

**38.2 State Agencies – Permits.** In order to satisfy a local code provision that requires compliance with state agency codes, the city must find which state codes contain approval criteria, and also find that as a matter of law, the applicants are not precluded from obtaining such state agency permits. *Miller v. City of Joseph*, 31 Or LUBA 472 (1996).

**38.2 State Agencies – Permits.** 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).

**38.2 State Agencies – Permits.** 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).

**38.2 State Agencies – Permits.** 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).

**38.2 State Agencies – Permits.** Conditioning approval on the satisfactory outcome of a separate administrative process does not preclude a finding of compliance with a zoning code standard, as long as compliance is found to be feasible and that finding is based on substantial evidence. *McArthur v. Lane County*, 31 Or LUBA 309 (1996).

**38.2 State Agencies – Permits.** A local government's determination of compatibility with its acknowledged comprehensive plan and land use regulations, made as part of a state agency permit approval process, is a "final" decision applying the local plan and regulations if (1) the state agency is required, by statute, rule or other legal authority, to assure the permit is compatible with the local plan and regulations; and (2) the state agency is authorized to rely on the local government's determination of compatibility. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

**38.2 State Agencies – Permits.** Where a local government's statements on a state agency permit land use compatibility form identify the code provisions relied on by the local government and explain the basis for the local government's determination that the subject facility is an outright permitted use, the statements constitute written findings which, under OAR 661-31-035(2), entitle a state agency to rely on the local government's

compatibility determination. *Knee Deep Cattle Company v. Lane County*, 28 Or LUBA 288 (1994).

**38.2 State Agencies – Permits.** 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 & Readi-Mix v. DOGAMI*, 25 Or LUBA 668 (1993).

**38.2 State Agencies – Permits.** 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).

**38.2 State Agencies – Permits.** Where a local government finds that approval criteria will be met if certain conditions are imposed, and those conditions are requirements to obtain state agency permits, a decision approving the subject application simply requires that there be substantial evidence in the record that the applicant is not precluded from obtaining such state agency permits as a matter of law. *Bouman v. Jackson County*, 23 Or LUBA 628 (1992).