

1                           BEFORE THE LAND USE BOARD OF APPEALS  
2                           OF THE STATE OF OREGON

3  
4 COLUMBIA STEEL CASTINGS CO.,       )  
5    )  
6                    Petitioner,        )  
7    )  
8            and                            )  
9    )  
10 COLUMBIA SLOUGH DEVELOPMENT        )  
11 CORPORATION,                            )  
12    )  
13                    Intervenor-Petitioner,        )  
14 ORDER                                    )  
15    )  
16            vs.                            )  
17    )  
18 CITY OF PORTLAND,                        )  
19    )  
20                    Respondent.         )

LUBA No. 89-058

FINAL OPINION  
)        AND

21  
22  
23            On remand from the Oregon Supreme Court.

24  
25            Steven Abel, Mildred Carmack and Jay T. Waldron,  
26 Portland, represented petitioner.

27  
28            David B. Smith, Tigard, represented intervenor-  
29 petitioner.

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31            Ruth Spetter, Senior Deputy City Attorney, Portland,  
32 represented respondent.

33  
34            SHERTON, Chief Referee; HOLSTUN, Referee; KELLINGTON,  
35 Referee, participated in the decision.

36  
37                    REMANDED    04/13/93

38  
39            You are entitled to judicial review of this Order.  
40 Judicial review is governed by the provisions of ORS  
41 197.850.

1 Opinion by Sherton.

2 **NATURE OF THE DECISION**

3 Petitioner appeals two interrelated city ordinances  
4 that amend the city comprehensive plan and zoning map  
5 designations for property within the Columbia Corridor.

6 **FACTS**

7 In 1988, the city initiated the  
8 "Industrial/Environmental Mapping Project," concerning  
9 proposed legislative comprehensive plan and zoning map  
10 amendments for property in the Columbia Corridor. After  
11 informational meetings and public hearings, a planning  
12 commission recommendation was forwarded to the city council  
13 in the form of a five volume study entitled "Industrial/  
14 Environmental Mapping Project (January 1989)." On May 4,  
15 1989, after additional public hearings, the city council  
16 adopted the challenged ordinances, together with four of the  
17 Industrial/ Environmental Mapping Project volumes.<sup>1</sup>

18 This appeal is before us on remand from the Oregon  
19 Supreme Court.<sup>2</sup> Columbia Steel Castings Co. v. City of

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<sup>1</sup>The four volumes are entitled "1-Industrial Mapping and Annexation Rezoning for the Columbia Corridor;" "2-Inventory and Analysis of Wetlands, Water Bodies and Wildlife Habitat Areas for the Columbia Corridor;" "3-Mapping for the Columbia Corridor;" and "4-Appendix to Inventory of Wetlands, Water Bodies, and Wildlife Habitat Areas for the Columbia Corridor." The city council adopted amendments to Volumes 1-3 before adopting those volumes. In this opinion, citations to the Mapping Project volumes adopted by the city council shall be in the form Vol. \_\_, p. \_\_\_\_.

<sup>2</sup>Our initial decision affirmed the challenged city decision. Columbia Steel Castings Co. v. City of Portland, 19 Or LUBA 338 (1990). Petitioner appealed that decision to the court of appeals, which issued an opinion

1 Portland, 314 Or 422, \_\_\_ P2d \_\_\_ (1992) (Columbia Steel).

2 The court described the matters in dispute as follows:

3 "The area around which the present dispute centers  
4 is a part of the Columbia Corridor, a 14,000-acre  
5 area located primarily within Portland and running  
6 east along the southern shore of the Columbia  
7 River from the Willamette River to N.E. 185th  
8 Avenue. The area includes natural resource areas,  
9 existing industrial operations, and land that is  
10 zoned for industrial use. In its present rezoning  
11 action, City divided the Corridor into five  
12 sub-areas.<sup>[3]</sup> Pursuant to OAR 660-16-000, City  
13 also identified and inventoried 36 'resource  
14 sites' within the Corridor. [Petitioner's]  
15 property lies within one of those resource sites,  
16 Site 55. Site 55 contains 1,867 acres and  
17 encompasses the Smith and Bybee Lakes, an  
18 environmentally important wetland area.  
19 [Petitioner] is located on the bank of a  
20 watercourse called the Columbia Slough. The  
21 Slough runs the length of the Corridor and is  
22 connected to Smith and Bybee Lakes.

23 "[Petitioner] has not questioned the  
24 permissibility of designating Site 55 as a  
25 resource site. However, [petitioner] asserted  
26 both to LUBA and to the Court of Appeals that City  
27 had failed to perform properly the next steps in  
28 the [Statewide Planning] Goal 5 resource  
29 protection process after identification of the  
30 resource, viz., identification of conflicting uses  
31 and performance of an ESEE [economic, social,  
32 environmental and energy] analysis of the impact  
33 of the resource and the conflicting use on each  
34 other, as required by OAR 660-16-005. \* \* \*

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reversing and remanding our initial decision. Columbia Steel Castings Co.  
v. City of Portland, 104 Or App 244, 799 P2d 1142 (1990). The city  
petitioned for review by the Supreme Court, which affirmed the decision of  
the Court of Appeals, in part on different grounds.

<sup>3</sup>The resource site at issue in this appeal, Resource Site 55, is in the  
Rivergate-Terminal 4 subarea.

1           "\* \* \* \* \*

2           "LUBA ruled that City's conflicting use and ESEE  
3 findings, although those findings were made on an  
4 area,           rather           than           on           a  
5 resource-site-by-resource-site, basis, nonetheless  
6 were sufficiently detailed to meet the  
7 requirements of OAR 660-16-005. The Court of  
8 Appeals reversed, holding that City's ESEE  
9 findings were not sufficiently location-specific  
10 to satisfy the rule. [T]he Court of Appeals  
11 remanded the case to LUBA to determine just how  
12 specific City's findings would have to be to  
13 satisfy the requirements of the rule." (Emphases  
14 added; footnotes omitted.) Columbia Steel, 314 Or  
15 at 426-28.

16           On review, the supreme court agreed with the city that  
17 the references throughout OAR chapter 660, Division 16  
18 (Goal 5 Rule) to "'resource sites,' 'sites,' 'particular  
19 sites' and 'specific sites' all refer to resource sites, not  
20 to smaller parcels (such as tax lots) within a resource  
21 site." (Emphasis in original.) Id., at 428. However, the  
22 court rejected the city's argument that area-wide ESEE  
23 findings are adequate to explain why a decision was made for  
24 a specific resource site, as required by OAR 660-16-005:

25           "\* \* \* If a local jurisdiction is to be able to  
26 'explain why' certain ESEE decisions were 'made  
27 for specific sites,' the premise must be that  
28 there was at some point a matchup between evidence  
29 and the site, including conflicting use and ESEE  
30 evidence. \* \* \* OAR 661-16-005 requires that a  
31 conflicting use and an ESEE analysis be done for  
32 each resource site." (Emphasis added.) Id. at  
33 430-31.

34           The court held the portion of our prior opinion stating  
35 the city's area-wide conflicting use findings and ESEE

1 analyses were adequate to comply with Goal 5 and the Goal 5  
2 rule was unlawful in substance. Id. at 432. However, the  
3 court remanded the case to us for further proceedings,  
4 because the city argued to the court that the challenged  
5 decision's "analysis vis-a-vis Site 55 is sufficient to meet  
6 the more exacting standard that a conflicting use and an  
7 ESEE analysis be done for each resource site." Id. at 433.  
8 The court stated the city's argument requires a judgment  
9 which LUBA must make in the first instance.

10 **DECISION**

11 Petitioner and intervenor-petitioner (petitioners)  
12 argue the only city findings specific to Resource Site 55  
13 are found in the inventory of Resource Site 55 in Volume 2,  
14 pages 105-07. According to petitioners, the information in  
15 this section of the findings addresses only the resource  
16 values of the site, except for the following statement:

17       "\* \* \* The St. John's landfill, water control  
18       structure, and various dikes and fill material are  
19       the three most significant human influences on  
20       this habitat complex." Vol. 2, p. 107.

21 Petitioners also point out the inventory refers to  
22 "additional discussion" in "Appendix K." Appendix K is a  
23 document entitled "History of the Lower Columbia Slough and  
24 Smith and Bybee Lakes." Vol. 4, pp. 85-95. Petitioners  
25 contend that other than describing the current status of the  
26 St. Johns Landfill, Appendix K does not identify or  
27 otherwise describe current or potential conflicting uses in

1 Resource Site 55.

2       Petitioners further argue the challenged decision makes  
3 no mention of current industrial uses of Resource Site 55,  
4 such as petitioner's uses of its property, or potential  
5 conflicting industrial uses for Resource Site 55.  
6 Petitioners also contend the challenged decision contains no  
7 analysis of the ESEE consequences specific to Resource  
8 Site 55. Petitioners conclude the above quoted statement  
9 and the information on the status of the St. Johns landfill  
10 in Appendix K are not sufficient to constitute an adequate  
11 conflicting use identification and ESEE analysis for  
12 Resource Site 55, as required by Goal 5 and OAR 660-16-005  
13 and explained by the supreme court in Columbia Steel.

14       The city contends the challenged decision includes  
15 findings adequate to constitute a conflicting use  
16 identification and ESEE analysis for Resource Site 55, as  
17 required by Goal 5 and OAR 660-16-005.<sup>4</sup>

18       We have reviewed the portions of the challenged  
19 decision and supporting findings cited by the parties.  
20 These portions include the mapping recommendations for the  
21 Rivergate-Terminal 4 subarea (Vol. 1, pp. 33-36), the

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<sup>4</sup>The city may also argue that the whole Columbia Corridor area, or the Rivergate-Terminal 4 subarea, should constitute the "resource site" for which Goal 5 and the Goal 5 rule require specific analysis. However, we believe the supreme court conclusively established in Columbia Steel, supra, that the challenged decision identifies 36 resource sites within the Columbia Corridor, and that Resource Site 55 (Smith and Bybee Lakes) is the "resource site" for which specific analysis is required.

1 inventory of Resource Site 55 (Vol. 2, pp. 105-07), the  
2 inventory of Columbia Corridor Water Features (Vol. 2,  
3 pp. 114, 118), the Analysis of ESEE Consequences (Vol. 2,  
4 pp. 121-63), and the aforementioned Appendix K (Vol. 2,  
5 pp. 83-95).<sup>5</sup> We agree with petitioners that nothing to  
6 which we have been cited in the challenged decision or its  
7 supporting findings identifies conflicting uses, or analyzes  
8 the ESEE consequences of such conflicts, specifically for  
9 Resource Site 55.<sup>6</sup> Therefore, we conclude the challenged  
10 decision fails to comply with OAR 660-16-005.

11 The city's decision is remanded.

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<sup>5</sup>We also note that Appendix L, entitled "Smith and Bybee Lakes, an Overview," appears to address only the physical characteristics and ecological values of the area. Vol. 2, pp. 97-112.

<sup>6</sup>The city's ESEE analysis does include a "conclusion" and a "recommendation" for Resource Site 55, but these provisions simply reiterate that the site is a significant wetland area and has tremendous wildlife habitat value and recommend application of protective zoning. Vol. 2, pp. 156, 163. They do not identify conflicting uses or analyze ESEE consequences.