38.2 State Agencies – Permits. Where a liquefied natural gas terminal requires both county and federal permits, and the county approves the local permit based on findings that rely on the applicant receiving federal permit approval, but the record indicates that applicant has been denied the federal permit at time of the county approval, the county errs in failing to consider whether the applicant is precluded from obtaining the required federal approval. *Oregon Shores Conservation Coalition v. Coos County*, 76 Or LUBA 346 (2017).

38.2 State Agencies – Permits. Issuance of a Department of Environmental Quality (DEQ) permit to operate a composting facility does not preempt a county from later concluding, in an application to verify whether the composting facility is a lawful nonconforming use, that the facility is not lawful nonconforming use, where the DEQ permit was issued based on a franchise authorization decision that was on appeal and that did not definitely resolve the issue of whether the composting facility is a lawful nonconforming use. *Grabhorn v. Washington County*, 73 Or LUBA 27 (2016).

38.2 State Agencies – Permits. 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).

38.2 State Agencies – Permits. 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).

38.2 State Agencies – Permits. Under OAR 660-031-0040 when renewing a state agency permit the agency is not required to make a determination of compliance with the statewide planning goals, unless the renewal involves a substantial modification or intensification of the permitted activity. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

38.2 State Agencies – Permits. Under OAR 660-018-0050(2), the Department of Environmental Quality's state agency coordination rule, a land use compatibility statement (LUCS) is the primary vehicle to ensure that agency permits are consistent with the statewide planning goals. In circumstances where the state agency coordination rules exempt permit renewals from the requirement to obtain a LUCS, the rules also exempt the agency from the requirement to make a determination that the renewed permit complies with the applicable goals. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

38.2 State Agencies – Permits. In renewing a discharge permit pursuant to the Department of Environmental Quality's state agency coordination rule, the agency is not required to re-evaluate activities allowed under the existing permit; rather, the agency is required to determine only whether the renewed permit involves a substantial modification or intensification of the permitted activity. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

38.2 State Agencies – Permits. In renewing a discharge permit under the Department of Environmental Quality's state agency coordination rules, nothing in those rules requires the agency to determine that the renewed permit complies with the statewide planning goals in circumstances where it is unclear that such determinations were made regarding the original permit. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

38.2 State Agencies – Permits. For purposes of state agency coordination programs, substantial intensification of the permitted activity refers to the regulated activity, not increasing complexity or intensification of the regulatory scheme or program. *Tualatin Riverkeepers v. ODEQ*, 55 Or LUBA 569 (2008).

38.2 State Agencies – Permits. 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).

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).