

**28.9 LUBA Scope of Review – State Agency Decisions.** Where DEQ has determined that for budgetary reasons it will no longer enforce its noise regulations, counties are free to enforce those noise standards if they wish, but they are not required to do so. *Mingo v. Morrow County*, 65 Or LUBA 122 (2012).

**28.9 LUBA Scope of Review – State Agency Decisions.** It would be inconsistent with the purpose of former OAR 660-025-0040 to review a county's approval of an amendment to a city's urban growth boundary (UGB) for compliance with the statewide planning goals or statutes, rules, or local ordinances implementing those goals, where in periodic review the Land Conservation and Development Commission reviewed the very same UGB amendment and determined that it complied with applicable goals and rules. *Gordon v. Polk County*, 54 Or LUBA 721 (2007).

**28.9 LUBA Scope of Review – State Agency Decisions.** 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).

**28.9 LUBA Scope of Review – State Agency Decisions.** In lieu of judicial review by the Court of Appeals of an order of the Columbia River Gorge Commission regarding any action of a county pursuant to the Columbia River Gorge Scenic Area Act, the county's decision may be appealed to LUBA. Such an appeal must be filed within 21 days after the Columbia River Gorge Commission decision becomes final and LUBA may not consider any issue concerning interpretation or implementation of the Columbia River Gorge Scenic Act. *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

**28.9 LUBA Scope of Review – State Agency Decisions.** An appeal to LUBA of a county decision under the Columbia River Gorge Scenic Act, prior to the date the Columbia River Gorge Commission issues a final decision reviewing the county decision, is premature and will be dismissed. Appellate jurisdiction for review of such a county decision in the first instance lies with the Columbia River Gorge Commission. *Lois Thompson Housing Project v. Multnomah County*, 37 Or LUBA 580 (2000).

**28.9 LUBA Scope of Review – State Agency Decisions.** 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).

**28.9 LUBA Scope of Review – State Agency Decisions.** 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).

**28.9 LUBA Scope of Review – State Agency Decisions.** 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).

**28.9 LUBA Scope of Review – State Agency Decisions.** 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).

**28.9 LUBA Scope of Review – State Agency Decisions.** 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).