

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).