

38.3 State Agencies – Local Gov’t Compatibility Determinations. Where an acknowledged comprehensive plan addresses matters relevant to a state agency’s program, the state agency is not required to demonstrate compliance with the plan and with the goals under ORS 197.180(1). *Schaefer v. OAB*, 81 Or LUBA 819 (2020).

38.3 State Agencies – Local Gov’t Compatibility Determinations. The fact that an overlay zone that a county applies to lands adjacent to an airport extends into a city and the existence of an intergovernmental agreement between the county and the city regarding airport planning coordination do not give the city “planning authority” over the airport and, therefore, do not make the city an “affected city or county” for purposes of OAR 738-130-0015(1), OAR 731-015-0015(2), and those SAC programs. *Schaefer v. OAB*, 81 Or LUBA 819 (2020).

38.3 State Agencies – Local Gov’t Compatibility Determinations. An appeal of a LUCS for a DEQ permit for a natural gas pipeline is excluded from LUBA’s review under ORS 197.015(10)(b)(H)(ii) and (iii) where the LUCS correctly determines that no future land use reviews are required for some portions of the project and that other portions of the project require future land use reviews, and where the LUCS does not purport to approve or deny those reviews. *McCaffree v. City of North Bend*, 81 Or LUBA 32 (2020).

38.3 State Agencies – Local Gov’t Compatibility Determinations. Where a local government issues a LUCS for a DEQ permit for a natural gas pipeline, arguments that the local government denied a petitioner an opportunity to argue against the LUCS and that there is a perceived risk of explosion do not establish that the petitioner is “adversely affected” by the LUCS for purposes of ORS 197.830(3) where the petitioner cites no authority for the claim that they had a right to participate in the LUCS decision and where the LUCS does not authorize any development activity. *McCaffree v. City of North Bend*, 81 Or LUBA 32 (2020).

38.3 State Agencies – Local Gov’t Compatibility Determinations. The Land Conservation and Development Commission has adopted OAR 660-031-0026, which identifies state agency permits that must be compatible with local land use regulations, and OAR 660-031-0035, which authorizes state agencies to rely on local land use compatibility statements when issuing such permits. Oregon Liquor Control Commission decisions regarding returnable bottle redemption centers are not listed at OAR 660-031-0026, and therefore a local government planner’s checkmark on an OLCC form indicating a redemption center is allowed in the applicable zone is not a land use compatibility statement. *Glenwood 2006, LLC v. City of Beaverton*, 76 Or LUBA 162 (2017).

38.3 State Agencies – Local Gov’t Compatibility Determinations. Where a previously executed OLCC form with a box checked is not a final, binding land use decision, it was not appealable to LUBA and in granting design review approval for a returnable bottle redemption center, a city may not rely on that OLCC form to establish that a redemption center is a permitted use in the applicable zone. *Glenwood 2006, LLC v. City of Beaverton*, 76 Or LUBA 162 (2017).

38.3 State Agencies – Local Gov’t Compatibility Determinations. A 1997 land use compatibility statement (LUCS) concluding that a dwelling on forest land is compatible with the county’s acknowledged comprehensive plan is not a land use decision that “approves” a dwelling on forest land under the applicable land use standards. A LUCS decision, in itself, does not approve

development. At most, it informs a state agency that a proposed use *can be* approved consistent with the county's comprehensive plan and applicable land use regulations. *Eng v. Wallowa County*, 76 Or LUBA 432 (2017).

38.3 State Agencies – Local Gov't Compatibility Determinations. LUBA may consider documents outside the record, including copies of earlier land use decisions regarding the subject property, that are useful in resolving a jurisdictional challenge to the appeal of a land use compatibility statement (LUCS), even in the absence of a motion to take evidence under OAR 661-010-0045. *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

38.3 State Agencies – Local Gov't Compatibility Determinations. An accurate and complete response to a state agency request for a land use compatibility statement may require several determinations, including: (1) characterization of the nature and scope of the proposed land use, (2) whether and how local land use regulations categorize and govern the proposed land use, and (3) whether and what local land use reviews are necessary to construct or operate the proposed use. *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

38.3 State Agencies – Local Gov't Compatibility Determinations. A land use compatibility statement (LUCS) concluding that a county's land use regulations do not regulate the use of groundwater does not answer the question posed by the state agency's LUCS request, which is whether the county's land use regulations govern the *land use* to be served by the proposed use of groundwater for which the applicant seeks a state agency permit. *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

38.3 State Agencies – Local Gov't Compatibility Determinations. Where a land use compatibility statement does not identify the land use to be served by proposed storage of groundwater in two reservoirs, and on appeal the applicant does not identify what land use is served by the groundwater, LUBA cannot resolve the dispute over whether the decision is excluded from LUBA's jurisdiction under ORS 197.015(10)(b)(A), for decisions applying land use regulations that do not require interpretation or the exercise of legal judgment, because it is not clear what land use regulations apply. *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

38.3 State Agencies – Local Gov't Compatibility Determinations. Where a landowner seeks a state agency permit to store groundwater in two reservoirs recently constructed without county approval, and the state agency requests the county to provide a land use compatibility statement (LUCS) to determine whether the land use served by the groundwater complies with county land use regulations, the scope of the land use to be evaluated under the LUCS includes the legal status of the two reservoirs that the applicant proposes to fill with groundwater. *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

38.3 State Agencies – Local Gov't Compatibility Determinations. Where on appeal of a land use compatibility statement (LUCS) concluding that no county land use regulations apply to the proposed storage of groundwater in two reservoirs, the applicant fails to demonstrate that the decision is excluded from LUBA's jurisdiction under ORS 197.015(10)(b)(A) (for decisions applying land use regulations that do not require interpretation or the exercise of legal judgment), by arguing that the county's land use regulations should be interpreted to exempt construction of

the two reservoirs from county approval. Even if that argument is correct, that the applicable land use regulations require interpretation defeats application of the exclusion at ORS 197.015(10)(b)(A). *Bishop v. Deschutes County*, 75 Or LUBA 504 (2017).

38.3 State Agencies – Local Gov’t Compatibility Determinations. A county is not obligated to accept an applicant’s characterization of its proposed use and scope of use for purposes of issuing a land use compatibility statement. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

38.3 State Agencies – Local Gov’t Compatibility Determinations. A governing body’s code interpretation made in the course of rendering a decision on a request for a land use compatibility statement is subject to the deferential standard of review at ORS 197.829(1). Even without that deferential standard of review, the county correctly concluded that a proposal to store irrigation water in two newly excavated but unapproved reservoirs is not an outright permitted use as the operation of an “existing irrigation system,” but rather a use that requires conditional use approval as the “excavation” for “reservoirs” in conjunction with an irrigation system. *Bishop v. Deschutes County*, 72 Or LUBA 103 (2015).

38.3 State Agencies – Local Gov’t Compatibility Determinations. 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).

38.3 State Agencies – Local Gov’t Compatibility Determinations. 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).

38.3 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 (2002).

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).