nearby uses more than if only the inventoried mineral resource were removed. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A local government's zoning ordinance definitions of "dust-sensitive uses" and "noise-sensitive uses" apply in place of the broader consideration of "dust-sensitive uses" and "noise-sensitive uses" that the local government employed during the conflict identification/ESEE

consequences phase of its Goal 5 planning, where the zoning ordinance Surface Mining Zone is the heart of the local government's ultimate Program to Achieve the Goal and there is no suggestion that the local government intended the broader consideration of "dust-sensitive uses" and "noise-sensitive uses" in the earlier Goal 5 planning phase that led up to the Program to Achieve the Goal to apply in place of the zoning ordinance definitions. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a local government's Goal 5 Program to Achieve the Goal for a particular mineral and aggregate site requires "ongoing incremental reclamation (subject to [Department of Geology and Mineral Industries] review and approval)" the local government likely could interpret that requirement to allow it to write a condition requiring "ongoing incremental reclamation" but expressly providing that DOGAMI is free to determine whether "ongoing incremental reclamation" is possible or desirable and that DOGAMI may modify or waive that requirement altogether in its permitting process as DOGAMI sees fit. However, the county cannot simply abandon the requirement for "ongoing incremental reclamation" by claiming it lacks expertise in reclamation and does not understand the meaning of that requirement. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a zoning ordinance expressly prohibits a county from issuing a use permit as a precondition of commencing mining until the applicant secures a state agency approval for a reclamation plan, the local government's failure to include such a requirement in the conditions attached to its conditional use and site plan approval decision is harmless error. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Conditions of approval are not too vague under the Court of Appeals' reasoning in *Sisters Forest Planning Committee v. Deschutes Cty.*, 198 Or App 311, 108 P3d 1175 (2005), where the conditions of approval are not any more vague than many of the standards they were imposed to address. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A requirement that mining "not be allowed closer than one-quarter mile from any noise or dust sensitive use" is properly interpreted to impose a minimum setback, leaving the applicant to select the mining site so long as the site selected is at least one-quarter mile from any noise or dust sensitive use. Any attempt by the local government to interpret the standard to allow it unbridled discretion to enlarge the one-quarter-mile setback would likely run afoul of the ORS 215.416(8)(a) requirement that permit applications be approved or denied based on "standards." *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a zoning ordinance requires a mining permit applicant to demonstrate that a proposed mining operation can meet certain state standards and a state standard prohibits mining "without taking reasonable precautions to prevent particulate matter from becoming airborne," and a local government interprets that state standard to require that the applicant successfully prevent all particulate matter from becoming airborne, the local government erroneously interprets the state standard. The state standard only requires that the applicant take reasonable precautions; it does not require the elimination of all airborne particulate matter. *Hoffman v. Deschutes County*, 61 Or LUBA 173 (2010).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where the Goal 5 program requires that the riparian setback be determined from the "top of high bank," as characterized by "an abrupt or noticeable change from a steeper grade to a less steep grade," a hearings officer errs in locating the top of high bank without addressing whether the location is characterized by an abrupt or noticeable change in grade. *The Piculell Group v. City of Eugene*, 56 Or LUBA 298 (2008).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A conclusion that the 374-foot elevation corresponds to the top of high bank, characterized by "an abrupt or noticeable change from a steeper grade to a less steep grade," is not supported by substantial evidence, where evidence in the record indicates that the 374-foot elevation is one point on a barely perceptible slope with no perceptible change in grade. *The Piculell Group v. City of Eugene*, 56 Or LUBA 298 (2008).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Remand is necessary where one element of the test for determining the location of top of high bank is contingent on a finding that "natural conditions prevail," but the hearings officer locates the top of high bank under that element without finding or explaining why "natural conditions prevail." *The Piculell Group v. City of Eugene*, 56 Or LUBA 298 (2008).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A hearings officer correctly relied upon the city's Goal 5 resource map to identify the boundary of a protected riparian area, and rejected the applicant's argument that the riparian setback can be determined on a case-by-case basis depending on the location of existing riparian vegetation, where nothing in the city's Goal 5 program suggests that the location of resource sites can be "refined" based on a site-by-site analysis. *The Piculell Group v. City of Eugene*, 56 Or LUBA 298 (2008).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A county may use an area larger than the subject property as the denominator in applying a one-dwelling-per-160-acres standard intended to protect deer wintering range, if the area chosen is justified based on applicable code or comprehensive plan provisions, or shown to be consistent with the text, context and purpose of the standard. *Young v. Crook County*, 56 Or LUBA 704 (2008).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a county's code and comprehensive plan are silent regarding how a one-dwelling-per-160-acres wildlife habitat standard is to be calculated, the county does not err in averaging residential density within the same 2000-acre study area that is used for the stability standard. *Young v. Crook County*, 56 Or LUBA 704 (2008).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where the Oregon Department of Fish and Wildlife (ODFW) testifies that that county's Goal 5 program to protect Other Winter Range relies upon resource zoning to limit residential density, and the findings do not address that testimony or explain why the county believes it can rezone Other Winter Range land to nonresource use without amending the county's Goal 5 program, LUBA will remand the decision to address the issue. *Lofgren v. Jackson County*, 55 Or LUBA 126 (2007).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A finding that rural residential development will have "minimal impact" on wildlife habitat is not supported by substantial evidence, where the only evidence relied upon is a study that addressed a different proposal under which one-fifth of the property would have been placed

in a conservation easement, and the county fails to impose or require such a condition or easement, or explain why the proposed development satisfies the minimal impact standard without such a condition. *Lofgren v. Jackson County*, 55 Or LUBA 126 (2007).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a county inventoried big game habitat, identified conflicting uses, analyzed the ESEE consequences, and identified the subject property as a 3B site (allow the uses which conflict with the resource site fully), the county governing body's interpretation that its code exempts 3B sites from further ESEE analysis is entitled to deference. *Kemp v. Union County*, 50 Or LUBA 61 (2005).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. OAR 660-023-0007 exempts the determination of a "program to protect historic resources" from the requirement to conduct an ESEE (economic, social, environmental and energy) analysis. The scope of that exemption is ambiguous, and could plausibly exempt (1) a local government's entire historic resources "program," as that rule broadly defines that term, or (2) only those parts of the program that "protect" historic resources, which a rule definition narrowly limits to local government review of applications for demolition or alteration of historic resources. Given the intertwined nature of most historic resources programs, the better reading of OAR 660-023-0007 is that it comprehensively exempts from the ESEE analysis adoption or modification of the "program," not merely those parts of the program that require local government review of applications for demolition or alteration of historic resources. *NWDA v. City of Portland*, 50 Or LUBA 310 (2005).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where the "resource protection program" is zoning that protects open space, when a local government amends the zone to allow a new use that could conflict with preservation of open spaces, it must either apply Goal 5 or take an exception to Goal 5. If it applies Goal 5, it must either demonstrate that the new use is not a conflicting use or, if it is, conduct an ESEE analysis sufficient to determine whether to protect the resource fully, allow conflicting uses, or limit conflicting uses. *Cox v. Polk County*, 49 Or LUBA 78 (2005).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Findings that a text amendment adding a new use to a park zone are inadequate to address protection of historic sites under Goal 5, where the findings address only one of several parks with historic sites, and fail to explain why allowing a new potentially conflicting use on or near historic sites is consistent with Goal 5. *Cox v. Polk County*, 49 Or LUBA 78 (2005).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Comprehensive plan language stating that the county will contact the state fish and wildlife agency "for any matter which could affect existing or potential wildlife habitat" within general deer winter range areas does not authorize the county to waive a plan policy imposing an 80-acre density limitation to such areas after consulting with the agency. *Wood v. Crook County*, 49 Or LUBA 682 (2005).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. That the county's Goal 5 program initially applied regulations protecting big game habitat to areas zoned for resource use does not mean that such regulations are automatically lifted from a parcel of land that the county rezones from a resource zone to a newly created nonresource zone. *Wood v. Crook County*, 49 Or LUBA 682 (2005).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Adoption of an ordinance that authorizes demolition of a structure that the city's Goal 5 historic inventory classifies as "noncontributing" and that is not protected under the city's historic resource protection program does not alter the Goal 5 inventory or "amend" the city's "resource list" within the meaning of OAR 660-023-0250(3)(a). *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Because OAR 660-023-0200(7) provides that local governments are not required to apply the ESEE process in order to determine a program to protect historic resources, it follows that a local government is also not required to apply the ESEE process when the city allows a new use that could conflict with a particular historic resource. *NWDA v. City of Portland*, 47 Or LUBA 533 (2004).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. ORS 197.467 requires imposition of a conservation easement to protect Goal 5-designated resources on the site of a proposed destination resort, and that requirement is not obviated by the fact that the Oregon Department of Fish and Wildlife has indicated that it will not require a conservation easement. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A county errs in interpreting a one dwelling per 40 acres density standard intended to protect Goal 5 wildlife habitat to be satisfied if the average dwelling density over a 1.2-million-acre area of the county does not exceed the standard, where the county's interpretation gives the standard no regulatory effect until over 28,000 dwellings are built in the area, and is inconsistent with the purpose of the standard to protect wildlife habitat. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A local standard imposing a one-dwelling-per-40-acres density limitation on Goal 5-protected wildlife habitat must be construed in a way that is consistent with its purpose and context to allow no more than one dwelling per 40 acres on the subject property. As applied to a destination resort, such a standard may effectively prohibit a resort that proposes 200 single-family residential lots in a 500-acre area. *Wetherell v. Douglas County*, 44 Or LUBA 745 (2003).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A plan provision that simply repeats the Goal 5 rule requirement that resource sites be preserved, where no conflicting uses are identified, does not apply directly to protect a resource site where no conflicts are identified, where the plan makes clear that it is the "results and conclusions" of applying that plan provision and others that constitutes the county's program to protect Goal 5 resource sites. *Dundas v. Lincoln County*, 43 Or LUBA 407 (2002).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where the county's comprehensive plan makes it clear that it relied on a particular zoning district as its program to protect an existing mining operation from conflicting uses, and that zone allows mining and dwellings as conditional uses, the county does not err in requiring that a conditional use application to reopen that mine after it had been closed for over 10 years to demonstrate that the mine would be compatible with nearby dwellings. Any error that the county may have committed in subjecting an existing mine with no conflicts to conditional use review in the future if the mine closed was rendered irrelevant by LCDC's acknowledgment of the comprehensive plan. *Dundas v. Lincoln County*, 43 Or LUBA 407 (2002).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a county considers the impacts that a proposed rezoning would have on inventoried Goal 5 resources, and concludes that the existing Goal 5 protection program continues to be adequate to protect those resources, the county's conclusion satisfies Goal 5. *Doty v. Coos County*, 42 Or LUBA 103 (2002).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. The terms and not the title of a code provision setting forth certain exceptions to prohibited activities in riparian areas control the scope of the exceptions in that provision. LUBA will affirm a hearings officer's interpretation to that effect where the text and context of the provision indicate that the provision applies more broadly than its title suggests. *Tylka v. Clackamas County*, 41 Or LUBA 53 (2001).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Code provisions protecting historic structures that are described in the county's inventory as significant, important or contributing to the significance of the overall resource are not properly interpreted to protect an accessory structure on the subject property that is not mentioned in the county's inventory. *Paulson v. Washington County*, 40 Or LUBA 345 (2001).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A code provision allowing a historic resource to be relocated if it is on land that is "needed to accommodate" a planned transportation project is not properly interpreted in context to require the county to determine if an alternative alignment would not require relocation, where a related code provision prohibits the county from considering alternative alignments. *Paulson v. Washington County*, 40 Or LUBA 345 (2001).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Remand is appropriate where the local government approves an aggregate mine that appears to impact an inventoried Goal 5 groundwater resource without addressing issues raised below regarding whether the proposed mine complies with local provisions that were adopted to protect Goal 5 resources. *Jorgensen v. Union County*, 37 Or LUBA 738 (2000).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. 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).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Under OAR 660-023-0180(4)(f) where a proposed aggregate mining operation will be located on Class I, II or Unique Farm land, the comprehensive plan must be amended to limit post-mining uses to uses listed under ORS 215.213(1) or 215.283(1) and fish and wildlife habitat uses. A decision authorizing mining that does not so limit post-mining uses must be remanded. *Turner Community Association v. Marion County*, 37 Or LUBA 324 (1999).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A committed-exception zone-change decision that acknowledges the existence of Goal 5 resources on the subject property, but concludes that the county's existing Goal 5 plan provisions will address any conflicts, is not adequate to demonstrate compliance with Goal 5, where the findings do not state which of the county's existing Goal 5 plan provisions ensure continued compliance once the exception is taken, and the findings do not consider whether the zone change may introduce the possibility of new conflicting uses. *Pekarek v. Wallowa County*, 36 Or LUBA 494 (1999).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A land development ordinance amendment adopting a half-acre minimum lot size for a flood hazard zone is not reviewable for compliance with Goal 5 where the acknowledged comprehensive plan calls for a half-acre minimum in the flood hazard zone. *Barnard Perkins Corp. v. City of Rivergrove*, 34 Or LUBA 660 (1998).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A Goal 5 program requiring a 100-yard setback from the crests of certain moraines satisfies the OAR 660-16-010(3) requirement for "clear and objective standards" where the crest of a moraine can be located using accepted survey techniques. *Buhler Ranch v. Wallowa County*, 33 Or LUBA 594 (1997).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. A Goal 5 program requirement for a "suitable visual buffer" does not satisfy the OAR 660-16-010(3) requirement for "clear and objective standards." Such a requirement must clearly specify the outcome to be achieved by the screening and the vantage point from which the proposed dwelling must be screened. *Buhler Ranch v. Wallowa County*, 33 Or LUBA 594 (1997).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Where a county has an acknowledged Goal 5 program, which includes an acknowledged inventory, and rural wetlands are included in a special category that is not part of that inventory, amendments to the county's ordinance that modify protections to rural wetlands do

not change the county's procedures for inventorying Goal 5 resources and do not conflict with Goal 5 because they continue to provide interim protection of resources in a special category. *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 33 Or LUBA 152 (1997).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. LUBA will defer to the local governing body's interpretation that under its code provisions governing permits for the demolition of historic properties, the planning director's determination regarding compliance with pre-application requirements is not reviewable by the historic review board or appealable to the governing body. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Whereas ORS 358.653(1) imposes a duty on state agencies and local governments that have a proprietary interest in historically significant properties to consult with the state Historic Preservation Office prior to seeking demolition of such properties, it does not establish requirements for state agencies and local governments to follow in carrying out their authority to regulate property under the ownership and control of other entities. *Save Amazon Coalition v. City of Eugene*, 29 Or LUBA 238 (1995).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. The provisions of ORS 358.920 to 358.950 and 97.740 to 97.760 concerning excavation of archaeological sites are not approval standards a local government must address in approving a planned development, so long as the local government does not approve the planned development in a way that obviates the applicant's responsibility to comply with those statues, without demonstrating (1) the statutes do not apply to the excavation or construction that may be carried out under the challenged decision, or (2) the statutory requirements have been met. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

9.5 Goal 5 – Open Spaces and Natural Resources/ Goal 5 Rule – Resource Protection Programs. Code provisions that provide interim resource protection to property not on a local government's acknowledged Goal 5 resource inventories, until the Goal 5 planning process can be carried out, do not implement Goal 5. Therefore, local interpretations of such code provisions are not subject to reversal by LUBA under ORS 197.829(4). *Gage v. City of Portland*, 28 Or LUBA 307 (1994).