

**38.3 State Agencies – Local Gov’t Compatibility Determinations.** A county is not obligated to accept an applicant’s characterization of its proposed use and scope of use for purposes of issuing a land use compatibility statement. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

**38.3 State Agencies – Local Gov’t Compatibility Determinations.** A governing body’s code interpretation made in the course of rendering a decision on a request for a land use compatibility statement is subject to the deferential standard of review at ORS 197.829(1). Even without that deferential standard of review, the county correctly concluded that a proposal to store irrigation water in two newly excavated but unapproved reservoirs is not an outright permitted use as the operation of an “existing irrigation system,” but rather a use that requires conditional use approval as the “excavation” for “reservoirs” in conjunction with an irrigation system. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

**38.3 State Agencies – Local Gov’t Compatibility Determinations.** Where an interchange area management planning effort was a joint Oregon Department of Transportation (ODOT)/city effort, in satisfying its OAR 734-051-0155(5)(c) obligation to coordinate with affected property owners ODOT is not required to repeat the public outreach effort that was made before the city adopted the interchange area management plan. *Parker Johnstone Wilsonville Honda v. ODOT*, 62 Or LUBA 116 (2010).

**38.3 State Agencies – Local Gov’t Compatibility Determinations.** Under OAR 660-018-0050(2), the Department of Environmental Quality’s state agency coordination rule, a land use compatibility statement (LUCS) is the primary vehicle to ensure that agency permits are consistent with the statewide planning goals. In circumstances where the state agency coordination rules exempt permit renewals from the requirement to obtain a LUCS, the rules also exempt the agency from the requirement to make a determination that the renewed permit complies with the applicable goals. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

**38.3 State Agencies – Local Gov’t Compatibility Determinations.** A county’s statement in a state agency land use compatibility certification of facts about a property’s zoning and the status of a subdivision of that property falls under the ORS 197.015(11)(b)(A) exception to the definition of land use decision because the compatibility statement did not require interpretation or the exercise of policy or legal judgment. *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

**38.3 State Agencies – Local Gov’t Compatibility Determinations.** Whether the Oregon Department of Environmental Quality properly issued a permit in reliance on a local government land use compatibility statement has no bearing on whether that land use compatibility statement is a land use decision as defined in ORS 197.015(11). *Wolfgram v. Douglas County*, 54 Or LUBA 54 (2007).

**38.3 State Agencies - Local Gov't Compatibility Determinations.** A county’s certification in a state agency land use compatibility statement that the activities proposed

in the related state agency permit application are consistent with all local land use requirements is necessarily a land use decision, as defined in ORS 197.015(11)(a), if it is a final decision and not subject to any of the exceptions set out at ORS 197.015(11)(b). *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006).

**38.3 State Agencies - Local Gov't Compatibility Determinations.** An ambiguous finding that is included in a 23-page findings document supporting a subdivision approval decision is not sufficient to provide actual or constructive notice of a prior county decision that approved a land use compatibility statement concerning grading related to that subdivision. *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006).

**38.3 State Agencies - Local Gov't Compatibility Determinations.** Where a county signs a land use compatibility statement certifying that a state agency permit applicant's proposal complies with all applicable local land use regulations, but fails to include any findings to support that certification, LUBA will remand the decision so that the county can adopt the required findings. *Wolfgram v. Douglas County*, 52 Or LUBA 536 (2006).

**38.3 State Agencies – Local Gov't Compatibility Determinations.** Under OAR 731-015-0075, an ODOT Class 3 project to improve a highway interchange must comply with any affected local government's comprehensive plan and, if the project does not comply, any comprehensive plan amendments that are necessary to bring the project into compliance must be adopted *before* ODOT issues its Revised Environmental Assessment for the interchange project. *Witham Parts and Equipment Co. v. ODOT*, 42 Or LUBA 435.

**38.3 State Agencies – Local Gov't Compatibility Determinations.** A development code provision that prohibits consideration of a permit application where a federal or state law violation exists on the property does not apply where a permit opponent alleges federal or state law violations but there is no final adjudication by a court or state or federal agency finding that such violations exist. Such a code provision does not require a local government to independently consider such allegations or make its own findings concerning the alleged violations. *Farrell v. Jackson County*, 41 Or LUBA 1 (2001).

**38.3 State Agencies – Local Gov't Compatibility Determinations.** Whether a National Pollutant Discharge Elimination System permit renewal application qualifies for the exception to the land use compatibility determination requirement recognized by OAR 660-31-040 is an issue properly determined by DEQ, as part of its permit renewal process, not by a local government that is requested to make such a determination. *Sparacino v. Klamath County*, 18 Or LUBA 804 (1990).

**38.3 State Agencies – Local Gov't Compatibility Determinations.** OAR 660-31-025(2)(c) (use is "allowed by the plan but subject to standards regarding siting, design, construction and/or operation") includes instances where required local reviews are discretionary and could result in denial of the subject use. *Sparacino v. Klamath County*, 18 Or LUBA 804 (1990).

**38.3 State Agencies – Local Gov't Compatibility Determinations.** Determining that an activity or use that is the subject of a state agency permit application falls under OAR 660-31-025(2)(c) merely establishes that compatibility with the acknowledged comprehensive plan, as provided in ORS 197.180(10), must be determined. If required local government approvals have not been obtained, the use cannot be determined to be "allowed under the plan" and, therefore, cannot be determined to be compatible with the plan. *Sparacino v. Klamath County*, 18 Or LUBA 804 (1990).