

BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF THE )  
STATE AGENCY COORDINATION ) STATE AGENCY COORDINATION  
PROGRAM OF THE OREGON ) CERTIFICATION ORDER  
MILITARY DEPARTMENT ) 89-CERT-543

The matter came before the Land Conservation and Development Commission (the Commission) on June 8, 1989 in response to a request for state agency certification under ORS 197.180 and the Commission's State Agency Coordination Rules, OAR 660, Division 30. The Commission, having reviewed the Oregon Military Department's state agency coordination program, the comments and objections of interested parties, and the report of the Director of the Department of Land Conservation and Development (the Department), now finds that:

Findings of Fact

1. On February 17, 1988, the Commission, pursuant to ORS 197.180(2) and OAR 660-30-045(1), requested that the Oregon Military Department submit its state agency coordination program for certification. Exhibit A to this Order.
2. On March 24, 1989, the Oregon Military Department submitted its state agency coordination program to the Department for review. The submittal, pursuant to ORS 197.180(2) and OAR 660-30-060(2)-(6), contained the Military Department's:
  - (a) Rules and Programs Affecting Land Use. OAR 660-30-060(3);
  - (b) Program for Assuring Compliance with the Statewide Planning Goals and Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations. OAR 660-30-060(4);
  - (c) Program for Coordination with DLCD, Affected State and Federal Agencies and Special Districts. OAR 660-30-060(5); and
  - (d) Program for Cooperation with and Technical Assistance to Local Governments. OAR 660-30-060(6).

3. On June 8, 1989, the Commission reviewed the findings and conclusions of the Director of the Department regarding the Oregon Military Department's state agency coordination program's compliance with the requirements of ORS 197.180 and OAR 660, Division 30. No additional comments or information were received by the Director of the Department or the Commission. Exhibit B, Sections VI, VII and VIII of the Director's report.

Conclusion

The Oregon Military Department's state agency coordination program:

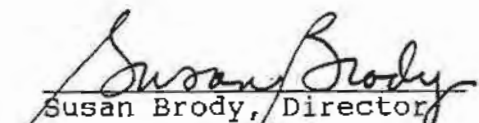
- (a) Contains the rules and procedures which assure compliance with the statewide planning goals and compatibility with acknowledged comprehensive plans for the Oregon Military Department's Development of Facilities program which has been determined to affect land use; and
- (b) Satisfies the requirements of ORS 197.180(2)(a)-(d) and OAR 660, Division 30.

THEREFORE, THE LAND CONSERVATION AND DEVELOPMENT COMMISSION ORDERS THAT:

The Oregon Military Department's state agency coordination program be certified pursuant to ORS 197.180 and OAR 660, Division 30.

DATED THIS 12 of June, 1989.

FOR THE COMMISSION:

  
Susan Brody, Director  
Department of Land  
Conservation and Development

SB:JBK  
<sac>

NOTICE: You are entitled to judicial review of the order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provision of ORS 183.484.

\*\* Copies of all exhibits are available for review at the Department's office in Salem.

LAND CONSERVATION AND DEVELOPMENT COMMISSION

Certification of State Agency Coordination Program

Oregon Military Department

I. REQUEST

The Oregon Military Department requests that its state agency coordination (SAC) program be certified as required by ORS Chapter 197.180 and OAR Chapter 660, Division 30.

II. SUMMARY RECOMMENDATION OF DLCD DIRECTOR

The Director of the Department of Land Conservation and Development (DLCD) recommends that the Land Conservation and Development Commission (LCDC) certify that the Oregon Military Department's state agency coordination program complies with the requirements of ORS 197.180 and OAR 660, Division 30. (See section VIII. of this report for the Director's complete recommendation.)

III. ACTION OF LCDC

Certify the Oregon Military Department's state agency coordination program to comply with the requirements of ORS 197.180 and OAR 660, Division 30.

DLCD Reviewer: James Knight  
Phone: 373-0085

Agency Contact: SFC Gerald Elliott  
Phone: 378-3914

Date of Report: May 15, 1989

Date of Commission Action: June 8, 1989

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#### IV. STATE AGENCY CERTIFICATION REQUIREMENTS

ORS 197.180 requires state agencies to submit state agency coordination (SAC) programs to DLCD upon request by the LCDC. Within 90 days of receipt, the DLCD Director shall review the submittal to determine whether the agency's program is sufficient to assure compliance with the goals and compatibility with acknowledged comprehensive plans and land use regulations.

LCDC shall either accept the Director's recommendation and certify the agency's submittal or find the program insufficient and return it for revision. OAR 660-30-005(4) defines "certification" as an order issued by LCDC that a state agency coordination program satisfies the requirements of ORS 197.180(2)(a)-(d) and OAR 660, Division 30.

LCDC has adopted OAR 660, Division 30, to implement the statutory state agency coordination requirements. This rule defines key terms, describes the content of a SAC program, sets out the steps for the certification review process and establishes the procedures for evaluating new or amended programs of certified agencies.

ORS 197.180(2) and OAR 660-30-060(2) require a state agency coordination program to contain four elements. These are:

1. The agency's rules and summaries of programs affecting land use;
2. The agency's administrative rules and procedures for assuring that its programs affecting land use comply with the statewide planning goals and are compatible with acknowledged comprehensive plans and land use regulations;
3. A description of the agency's procedures for coordination with DLCD, affected state and federal agencies and special districts; and
4. A description of the agency's program for cooperating with and providing technical assistance to local governments.

Upon receipt of a complete submittal, DLCD issues a public notice to provide an opportunity for interested persons to submit written comments or objections concerning certification of the agency's coordination program. The length of the notice period shall be at least 30 days. DLCD's evaluation of the agency's SAC program, including responses to comments and objections and a recommendation regarding certification, are set forth in a written report. Prior to Commission action on the agency's program, the submitting agency, commenters and objectors are

given at least 20 days to review the DLCD Director's recommendation and analysis and file any written exceptions to that report.

## V. BACKGROUND INFORMATION

### Statutory Duties

The Oregon Military Department (the Military Department) is a state agency established pursuant to ORS Chapter 396 (see Appendix A to the agency's submittal). Organizationally, the Military Department exists as a separate agency in state government under the overall direction of the Governor.

The Military Department is the agency responsible for the organization and operation of the military affairs of the state. The Military Department consists of three principal components: the Oregon Army National Guard (ORARNG), the Oregon Air National Guard (ORANG), and the Oregon State Defense Force (ORSDF). The agency's SAC submittal describes each of these elements as follows (p. 2):

1. The Oregon Army National Guard consists of 7,500 personnel, organized into 75 units in 40 communities around the state (See Appendices C and D). The ORARNG is generally divided into three major commands: State Area Command (STARC), 41st Separate Infantry Brigade, and Troop Command Brigade. The primary missions of ORARNG units include infantry, field artillery, armored cavalry, combat engineer and various support functions.
2. The Oregon Air National Guard consists of 2,000+ personnel, organized into 17 units distributed at the Portland Air Base, Coos Head Air Station (Charleston), Kingsley Field (Klamath Falls), and Camp Rilea (Warrenton). Units of the ORANG are primarily involved in military flight operations (air defense), aircraft and surface vehicle maintenance, air traffic control, combat communications, and personnel and facility support.
3. The Oregon State Defense Force (ORSDF), formerly known as the Oregon National Guard Reserve, is organized under authority of federal and state statutes, with the responsibility of conducting state emergency functions under the direction of the Governor. The ORSDF has an authorized strength of 1,240 volunteer personnel and is organized into military-type units which cover the entire state.

The Military Department employs 1700 full-time personnel including state employees and federal technicians, in directing the organization, operation, and training of these 10,000+ part-time soldiers, airmen, and ORSDF personnel.

#### Missions of the Military Department

The Military Department and its Army and Air Guard components are charged with performing various federal and state military missions in addition to their authorized federal and state emergency service responsibilities. The agency's mission statements are summarized on page 3 of the submittal and described in detail in Appendix E.

Oregon Army and Air National Guard units are organized by the federal government, receive substantial financial assistance, and may be called to active federal service by the President or the Department of Defense. Unlike the Army and Air Guard, the Oregon State Defense Force has no federal mission. However, in the event of war, the ORSDF would serve in place of the National Guard if the latter were ordered to active duty.

In terms of state service, units of the Army or Air Guard as well as the ORSDF may be called by the Governor to state active duty to provide emergency aid and response tasks within Oregon under a variety of circumstances.

The Military Department (p. 2) operates under the direction of the Adjutant General who is appointed by the Governor. The Adjutant General serves as both the Director of the Military Department and the Commander of the Organized State Militia.

#### First Military Department SAC Program

The Military Department's first state agency coordination program was approved by LCDC on February 14, 1978. The SAC requirements in effect at that time did not require LCDC to certify agency coordination programs. As a result of its review, LCDC determined in 1978 that the Military Department's construction, operation and maintenance of National Guard support facilities composed its only program which affected land use.

#### 1989 Military Department SAC Submittal

On February 17, 1988, the LCDC officially requested the Military Department to submit a revised state agency coordination program for certification. July, 1988 was established by LCDC as the date for submittal of the program to DLCD. Through mutual agreement with DLCD, the Military Department's submittal date was extended to allow additional time to resolve several legal issues pertaining to the agency's SAC program.

The Military Department adopted its coordination program in late March, 1989. The Military Department's SAC submittal was

May 15, 1989

received at DLCD on March 24, 1989. DLCD issued public notice of the Military Department's request on April 12, 1989. The comment period closed on May 12, 1989.

The submittal describes through text, policy statements and statute and regulation references how the Military Department's coordination program addresses the requirements for certification and other SAC statute and LCDC rule changes enacted since 1978.

The Military Department states that upon certification by LCDC, "the provisions of this revised Military Department State Agency Coordination Program will supersede those of the existing SAC program" (p. 1).

## VI. FINDINGS

ORS 197.180(2) requires a state agency coordination program to contain four elements. OAR 660-30-060(3)-(6) describe each of these elements. LCDC certification of a SAC program must be based upon findings and a recommendation by the DLCD Director that the agency's program complies with ORS 197.180 and OAR 660, Division 30.

### 1. Agency Rules and Programs Affecting Land Use

OAR 660-30-060(3)

#### A. Requirement 1

Submit copies of all agency rules and list and briefly describe all agency programs authorized by law.

#### Response

The Military Department's program summarizes and contains copies of the agency's enabling state statutes and relevant administrative rules and Military Department Regulations (see p. 4 and attachments provided with the SAC submittal). Copies of applicable federal statutes and other Military Department regulations can be reviewed at the agency's Salem office.

As a preface to its program descriptions, the agency on page 5 notes:

The organization, administration, training and support of the Organized State Militia constitute the basis for the Military Department programs outlined below. The programs of the ORARNG, [OR]ANG, and the ORSDF components are described together where possible, for the purpose of this Plan [i.e., SAC program]. Separate descriptions are provided where



component programs differ substantially and cannot be described together.

Army and Air National Guard Programs are conducted in accordance with regulations established by the National Guard Bureau (NCB), with limited opportunity for changes at the state level without significant justification, review and approval.

The submittal describes on pages 5-13 the ten (10) principal programs the Military Department participates in or is responsible for administering. These programs are as follows:

#### Program #1 - Organization of Units

This program involves the state's role with the National Guard Bureau and with the Departments of the Army and Air Force in organizing and allocating guard units to the various states and territories. Under this program, the Governor is responsible for approving the allocation (and any reallocation) of units within the state.

Proposals for locating or changing units within the state also involve the preparation of detailed analyses addressing various factors including the (p.6):

- a. Impact on the overall efficiency of the National Guard in accomplishing its military missions;
- b. Impact on the affected community, including the capability of public and other support facilities at the site;
- c. Requirements for new buildings and improvements as a result of the proposal; and the
- d. Proximity of the site to appropriate training areas.

#### Program #2 - Development of Facilities

This program (pp. 6-9) is responsible for the provision and maintenance of facilities for National Guard units located throughout the state. Included here are armories, equipment maintenance shops and training sites for the ORARNG, and air bases for the ORANG. The Oregon State Defense Force uses these same facilities, but maintains no facilities of its own.

Facilities under this program include both the improvement and expansion of existing installations and the development of new facilities. However, as noted on page 7, the improvement and expansion of existing facilities do not include the maintenance and repair of such facilities.

In terms of location, ORARNG facilities can be located on either public or private lands and are sited in accordance with

applicable state and federal regulations. Oregon Air National Guard facilities, on the other hand, are always located on lands solely owned by or leased to the federal government and are developed based solely on federal standards and requirements.

Currently, there are 43 armories, 12 equipment maintenance facilities and 5 training sites for the Army National Guard in Oregon. The Air National Guard operates four (4) facilities at Portland, at Camp Rilea near Warrenton, at Coos Head near Charleston and in Klamath Falls. Detailed information and descriptions of Army and Air Guard facilities are provided in Appendices C, D, F and G to the submittal.

#### Program #3 - Establishment of Local Training Areas

This program (p. 9) is concerned with the leasing by both the Army and Air National Guard of lands from public and private land holders for use as Local Training Areas or LTA's. The purpose of an LTA is to provide unit-level training opportunities near to where the unit is located and thereby minimize the need and expense of transporting personnel and equipment to more established training facilities.

Training occurring at LTA's involves activities which are low-impact, low-intensity in nature and are of limited duration. No permanent support facilities are required. National Guard Bureau regulations do not allow the construction of permanent facilities on lands leased as LTA's.

Lease procedures for establishing Army and Air Guard LTA's are described generally on page 9 of the submittal.

#### Program #4 - Acquisition and Disposal of Land

The development and improvement of Military Department facilities often may necessitate the acquisition or disposal of land. These actions occur under Program #4 (pp. 9-10).

Land transactions involving the Army National Guard use applicable state procedures, in coordination with the state Department of General Services. National Guard Bureau regulations also provide direction when such land transfers involve the use of federal funds.

Because all Air National Guard facilities are located entirely on land owned by or leased to the federal government, acquisition and disposal of ORANG lands are accomplished by the Department of the Air Force at the request of the Oregon Air National Guard.

#### Program #5 - Operation of Facilities

This program (p. 10) is responsible for the uses and activities that occur at Army and Air National Guard facilities and installations. In addition to military training functions, Army

National Guard armories may also be used as locations for community meetings and for emergency response, planning and shelter purposes.

Air Guard facilities, because of the need for continual security, are generally not available for non-military purposes.

#### Program #6 - Maintenance of Facilities

This program (p. 11) encompasses the various activities and procedures intended to maintain, repair, and provide upkeep to Army and Air National Guard buildings, structures, and training areas.

#### Program #7 - Maintenance and Repair of Equipment

This program (p. 11) deals with the maintenance, repair, and storage of vehicles, aircraft and other equipment at established maintenance facilities and training sites. The primary objectives of this program are to maintain Military Department equipment in accordance with applicable regulations and also provide training opportunities in important military skills.

#### Program #8 - Training of Personnel

Under this program (pp. 11-12), the training of National Guard personnel occurs in accordance with regulations issued by the National Guard Bureau and the Departments of the Army and Air Force.

While training activities vary depending upon the unit, there are basically two types of training conducted by the Army and Air National Guard. These are described on page 11 of the SAC program:

##### 1. Combat Training

Individual and unit training which applies directly to the military mission of the unit and must be accomplished in order to learn and maintain required skills and ensure a condition of unit readiness to perform its mission. Training can occur at armories, air bases, equipment maintenance facilities, training sites, or LTA's.

##### 2. Community Service Projects

As opposed to purely combat training with little application to the civilian community, numerous military skills can be acquired and practiced while conducting operations which can be of benefit to the citizens of the state. ORNGR 28-19/OreANGR 190-4, COMMUNITY SERVICE PROGRAM defines a variety of activities, known as community service projects, which must be conducted in this manner. Requests to conduct community service projects are initiated by the proponent of

the action (sponsor) and processed through the Military Department for review and approval.

Program #9 - Administration

Activities occurring under this program (p. 12) include those administrative matters and activities performed by the Military Department to organize and support the Army and Air National Guard, including liaison between the state of Oregon and applicable federal agencies and departments.

Program #10 - State Emergency Operations

This program (p. 12) deals with the emergency service role of the Military Department. As described on page 12,

Any component of the Organized State Militia, or portion thereof, can be activated to conduct state emergency operations upon the call of the Governor and declaration of a state of emergency. Personnel may be activated to respond to such emergencies as civil disturbances, natural disasters (floods, forest fires, volcano eruptions, etc.), and other such operations. Personnel utilized in this manner are called to State Active Duty and paid by the State. [OR]ARNG and [OR]ANG personnel may use federally owned National Guard equipment in the performance of such duties, as long as the state pays the costs of operation, repair and maintenance of such equipment.

Specific authority for emergency operations is found in ORS 401.015-401.535. Specific guidance and detailed instructions for implementation by the Military Department are found in the State Area Command--Oregon Emergency Operations Plan 1-89, as amended from time to time.

B. Requirement 2

Identify which of the agency's rules and programs are land use programs. For each program provide a copy or a summary of the program's enabling authority, copies of applicable administrative rules and procedures and an analysis of the program's relationship with land use.

Response

The Military Department's discussion and analysis of which of its rules, regulations, operational procedures and programs affect land use is found in Section V of the agency's SAC submittal at pages 13-21.

The Military Department introduces its evaluation by restating the SAC rule's definition of "rules and programs affecting land use" found in OAR 660-30-005(2). Based on this definition, the Military Department states on page 14 that there are two broad standards for determining whether an agency's rule or program

affects land use. These two standards are:

- Specific reference to an agency rule or program in the statewide planning goals, or
- Reasonable expectation that an agency rule or program will have a significant effect on the areas or issues identified in the statewide goals, or on present or future uses identified in acknowledged comprehensive plans.

The Military Department concludes that under the first standard, the agency has no rules or programs specifically referenced in the statewide goals (p.14).

The submittal next analyzes the Military Department's rules and programs under the "significant effects" test in the SAC rule.

#### Military Department Administrative Rules

The Military Department has adopted only one administrative rule. This rule is OAR 248, Division 1, which establishes the procedures the agency will follow in giving notice of pending rule adoption. The submittal states that giving notice is purely an administrative matter and will not affect land use as defined in the SAC rule (p. 14).

#### Military Department Regulations and Procedures

The Military Department has adopted a great number of regulations and operational procedures to organize and direct the agency's efforts and activities. With the exception of Oregon National Guard Regulation 210-20 discussed below, the submittal at page 15 states that all other:

Military Department regulations and operational procedures are internal management directives, as defined in ORS 183.310(8), and are exempt from the Administrative Procedures Act. These Military Department operational procedures are not reasonably expected to have a significant effect on resource values or areas identified in the statewide planning goals or to affect present or future land uses identified in an acknowledged comprehensive plan. As a result, these regulations and operational procedures do not have the potential to significantly affect land use, as that term is defined in OAR 660-30-005(2).

The only agency directive which the agency concludes (p. 14) does affect land use is Regulation 210-20 which has been adopted to implement key provisions of the Military Department's SAC program. This regulation establishes the procedures the Military Department will follow to assure that its programs affecting land use are carried out in compliance with the statewide goals and in a manner compatible with acknowledged comprehensive plans and land use regulations.

Military Department Programs

The Military Department's land use analysis of each of its ten (10) programs described previously is found at pages 15-21 of its SAC submittal.

Program #1 - Organization of Units

The submittal states (p. 15) that organizing units for the State Militia is an administrative matter and will not have any significant effects on land use in terms of the statewide goals or uses identified in acknowledged comprehensive plans. Military Department actions to provide facilities and installations to accommodate the stationing of units in Oregon are discussed under Program #2 below.

Program #2 - Development of Facilities

As explained earlier, this program involves decisions and actions of the Military Department to site and construct facilities for both the Army and Air National Guard throughout Oregon (p. 15).

The Military Department states that its determination of which of its actions under the Facilities program affects land use rests upon first identifying which of the agency's facility functions are subject to state law and which are not (p. 15). As explained on pages 15-6 of the submittal:

The federal government has retained the responsibility for constructing and acquiring facilities for the reserve components of the armed forces of the United States. Chapter 133 of Title 10, United States Code Annotated, which includes Section 2231-2239, specifies the conditions under which such facilities are to be provided. (Chapter 133 is attached to this Program as Appendix J.)

Section 2233 of Chapter 133 declares that title to property acquired by the United States by purchase, lease or transfer vests in the United States. Section 2237(b) of this same chapter identifies specific actions and defines the conditions under which a state may regulate the activities of the federal government in developing these reserve component facilities.

ORS 197.180(1) states that unless a state agency is exempted by another statute, it must carry out its actions and responsibilities with respect to the agency's programs determined to affect land use in a manner which complies with the statewide planning goals and is compatible with acknowledged comprehensive plans.

Military Department review and analysis of the above provisions, including relevant section of the SAC rule (OAR 660-30); indicate that the applicability of state and local

land use requirements to Military Department facility projects and actions depends upon whether or not the facility is located on federal land.

Therefore, for the purposes of this SAC program, it is the position of the Military Department that the key criterion for determining which aspects of the Development of Facilities Program constitute a "program affecting land use," as that term is defined in OAR 660-30-005(2)(b), is whether or not the facility is located on federal land. [Emphasis in original.]

Based on the above analysis, it is the position of the Military Department that any reserve component facility developed on land owned by or leased to the federal government in Oregon is not considered to affect land use as defined by the SAC rule. This conclusion is considered by the Military Department to be applicable to all facilities and installations developed for the Army and Air National Guard (pp. 16-17).

However, many Military Department facilities are developed on non-federal land. In these cases, development of reserve component facilities on land not owned by or leased to the federal government is considered to affect land use and, therefore, is subject to applicable state and local land use requirements (p. 17).

On pages 17-8, the Military Department specifies what aspects of its Facilities program are required to address land use. The submittal indicates that only facilities developed for the Army National Guard on non-federal land are obligated to comply with the statewide goals and be compatible with acknowledged comprehensive plans. All existing and any future Air Guard facilities are or will be on land owned by or leased to the federal government.

The submittal states at pages 17-18 that there are two categories of facility actions undertaken on behalf of the Army Guard that can reasonably be expected to have a significant effect on the statewide goals and acknowledged comprehensive plans.

The two categories are (pp.17-8):

1. Improvement and Expansion of Existing ARNG Facilities

This category includes the improvement and expansion of an existing ARNG facility (i.e., an armory, equipment maintenance shop or training site) on land owned by the state or leased by the state from a private property owner or non-federal public agency. The improvement or expansion of an existing facility includes the construction of a new building or a new training support facility at an existing site. However, the improvement and expansion of an existing facility does not include the maintenance and repair of such a facility.

## 2. Development of New ARNG Facilities

This category includes the development of a new ARNG facility (i.e., an armory, equipment maintenance shop, or training site) on land owned by the state or leased by the state from a private property owner or non-federal public agency. The development of a new facility refers to a facility to be located on land where no ARNG facility now exist. (Emphasis added.)

### Program #3 - Establishment of Local Training Areas

The Military Department has concluded (p. 18) that the establishment of local training areas (LTA's) does not constitute a program affecting land use as that term is defined in the SAC rule. As noted on page 18 in the submittal, LTA's:

are developed to allow low-intensity, intermittent field training (e.g., small unit maneuvers, land navigation, infantry operations, deployment of mobile radar stations, etc.). These activities are conducted without the development of permanent improvements and do not result in substantial or long-term impacts to the site.

### Program #4 - Acquisition and Disposal of Land

In its submittal, the Military Department notes (p. 18) that its program involving the acquisition and disposal of land in connection with the development of facilities does not affect land use when such actions do not alter the use or area of the property in question. See OAR 660-30-005(b)(b)(C). The agency does recognize that any subsequent use or division of land acquired under this program must conform with all requirements for the development of facilities, including compliance with the statewide goals and compatibility with acknowledged comprehensive plans.

### Program #5 - Operation of Facilities, Program #6 - Maintenance of Facilities and Program #7 - Maintenance and Repair of Equipment

The Military Department on page 19 states that its three programs dealing with the ongoing use and maintenance of agency facilities and equipment at existing sites do not constitute programs affecting land use.

It is the Military Department's position that the use and maintenance of existing facilities and equipment is allowed by all city and county comprehensive plans and land use regulations. Such facilities and the uses and activities which occur in connection with them, including non-military uses authorized under ORS 396.540, are allowed, depending upon the jurisdiction in question, as outright permitted uses, conditional uses, special uses or non-conforming uses.



As long as such facilities and the related uses and activities under these three programs are operated or are conducted in a manner consistent with the provisions of applicable local land use regulations, the Military Department believes it is reasonable to expect that there will be no significant impact on the statewide goals or uses in acknowledged plans. For these reasons, the Military Department concludes that these three programs do not affect land use pursuant to the SAC rule at OAR 660-30-005 (2).

Program #8 - Training of Personnel

Since the training of personnel at armories, vehicle maintenance facilities, and at training sites is an existing use, the Military Department has determined that activities under this program are not expected to have a significant effect on the statewide goals or uses in acknowledged plans (p. 20).

Similarly, the training of personnel at local training areas LTA's as noted previously in the submittal at page at 18 does not affect land use due to the insignificant nature such activity has on the statewide goals and uses in acknowledged plans.

In addition to its determination regarding the non land use effects of military training under Program #8, the submittal also states (p. 20) that training activities occurring in connection with community service projects also do not affect land use. As explained at page 20:

Under the conditions established for approval of community service projects and the type of activities allowed, such actions are not reasonably expected to have a significant effect on the resources, objectives, or areas identified in the statewide planning goals, or present or future land uses identified in acknowledged comprehensive plans. As a result, these actions will have no significant effect on land use, as that term is defined in OAR 660-30-005(2).

Finally, it is the position of the Military Department that even in the case of community projects that do involve actions that require a land use approval from a local government and/or state or federal permit, such training activity does not affect land use in terms of the SAC rule. This is because it is the public or private sponsor of the project in question, not the Military Department, that is the party who initiates the project and obtains the necessary permits and approvals.

On this point, the submittal states (p. 20):

However, community service projects include actions described as ENGINEER PROJECTS which sometimes require a land use approval from the local government and/or a permit from a state or federal agency. ORNGR 28-19/OreANGR 190-4 (Appendix K) requires the sponsor of an engineer project to obtain

required land use approvals and permits prior to ORNG participation in the project. Military Department documents are designed to assure that the sponsor acknowledges responsibility for obtaining required approvals at the time of project review, and that such approvals are submitted to the Unit Commander in writing prior to commencement of ORNG participation in the project. (Emphasis in original.)

For these reasons the Military Department, based on the definition at OAR 660-30-005(2) in the SAC rule, concludes that the Program #8 - Training of Personnel program does not affect land use.

#### Program #9 - Administration

The submittal on pages 20-21 states that the various management activities (e.g., personnel, property management, finance, etc.) associated with the operation of the State Militia are administrative matters which have no land use impact. For this reason, the Military Department has determined that this program, based on the SAC rule, does not affect land use.

#### Program #10 - State Emergency Operations

The Military Department as described earlier in the submittal on page 12 can be activated by the Governor to assist in responding to declared state emergencies. Under the state emergency statutes at ORS 401.065-401.095, the Governor is vested with the authority to temporarily suspend the provisions of any law, rule, ordinance, or order which is inconsistent with the purpose of conducting emergency operations.

It is the conclusion (p. 21) of the Military Department that the agency's actions under declared state emergencies, pursuant to ORS 401.065 and the program exemption provision in ORS 197.180(1), are not subject to the state agency coordination requirements in ORS 197.180 and OAR 660-30.

#### C. Requirement 3

Identify any of the agency's land use programs subject to the LCDC State Permit Compliance and Compatibility rule, OAR 660, Division 31.

#### Response

The Military Department states on page 28 that it does not issue permits for any of its programs affecting land use and therefore is not subject to the requirements of LCDC State Agency Permit Compliance and Compatibility Rule, OAR 660-31.

Conclusion

The DLCD Director finds, based upon the findings, reasons and analysis submitted by the Oregon Military Department, that the Military Department's agency coordination program satisfies the three requirements of OAR 660-30-060(3).

2. Program of Coordination Pursuant to ORS 197.040(2)(e)

## OAR 660-30-060(4)

This element of a SAC program pertains to the agency's process for assuring that its rules and programs affecting land use comply with the statewide planning goals and are compatible with acknowledged comprehensive plans and land use regulations.

A. Requirement 1

Identify any agency land use programs which are expressly exempt from the statutory requirement to be compatible with acknowledged comprehensive plans, but not from compliance with the statewide planning goals.

Response

The Military Department states at page 22:

The Military Department has determined that its Development of Facilities Program (see Section V, Program #2) is the Department's only program which affects land use. The Development of Facilities Program is classified as a "compatible land use program" pursuant to OAR 660-30-060(4)(a)(B) because there are no applicable statutes, constitutional provisions or appellate court decisions which would exempt all or portions of this program from compatibility with acknowledged comprehensive plans, but not from compliance with the statewide planning goals.

B. Requirement 2

Adopt or amend rules and procedures for assuring that the agency's land use program(s) comply with the statewide planning goals in the manner described in OAR 660-30-065.

Response

As noted previously, the Military Department has determined that its statutory obligation to comply with the statewide goals and to be compatible with acknowledged comprehensive plans only applies to two categories of actions under the Development of

Facilities Program. To be subject to state and local land use requirements, such actions must be located or occur on land owned by the State of Oregon or on lands leased by the State of Oregon from private property owners or non-federal public agencies (p. 22).

The two categories (pp. 22-23) of facility actions are:

- 1) The improvement and expansion of an existing Army National Guard facility (i.e., an armory, equipment maintenance facility or training site. While this category includes construction of a new building at an existing site, the maintenance and repair of existing facilities are not determined to affect land use.
- 2) The development of a new facility (i.e., armory, equipment maintenance facility, or training site) at a location where no Military Department facility currently exists.

#### Military Department Rules

The SAC rule, OAR 660-30, requires that state agencies adopt rules and procedures appropriate for assuring that programs affecting land use comply with the statewide planning goals and are compatible with acknowledged comprehensive plans.

To meet this requirement the Military Department has adopted Oregon National Guard Regulation (ORNGR) 210-20 to implement the agency's land use responsibilities for the two types of facility actions described at pages 22-23. A complete copy of ORNGR 210-20 is provided in Appendix I with the submittal.

From a legal standpoint, the Military Department has determined that this land use regulation is equivalent to a state agency rule adopted pursuant to the State Administrative Procedures Act under ORS Chapter 183. Appendix H in the submittal contains the Military Department's analysis to support its conclusion that ORNGR 210-20 meets the administrative rule requirement in OAR 660-30.

ORNGR 210-20(5) describes the overall goal compliance and plan compatibility findings required by the Military Department in approving or undertaking applicable actions under the Development of Facilities Program.

The regulation states (p. 23):

5. COMPLIANCE WITH THE STATEWIDE PLANNING GOALS AND COMPATIBILITY WITH ACKNOWLEDGED COMPREHENSIVE PLANS AND LAND USE REGULATIONS

Prior to undertaking any project or action determined to affect land use, the Military Department shall find that

the project or action complies with the statewide planning goals and is compatible with applicable acknowledged comprehensive plans and land use regulations. Military Department goal compliance and plan compatibility determinations shall be made in accordance with the provisions of ORNGR 210-20 and the Military Department's certified state agency coordination program, which is hereby adopted by reference.

The submittal indicates (p. 23) that it's the Military Department's position that when the agency acts compatibly with an acknowledged comprehensive plan it is complying with the statewide planning goals.

However, in a situation where it is necessary for the Military Department to adopt direct findings against one or more of the statewide goals, the agency will follow the steps contained in ORNGR 210-20(6)(b).

ORNGR 210-20(6)(b) states (pp.23-4):

- b. The Military Department does not anticipate the need to adopt findings for compliance with the statewide planning goals. However, if direct goal findings by the Military Department are required, the Department shall adhere to the following procedure:
  - 1) Confirm that a situation exists pursuant to OAR 660-30-065(3) requiring the Department to adopt findings of compliance with one or more of the statewide planning goals;
  - 2) Identify the specific statewide goal(s) or goal requirements the Department must address;
  - 3) Consult directly with the affected jurisdiction(s). Military Department policy is to request amendment of the applicable comprehensive plan or other appropriate land use decision by the city or county, if possible, rather than for the Department to address the goals on its own accord;
  - 4) Request interpretive guidance from the Department of Land Conservation and Development and the Attorney General's Office;
  - 5) Rely on any relevant goal interpretations for state agencies adopted by LCDC under OAR Chapter 660; and
  - 6) Adopt any necessary findings to assure compliance with the statewide goals.

Military Department Procedures

No additional procedures other than those contained in ORNGR 210-20 have been adopted by the Military Department to address compliance with the statewide planning goals.

C. Requirement 3

Adopt or amend rules and procedures for assuring that the agency's land use program(s) are compatible with acknowledged comprehensive plans, including the resolution of land use disputes, in the manner described in OAR 660-30-070.

Response

The Military Department's procedures for assuring compatibility with acknowledged comprehensive plans are contained in the agency's land use regulation, ORNGR 210-20. A copy of ORNGR is provided in Appendix I with the submittal.

Military Department Rules

ORNGR 210-20(5) presented above requires the Military Department to adopt compatibility (and goal compliance) findings before undertaking an action under the agency's Development of Facilities program which has been determined to affect land use. The agency's specific compatibility procedures are found at ORNGR 210-20(7).

ORNGR 210-20(7) states (pp. 24-6):

7. COMPATIBILITY WITH ACKNOWLEDGED COMPREHENSIVE PLANS AND LAND USE REGULATIONS

The following procedure is intended to assure that a Military Department project or action determined to affect land use is compatible with the acknowledged comprehensive plans and land use regulations of applicable cities and counties.

- a) Prior to initiating any project or action referenced in ORNGR 210-20(3), the [Military Department] Installations Office (AGI) shall contact the planning office of the applicable city or county. In cooperation with local land use representatives, AGI shall conduct a review of the jurisdiction's comprehensive plan and land use regulation applicable to the proposed project or action. This review of local land use documents and regulations shall be completed as early in the Military Department's planning process as possible, normally during the preparation of funding requests and environmental documents for the project or action.

- b) The Military Department shall obtain city and county land use approvals, including where appropriate, comprehensive plan and land use regulation amendments, statewide goal exceptions, zone changes, conditional use permits, and other applicable local land use approvals prior to the Military Department's initiation of a proposed project or action.
- c) Except where it is necessary for the Military Department to adopt findings for compliance with the statewide planning goals (see ORNGR 210-20(6)(b) above), the Military Department shall achieve goal compliance by acting compatibly with acknowledged comprehensive plans and land use regulations.
- d) In order to make the necessary determinations of compatibility for a Military Department project or action affecting land use, the Military Department shall rely on the following three (3) types of land use approval:
  - 1) A copy of the local land use permit or equivalent documentation from the city or county planning agency or governing body that the project or action has received land use approval; or
  - 2) A letter from the local planning agency or governing body stating that the project or action is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval; or
  - 3) Other information provided to the Military Department equivalent to 1 or 2 above, including but not limited to documented confirmation of compatibility with applicable land use regulations from an authorized representative of the affected jurisdiction.
- e) The Installations Office (AGI) shall be responsible for submitting all information required by the city or county to review and approve a Military Department land use application or request for compatibility determination. Other Military Department offices may be tasked to develop specific information to be submitted as justification for a proposed project or action.
- f) A denial of a Military Department request for land use approval or determination of compatibility shall be pursued through local appellate procedures until the city or county governing body has rendered its final decision. At that point the Department shall:

- 1) Decide to stop pursuit of land use approval for the proposed action or project at the site in question;
- 2) Modify or redesign the proposed action or project to comply with the city or county land use requirements and resubmit the modified or redesigned project or action to the city or county for land use approval;
- 3) Appeal the local government denial to the State Land Use Board of Appeals (LUBA); or
- 4) Pursue the denial through the dispute resolution procedures described in ORNGR 210-20(8).

#### Military Department Procedures

No additional Military Department procedures other than those contained in ORNGR 210-20 have been adopted by the Military Department to address compatibility with acknowledged comprehensive plans and land use regulations.

#### Conflict Resolution

As part of its compatibility process, the Military Department has adopted procedures for dealing with conflicts with local jurisdictions involving the agency's Development of Facilities program. As indicated on page 26 of the submittal, it is the Military Department's intention to resolve all land use issues with local governments by relying on all applicable agency compatibility procedures.

However, in the situation where the Military Department and a local jurisdiction are unable to agree on a land use matter, the agency will use procedures contained in ORNGR 210-20(8)(b) to resolve the dispute.

ORNGR 210-20(8)(b) provides (pp. 26-7):

- 1) Military Department staff, where appropriate, shall request meetings with planning staff or other representatives of the local governments to discuss:
  - a) Ways the proposed Military project or action can be made compatible with the jurisdiction's comprehensive plan and land use regulations, including possible modification of the proposed project or action while achieving the Department's desired results;
  - b) Military Department alternative actions, including withdrawal of the proposal.



- 2) All applicable requests by the Military Department shall be submitted in a timely manner.
- 3) Local denials of Military Department requests for land use approvals or compatibility determinations shall be pursued through appropriate appeal processes, when determined necessary by the Department.
- 4) Where appropriate, the statutory plan amendment and periodic review processes shall be employed to obtain local land use approvals related to projects or actions affecting land use proposed by the Military Department.
- 5) If the dispute cannot or is not expected to be resolved through steps 1-4 above, the Military Department may request informal mediation or a compatibility determination from the LCDC in accordance with OAR 660-30-070. Such request shall be made to the LCDC in writing by the Adjutant General or an authorized representative.

#### D. Requirement 4

Assure that the agency's rules and procedures for goal compliance and plan compatibility will apply to any new or amended agency land use program enacted after certification in the manner described in OAR 660-30-075.

#### Response

##### Military Department Rules

The Military Department states (p. 27) that it does not anticipate any amendments to its Development of Facilities Program which would not be covered in the procedures included in ORNGR 210-20. However, in the event that such a circumstance does arise, the Military Department shall follow procedures listed in ORNGR 210-20(9) to submit notice of the amendments to the Department of Land Conservation and Development, as required by OAR 66-30-075.

ORNGR 210-20(9) states (pp. 27-8):

#### 9. COMPLIANCE AND COMPATIBILITY OF NEW OR AMENDED LAND USE PROGRAMS

LCDC certification of the Military Department's SAC Program, including ORNGR 210-20, signifies that the Department has fulfilled its statutory state agency coordination responsibilities. The Military Department shall implement the following procedures to assure that new Department programs or any amendments to existing Department land use programs or ORNGR 210-20 shall conform to the Department's certified SAC Program and the requirements of ORS 197.180 and OAR 660-30:

- a) The Military Department shall not amend its certified state agency coordination program, adopt new programs, amend existing land use program or revise ORNGR 210-20 without notifying the Department of Land Conservation and Development (DLCD) in accordance with 660-30-075.
- b) Such notice to adopt or amend a program or regulation, as described in ORNGR 210-20(9)(a) above, shall be provided to the DLCD in writing no less than 45 days before adoption by the Military Department is scheduled to occur.
- c) The notice provided to DLCD shall demonstrate that the proposed adoption or amendment:
  - 1) Does not affect land use and therefore is not a Military Department land use program; or
  - 2) Affects land use or otherwise is a Military Department land use program and that goal compliance and comprehensive plan compatibility can be assured through adherence to existing procedures in the Military Department's certified SAC program; or
  - 3) Affects land use or otherwise is a Military Department land use program, but is not covered by regulations and procedures in the Department's certified SAC program. In this case, the notice shall include an explanation of how the Military Department shall assure goal compliance and comprehensive plan compatibility in accordance with the applicable provisions of OAR 660-30-075.

#### Military Department Procedures

No additional procedures other than those contained in ORNGR 210-20 have been adopted by the Military Department to address the compliance and compatibility of new or amended land use programs.

#### Conclusion

The DLCD Director finds, based on the findings, reasons and analysis submitted by the Oregon Military Department, that the Military Department's agency coordination program meets the four requirements of OAR 660-30-060(4).

3. Program for Coordination Pursuant to ORS 197.090(1)(b)

OAR 660-30-060(5)

This element of a SAC program pertains to the agency's process for coordination with DLCD, affected state and federal agencies and special districts.

A. Requirement 1

Describe the procedures the agency will use to coordinate its land use program(s) with DLCD, affected state and federal agencies and special districts.

Response

The Military Department's program for coordination with affected agencies is found on pages 29-30. This section of the submittal also lists those local, state and federal agencies that the Military Department coordinates with most often.

Coordination with the Department of Land Conservation and Development (DLCD)

The submittal states (p. 29) that the Military Department through its Installations Office (AGI) typically reviews and coordinates with DLCD on issues such as new or amended statewide goals or administrative rules, state agency coordination, coastal management and plan amendments and periodic reviews from local governments.

State and Federal Agencies

The Military Department coordinates with state and federal agencies on issues affecting land use in various ways. Such involvement occurs through activities to obtain land use approvals, agency permits, preparing environmental impact documents, and the review of agency plans, programs and projects (p. 29).

Special Districts

The Military Department indicates that it (p. 30):

has identified no general requirements to routinely coordinate with any special district(s) regarding land use issues at the present time. If such a need arises, the Military Department will coordinate with such special district(s) to assure that special district programs do not conflict with Military Department programs or actions.

B. Requirement 2

Designate a unit (or position) to be responsible for interagency coordination of the agency's land use program(s).

Response

The contact for the Military Department's interagency coordination is the agency's Executive Officer or the Installations Officer whose offices are located in Salem (p. 30).

Conclusion

The DLCD Director finds, based upon the findings, reasons and analysis submitted by the Oregon Military Department, that the Military Department's agency coordination program meets the two requirements of OAR 660-30-060(4).

4. Cooperation with and Technical Assistance to Local Governments

OAR 660-30-060(6)

A. Requirement 1

Describe how the agency will participate in and coordinate with the local planning process concerning implementation of the agency's land use program(s).

Response

The Military Department's general position regarding participation in and coordination with city and county planning efforts is described on page 31 of agency's SAC program:

Due to the nature of Military Department functions, routine involvement in local land use planning is not normally maintained unless issues arise that directly involve an interest in Military Department activities or potentially affect Military Department programs.

The primary interest of the Military Department in land use issues lies in the local regulation of facilities construction, the continued operation of established training sites and local training areas, and a desire to avoid or minimize negative impacts to surrounding communities from Military Department activities. Where this SAC Program identifies a requirement to coordinate with a local

jurisdiction in order to obtain a land use approval, the Military Department will contact the applicable jurisdiction as early as practicable in order to assure adequate time to meet such requirements.

Upon receipt of notice of proposed amendment(s) to a local government comprehensive plan or land use regulation, the Military Department will assess the proposal for potential impact to its facilities and lands, and will actively participate in public review processes, as deemed necessary to promote compatibility between Military Department activities and land use planning efforts of the local jurisdiction.

#### Coordination of Military Department Actions on Federal Land

Although not specifically required by the SAC rule, the Military Department's submittal contains on pages 31-2 a discussion of its coordination actions to assure that off-site impacts of its activities on federal lands are minimized. The submittal states on page 32 that it is Military Department policy to:

eliminate or mitigate as much as possible the negative impacts of its actions on federal land, allowing most land use issues to be resolved in this manner. The Military Department will continue to coordinate with affected jurisdictions in attempting to define and resolve problems on adjacent land associated with its actions on federal lands.

#### B. Requirement 2

Designate a unit (or position) to contact for obtaining technical assistance from the agency.

#### Response

The Military Department's contacts for providing technical assistance and information are the agency's Executive Officer or the Installations Officer, both of whom are located in Salem (p. 32).

#### C. Requirement 3

Describe the kinds of technical assistance and information available from the agency and the methods used to provide such assistance and information to local governments.

#### Response

On page 32, the submittal states:

Limited technical assistance and information related to land use planning issues are available to local governments from the Military Department. Such information generally relates

to the activities and needs of the Military Department and with regard to providing facilities for military training and support.

Such assistance and information will be made available by the Military Department, to the degree allowed by applicable security regulations, to local officials on request, or may be offered by the Military Department at its behest in instances where a potential action of the jurisdiction may affect a Military Department facility or activity.

D. Requirement 4

Describe how the agency will participate in the periodic review process, including the incorporation of any new or amended agency land use program into acknowledged comprehensive plans.

Response

The Military Department describes its involvement in periodic review on page 33:

The Military Department will participate in the update of comprehensive plans through the Periodic Review process coordinated by DLCD. To that end, the Military Department will participate in the development of the 180-DAY PERIODIC REVIEW NOTICES which are sent by the DLCD to the jurisdictions listed in Appendix G and others, as appropriate. The Military Department will work with DLCD to assure that periodic review notices to local governments give appropriate consideration to Military Department requirements and efforts to achieve compatible land use designations for all existing and anticipated facilities from the appropriate local governments. (Emphasis in original.)

Current land use designations affecting Military Department lands and facilities are defined in Appendix G. When notice is received that the periodic review process is commencing in a jurisdiction where current or proposed land use designations are inadequate, the Military Department will submit written requests for appropriate changes and participate in public hearing processes to provide justification for such amendments.

E. Requirement 5

Describe, if applicable, any special agency procedures or programs to cooperate with and provide technical assistance to coastal cities and counties.

Response

The submittal at page 33 describes the Military Department's relationship with coastal jurisdictions and participation in Oregon's Coastal Zone Management Program (OCMP).

In general, it is the agency position to rely on compatibility with acknowledged coastal comprehensive plans to meet the requirements of the OCMP. Where necessary, the Military Department will address directly the statewide goals and obtain applicable state and federal permits from agencies listed in the OCMP having coastal resource management responsibilities.

The Military Department has two coastal installations on federal land. These are the Coos Head Air Guard Station at Charleston and a portion of Camp Rilea near Warrenton. The agency is committed to adhering to the OCMP and LCDC rules (OAR 660-35) for assuring that any off-site impacts from these two facilities comply with all applicable federal consistency regulations.

#### F. Requirement 6

Describe, if applicable, any special agency procedures to coordinate with other state agencies and local governments to provide technical assistance involving public facility funding, local public facility plans, permit issuance and economic development as required by ORS 197.712(2)(f) and 197.717(1) and (2).

#### Response

The Military Department at page 34 states that the above requirements concerning public facilities, permits and economic development do not apply to the agency.

#### Conclusion

The DLCD Director finds, based on the findings, reasons and analysis submitted by the Oregon Military Department, that the Military Department's agency coordination program satisfies the six requirements of OAR 660-30-060(6).

### VII. COMMENTS AND OBJECTIONS

No objections have been received by DLCD opposing certification of the Military Department's state agency coordination program.

One letter of comment was submitted by the Douglas County Planning Department (attached). The letter states that while there has been limited County involvement with the Military Department, the County is appreciative of the Military Department's support of County's efforts in the area of disaster planning and emergency operations.

The County expresses its agreement with the Military Department's determination that its Development of Facilities program is the agency's only land use program and that operation of existing Military Department facilities does not significantly affect land use.

The County has two concerns about the Military Department's SAC procedures. First, the County believes several aspects of the Military Department's regulation for land use coordination (ORNGR 210-20) are unclear regarding the agency's obligation to adopt plan compatibility findings when addressing the statewide goals.

Second, the County comments that the Military Department's regulation indicates a preference for legislative comprehensive plan amendments for the siting of new facilities such as a new armory. The County states that if the Military Department was to seek a plan amendment to develop a new facility, "we would most likely route the request through our quasi-judicial application process."

#### Response

A review of ORNGR 210-20 (6)(b)(3) and (6) cited by Douglas County reveals no inconsistency with regard to the Military Department's obligation to adopt comprehensive plan compatibility findings. The overall purpose of ORNGR 210-20 (6) is to implement the agency's statutory goal compliance requirement in the unlikely event that the Military Department can not achieve compliance by acting compatibly with an acknowledged comprehensive plan. Unless prevented from doing so, the Military Department is committed to meeting the statewide planning goals by undertaking its facility actions affecting land use in manner compatible with the applicable acknowledged comprehensive plan. See ORNGR 210-20 at sections (5), (6)(a) and (7).

Similarly, analysis of ORNGR 210-20 with respect to the second concern does not substantiate the County's comment about the Military Department's preference for obtaining needed land use approvals through plan amendment requests. This conclusion is supported by ORNGR 210-20(7)(b) which clearly commits the agency to securing whatever appropriate city or county decisions are needed, including plan or land use regulation amendments, goal exceptions, zone changes, conditional use permits or other necessary local land use approvals prior to initiating proposed projects or actions.

#### VIII. OVERALL CONCLUSION AND RECOMMENDATION

The DLCD Director finds, based upon the findings, reasons and analysis submitted by the Oregon Military Department, that the



Military Department state agency coordination program satisfies the applicable requirements of ORS 197.180 and OAR 660, Division 30.

The DLCD Director recommends, based on these findings, reasons and analysis, that the Land Conservation and Development Commission, pursuant to ORS 197.180(5), certify the Oregon Military Department's state agency coordination program on the basis that:

1. The Military Department's rules and procedures are sufficient to assure the Military Department's compliance with the statewide planning goals and compatibility with acknowledged comprehensive plans for its two categories of actions conducted under its Development of Facilities Program which has been determined to affect land use; and
2. The Military Department's state agency coordination program complies with all other applicable requirements of ORS 197.180 and OAR 660, Division 30.

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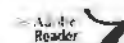


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