

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. If an electrical permit is “for construction involving a new building, an addition or change in the use of a building,” then under OAR 918-001-0045 verification may be required to establish that the “project” is permitted under the local government’s land use regulations without “specific land use approval” or that “the project has final land use approval.” If any such verifications are actually included as part of an electrical permit decision itself, that may be sufficient to make the electrical permit a land use decision, as ORS 197.015(10)(a) defines that term. *Hardesty v. Jackson County*, 58 Or LUBA 162 (2009).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. A state agency permit renewal decision that concludes, based on substantial evidence, that the renewed permit does not involve a substantial modification to or intensification of the permitted activity, and thus no land use compatibility statement is required from the affected local government, is not a land use decision subject to LUBA’s jurisdiction under ORS 197.015(11)(a)(B), because it is not an agency decision with respect to which the agency is required to apply the goals. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Under former OAR 660-025-0040(2), LUBA has jurisdiction over issues that do not involve compliance with the statewide planning goals. *Gordon v. Polk County*, 53 Or LUBA 618 (2007).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. LUBA does not have jurisdiction to review a decision by the Department of Land Conservation and Development approving a county periodic review work task. *Colony v. Wallowa County*, 46 Or LUBA 586 (2004).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Generally, a state agency decision is a land use decision that is reviewable by LUBA if the state agency is required to apply the statewide planning goals to its decision. *Witham Parts and Equipment Co. v. ODOT*, 41 Or LUBA 588 (2002).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. One of the required elements of a state agency coordination program under OAR 660-030-0060(2) and (3) is that the agency identify agency programs that affect land use and must therefore comply with statewide planning goals. *Witham Parts and Equipment Co. v. ODOT*, 41 Or LUBA 588 (2002).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Although state agencies are required to carry out their programs that affect land use in a manner that is consistent with both the statewide planning goals and acknowledged comprehensive plans, under OAR 660-030-0065, state agencies generally achieve compliance with statewide planning goals by assuring that their actions are compatible with acknowledged comprehensive plans. *Witham Parts and Equipment Co. v. ODOT*, 41 Or LUBA 588 (2002).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Where ODOT’s approved state agency coordination program provides that (1) ODOT Class 3 Project decisions must be consistent with comprehensive plans and statewide planning goals, (2) ODOT will make the requisite comprehensive plan and statewide planning goal determination when it “grants design approval for the project,” and (3) ODOT grants design approval for a Class 3 Project in a Revised Environmental Assessment, the Revised Environmental Assessment is reviewable by LUBA as a land use decision. *Witham Parts and Equipment Co. v. ODOT*, 41 Or LUBA 588 (2002).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. If a DSL finding of compatibility is not based on a final land use decision made by the city, LUBA lacks jurisdiction over the appeal from the finding of compatibility. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. A DSL finding of compatibility that relies on the separate opinions of two city planners and the city attorney is not based on a final land use decision made by the city. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Although OAR 660-31-035(1), which governs Class A permits, does not require that an affected local government's compatibility determination either be in writing or be supported by written findings in order to be relied upon by a state agency issuing a permit, the absence of a writing raises the question of whether there actually is a local government determination. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Two factors govern whether a local government's determination of compatibility with its acknowledged plan and regulations, made as part of a state agency approval process, is a "final" decision applying the local government's plan and regulations: (1) the state agency must be required by statute, rule or other authority, to assure that the proposal is compatible with the local government plan and regulations; and (2) the state agency must be authorized by statute, rule or other legal authority to rely on the local government's determination. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Petitioner's sole remedy on appeal from a DSL approval of a fill permit, stated in ORS 196.835, is to request a contested case hearing and, if desired, to appeal to the Court of Appeals from the order issued following the hearing. *Citizens for Pub. Accountability v. City of Eugene*, 31 Or LUBA 395 (1996).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. ORS 517.890 provides that appeals of provisional surface mining permits are governed by the provisions of "ORS 183.310 to 183.550 for appeals from orders in

contested cases." Therefore, regardless of whether contested case procedures were observed in all respects during DOGAMI proceedings governed by ORS 183.480(2) and 183.482, jurisdiction to review DOGAMI's decision lies with the court of appeals, not LUBA. *Hood River Sand, Gravel & Read-Mix v. DOGAMI*, 25 Or LUBA 668 (1993).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. Where the court of appeals has jurisdiction for initial review of a state agency land use decision, LUBA does not have jurisdiction to review the decision. ORS 198.825(2)(d). *Interlachen, Inc. v. City of Fairview*, 25 Or LUBA 618 (1993).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. A city resolution initiating a boundary commission proceeding under ORS 199.490 to consider annexation of property is not a final land use decision, where the boundary commission is not authorized to rely on comprehensive plan compliance findings in the city resolution and must itself make a determination of plan compliance. *Interlachen, Inc. v. City of Fairview*, 25 Or LUBA 618 (1993).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. ORS 196.825(6) explicitly provides that Division of State Lands removal-fill permit decisions are contested case orders and that appeals of such orders are to the court of appeals, pursuant to ORS 183.482. LUBA does not have jurisdiction to review state agency contested case orders. ORS 197.825(2)(d). *Stewart v. Division of State Lands*, 25 Or LUBA 565 (1993).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. LUBA does not have authority to invalidate a rule promulgated by LCDC. *DLCD v. Coos County*, 24 Or LUBA 137 (1992).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. LUBA does not have jurisdiction to determine whether an enforcement order exceeds LCDC's statutory authority under ORS 197.320. *Schatz v. City of Jacksonville*, 23 Or LUBA 40 (1992).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. The Court of Appeals has exclusive jurisdiction to review final state agency orders in contested case proceedings. *Pilling v. LCDC*, 22 Or LUBA 188 (1991).

26.2.5 LUBA Jurisdiction – Land Use Decision: Statutory Test – State Agency Decision. The question of whether a hearings officer appointed by the Department of Land Conservation and Development pursuant to an enforcement order acts on behalf of the local government or on behalf of DLCD is governed by the terms of the enforcement order. *Pilling v. LCDC*, 22 Or LUBA 188 (1991).