38.1 State Agencies – Generally. Land use regulations that set out approval criteria for commercial composting operations and also state "[a]dditionally, these facilities shall be subject to" DEQ and Metro rules simply advise applicants for county approval of commercial composting facilities that there are other legal requirements that must be satisfied before a composting facility can commence operation. That language does not obligate the county to apply DEQ and Metro rules and find the proposed facility complies with those rules. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

38.1 State Agencies – Generally. In considering an application to modify an existing conditional use permit for a commercial composting facility under county land use regulations, there is no generally applicable principle that a county must in all cases deny the application unless it can find that the composting facility will be able to comply with existing state standards for such facilities. *Tolbert v. Clackamas County*, 70 Or LUBA 388 (2014).

38.1 State Agencies – Generally. 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).

38.1 State Agencies – Generally. Oregon Division of State Lands (DSL) cease and desist orders cannot be categorically dismissed as mere attention-getting devices. However, where a DSL cease and desist order indicates the presence of a "threatened violation," rather than a "violation" of state fill and removal laws, the DSL cease and desist order does not establish the presence of a "documented" violation of state fill and removal laws. *Kipfer v. Jackson County*, 58 Or LUBA 436 (2009).

38.1 State Agencies – Generally. Under *Ashland Drilling Inc. v. Jackson County*, 168 Or App 624, 7 P3d 748 (2000), direct county regulation of wells, water quality and water quantity is preempted, but county land use regulations that simply limit land uses based on their impacts on water resources are not preempted. *Pete's Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

38.1 State Agencies – Generally. ORS 374.310 provides a very broad grant of authority to the Oregon Department of Transportation (ODOT) to condition access permits that are "in the best interest of the public for the protection of the highway or road and the traveling public." Under this broad grant of authority, ODOT's actions may have the indirect effect of delaying local government development approvals, but that delay does not impermissibly encroach on a local government's planning authority. *Dept. of Transportation v. City of Eugene*, 38 Or LUBA 814 (2000).

38.1 State Agencies – Generally. LCDC has authority to adopt administrative rules that limit types of nonfarm uses otherwise allowed by statute. Therefore, OAR 660-033-0020(4), which establishes November 4, 1993, as the date a county must use for determining whether a dwelling exists on a tract for purposes of lot-of-record dwelling, is valid, notwithstanding that it prohibits

some lot-of-record dwellings otherwise allowed by ORS 215.710. *Bruggere v. Clackamas County*, 37 Or LUBA 571 (2000).

38.1 State Agencies – Generally. Under the county's comprehensive plan, ODOT's initiation of eminent domain proceedings gave it the requisite "ownership" interest in property to file an application for a plan amendment regarding the property, and that interest was not affected, for purposes of the plan amendment, by dismissal of the eminent domain proceeding after the agency's application was deemed complete. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57 (1996).

38.1 State Agencies – Generally. The coordination obligation imposed by Statewide Planning Goal 2 (Land Use Planning), and similarly worded local government comprehensive plan provisions, does not require that a local government accede to every concern expressed by a state agency, but does require that a local government adopt findings responding to legitimate concerns expressed by a state agency. *ONRC v. City of Seaside*, 29 Or LUBA 39 (1995).

38.1 State Agencies – Generally. With regard to siting a lot of record dwelling on high-value farmland, a county does not have authority to require that an Oregon Department of Agriculture hearings officer make determinations other than those specified in ORS 215.705(2)(c). *DLCD v. Josephine County*, 28 Or LUBA 459 (1994).

38.1 State Agencies – Generally. That state agencies may recognize and regulate "combination parks" which include both recreational vehicles and mobile homes occupied on a long-term basis does not mean a local government must adopt comprehensive plan and zoning provisions allowing such combination parks. *Jones v. Lane County*, 28 Or LUBA 193 (1994).

38.1 State Agencies – Generally. Where a document was originally drafted by state agency staff, but was never adopted by that agency as an administrative rule, and is applicable to a challenged local government decision only because it is incorporated by reference into the local code, under ORS 197.829 LUBA is neither required nor allowed to give deference to an interpretation of that document by an agency staff member. *Furler v. Curry County*, 27 Or LUBA 546 (1994).