

Oregon State Marine Board

State Agency Coordination Program

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Oregon State Marine Board

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Table of Contents

<u>Section</u>	<u>Page</u>
I. Introduction	3
II. Marine Board Rules and Programs	5
III. Marine Board Program to Assure Compliance with the Statewide Planning Goals and Compatibility with Acknowledged Comprehensive Plans	8
IV. Marine Board Program for Coordination with Affected State and Federal Agencies and Special Districts	12
V. Marine Board Program for Cooperation and Technical Assistance to Local Governments	14
IV. Appendices	16
A. Oregon Revised Statutes	
B. Oregon Administrative Rules	
C. Other Documents	

Section I

Introduction

ORS 197.180 requires that each state agency prepare a coordination program for review and certification by the state Land Conservation and Development Commission (LCDC). The overall purpose of state agency coordination (SAC) programs is to assure that state agency rules and programs which affect land use comply with the statewide planning goals and are compatible with acknowledged city and county comprehensive plans.

The Oregon State Marine Board (hereafter referred to as the Board) has developed its coordination program with one overall objective in mind--to fulfill its land use responsibilities in a clear, concise, manner and thereby further the achievement of applicable Marine Board statutes and requirements in a coordinated manner with the statewide planning program.

The Board's original state agency coordination program was approved by LCDC in April of 1978. At that time, LCDC agreed with the Board's determination that five (5) of its programs affected land use. These programs were:

- the Marine Facilities Plan
- Financial Assistance for Marine Facilities
- Marine Law Enforcement
- Boating Regulations on State Scenic Waterways
- Regulation of Boat Races and Regattas

Since receiving approval by LCDC in 1978, the Board has made no changes to its SAC program. However during this interim, there have been no significant amendments to Marine Board statutes and administrative rules.

LCDC requirements for agency coordination, however, have been revised since the Board's program was previously approved. As a result of legislative and policy actions by LCDC, the administrative rule (i.e., OAR 660, Division 30) has been updated twice, in 1982 and again in 1986. It is the intent of the Board to bring its revised coordination program into full compliance with all current SAC requirements. The Board's existing SAC program will be considered rescinded upon certification of the revised program by LCDC.

The Marine Board is a state agency which is comprised of five (5) members appointed by the Governor. Members are appointed to terms of four years and are subject to confirmation by the Senate. The Board appoints the State Marine Director who serves as head of the Board's staff. The Board's administrative offices are located in Salem.

The principal purposes of the Board as provided in ORS Chapters 488 and 704 are as follows:

1. Adopt rules to implement state boating laws.
2. Advise, assist and coordinate with other agencies in the enforcement of boating laws.
3. Plan and recommend the development of boating facilities throughout the state.
4. Distribute funds for the purposes of boating enforcement and developing and maintaining boating facilities.
5. Publish and distribute to the public state boating laws and information about safe boating.
6. Adopt rules for the uniform navigational marking of waters of the state.
7. Title and register all motorboats, sailboats 12 feet and over, and floating homes and boat houses.
8. Register outdoor outfitters and guides (see ORS Chapter 704).

Section II

Marine Board Rules and Programs

A. Enabling Statutes

The Board was created by the Oregon legislature in 1959 and is governed by Oregon Revised Statutes (ORS) Chapter 488. The specific sections dealing with the functions of the Board are found at ORS 488.825-488.880.

B. Agency Programs

The Board is responsible for five (5) broad program areas.

1. Marine Law Enforcement

The Board administers all state boating laws and rules. It contracts with 27 county sheriffs and the State Police for on-water enforcement and safety services.

2. Boating Education

The Board provides coordination and leadership in promoting water safety for boaters. Publications, films, and public school programs are used to provide safety information. The Board actively assists volunteer organizations in the area of boating safety.

3. Facility Program

Grant Program

The Board provides grants to cities, counties, park and recreation districts, port districts and state agencies for the acquisition, development, improvement and rehabilitation of boating facilities to serve the public. Eligible projects include launch ramps, docks, parking and restrooms. The Board does not own or operate any facilities. Recently, over 85% of all

projects involve the rehabilitation or improvement of existing facilities.

Maintenance Assistance Program

The Board assists local government with the operation and maintenance of improved public boat launch sites. Funds are allocated for activities such as restroom cleaning, grounds keeping, and facility maintenance.

4. Outfitters and Guides Registration

Under ORS Chapter 704, the Board is required to register persons providing outdoor guiding services to the public. Approximately 600 outfitters and guides are registered by the Board. Proof of liability insurance coverage and first aid training are prerequisites for registration.

5. Boat Registrations and Titles

The Board titles and registers over 156,000 motorboats and sailboats (12 feet and over). It also titles floating homes/boathouses (approximately 1,300).

C. Administrative Rules

The Board has adopted various administrative rules in accordance with its statutory directive established by ORS 488.830(1) and ORS 183.310-183.550. The Board's administrative rules are found in Oregon Administrative Rules (OAR), Chapter 250.

1. Division 1: Procedural Rules (Notice Requirements)
2. Division 10: Statewide Rules
3. Division 11: Rules of Right-of-Way
4. Division 12: Lights and Shapes
5. Division 13: Sound and Light Signals
6. Division 14: Marine Facility Program
7. Division 16: Outfitters and Guides Registration
8. Division 20: Local and Special Rules
9. Division 30: Scenic Waterways

D. Administrative Procedures

The Board relies on a document entitled, Boating Facility Grant Procedure Guide, to administer the marine facility grant program. The guide, while not adopted as an administrative rule, does establish detailed instructions and requirements for applying for and processing marine facility grants in accordance with OAR Chapter 250, Division 14.

E. Analysis of Programs Affecting Land Use

Analysis of Marine Board programs against the definition in the LCDC coordination rule reveals that only one program qualifies as a "program affecting land use." This is the Grant Program under the Board's overall Facility Program.

Under the Grant Program, Board funds are provided to local governments, certain special districts and state agencies on an application basis for the purposes of property acquisition and developing, improving and rehabilitating public boating facilities. Such facilities are typically addressed in and regulated by acknowledged comprehensive plans. While most grants go to support projects involving the rehabilitation or improvement of existing facilities, a smaller number of grants will be used to develop facilities that may have significant effects on present and future land uses identified in acknowledged plans.

Some of the land use issues associated with such larger projects could include consistency with local design and development standards, heavier use of parking facilities and streets, compatibility problems with adjoining property owners, greater demands upon public recreation facilities, and the loss of or the increased threat to inventoried significant natural resources such as vegetation, aggregate deposits, habitat areas and scenic sites.

F. Agency Land Use Programs Subject to LCDC Consistency Rule

The Board's Grant Program does not involve the issuance of any permits and therefore is not subject to LCDC's state agency permit compliance and compatibility rule, OAR 660-31.

Section III

Marine Board Program to Assure Compliance with the Statewide
Planning Goals and Compatibility with Acknowledged Comprehensive
Plans

A. Exempt and Compatible Agency Land Use Programs

The Board's only "program affecting land use," the Facility Grant Program, falls into the category of a "compatible land use program" as that term is used in LCDC's SAC rule. There is no statute, constitutional provision or appellate court decision which would expressly exempt the Board from issuing grants for projects which are not compatible with acknowledged comprehensive plans.

B. Rules and Procedures for Assuring Compliance with the
Statewide Planning Goals

1. Board Rules

The Board's only program affecting land use, the Facility Grant Program, is described in Section II B.3 and E. The Facility Grant Program is subject to the following administrative rule.

OAR 250-14-003(2)(d) describes the findings required by the Board in approving a Facility Grant and reads as follows:

(d) Approval of Marine Facility Grant: In order to approve a Marine Facility Grant, the Board shall assure that the project complies with the statewide planning goals and is compatible with applicable acknowledged comprehensive plans by following the procedures set out in the Board's state agency coordination program adopted pursuant to ORS 197.180.

2. Board Procedures

The procedural rule listed above applies to all projects affecting land use reviewed by the Board under the Facility Grant Program. The rule requires that the Board find that the project complies with the statewide planning goals and is compatible with acknowledged comprehensive plans. Because all comprehensive plans in the state have been acknowledged to be in compliance with the statewide planning goals, when the Board act compatibly with an acknowledged comprehensive plan, it is acting in compliance with the statewide planning goals.

The Board, therefore, does not anticipate ever having to adopt findings directly against the statewide planning goals for the reasons described above. However, in the event that such findings are required, the Board, in accordance with OAR 660-30-065(3-5), will adhere to the following procedures:

The Board, when approving a Facility Grant, shall adopt statewide goal findings only for those goals which have not otherwise been complied with by the applicable city or county in its comprehensive plan. In fulfilling any obligation to comply with one or more of the goals, the Board will follow the following procedures:

- a. Confirm that a situation actually exists requiring the Board to adopt findings against one or more of the statewide goals.
- b. Identify the specific statewide goals which the Board must address.
- c. Consult directly with the affected local government.
- d. Request interpretive guidance from the Department of Land Conservation and Development and the Attorney General's office.
- e. Rely on any relevant goal interpretations for state agencies adopted by LCDC under OAR Chapter 660.

C. Rules and Procedures for Assuring Compatibility with Acknowledged Comprehensive Plans

1. Board Rules

The Board has adopted OAR 250, Division 14 to implement the Marine Facility Program authorized by ORS 488.875. OAR 250-14-003(2)(d) stated under III B. above requires that the Board find that a project is compatible with the applicable acknowledged comprehensive plan in order to approve a Facility Grant. To obtain the necessary information concerning a project's compatibility with an acknowledged comprehensive plan, Division 14 establishes three

requirements which must be addressed in an application for a Facility Grant.

OAR 250-14-003(2)(b) requires that an application must include:

(B) A resolution or statement from the governing body authorizing the project.

(C) Certification from the local city or county planning agency that the project is in compliance with local comprehensive plans.

(G) For certain projects, various regulatory permits, leases, licenses, certifications, and plan reviews must be obtained. It is the responsibility of the applicant to secure the necessary clearances prior to implementing any project. The applicant shall indicate to the Board the status of any such permits, etc., as part of its applications.

2. Board Procedures

The Board will adhere to the following procedures to assure that Facility Grants are approved for projects which are compatible with acknowledged comprehensive plans. Whenever possible, the Board's compatibility findings shall be based upon specific land use approvals or responses from cities and counties. (See LCDC rule, OAR 660-30-070(2)(a-b).)

The Board, when approving a Facility Grant, shall rely on one of the following three types of land use approval to satisfy the Board's land use compatibility requirements set forth in OAR 250-14-003(2)(d). The three types of approval are:

- a. A copy of the local land use permit or equivalent documentation from the city or county planning agency or the local governing body that the project has received land use approval.
- b. A letter from the local planning agency or governing body stating that the project in question is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval.
- c. Other information provided in the grant application equivalent to 1 or 2 above.

3. Resolution of Disputes

It is the intention of the Board to avoid or resolve any land use disputes involving a Facility Grant request through

the convening of a preapplication conference as provided under OAR 250-14-003(2)(a). As may be necessary, the Board also will use the applicable steps described in OAR 660-30-070(4-7) of the LCDC coordination rule to settle any conflicts. As a matter of policy, the following procedural steps will be followed:

The Board shall use one or more of the following to resolve any land use disputes which may arise involving the approval of a Facility Grant:

1. Hold direct meetings between the Board, the applicant (if other than the local government) and the local government.
2. Identify alternative actions or modifications to the proposed project to resolve the land use dispute.
3. Request informal LCDC mediation or compatibility determination under OAR 660-30-070(5-7).

D. Compliance and Compatibility of New or Amended Land Use Programs

The Board does not anticipate any amendments to the Facility Grant program which would not be covered by the land use coordination rules, procedures described under III. B and C above. However, if such a case does arise, it is the Board's intention to submit notice of any amendments to the Facility Grant program as well as notice of any new rules or programs to the Department of Land Conservation and Development for review. As a matter of policy, the procedure below will be followed:

The Board shall submit notice of any amendments to the Facility Grant Program or any new Board rules or programs to the Department of Land Conservation and Development as required by OAR 660-30-075.

Section IV

Marine Board Program for Coordination with Affected State and
Federal Agencies and Special Districts

A. Agencies Coordinated with by Marine Board

The Board coordinates as needed with all appropriate local, state and federal agencies, particularly those involved in the management of natural resources. Those agencies most often coordinated with include the following.

Local

Cities, counties, park and recreation districts, port districts and water improvement/irrigation districts.

State

Department of Fish and Wildlife
State Parks Division
Division of State Lands
Department of Land Conservation and Development
Department of Environmental Quality

Federal

U.S. Forest Service
Bureau of Land Management
Army Corps of Engineers
U.S. Fish and Wildlife Service
U.S. Bureau of Reclamation
Soil Conservation Service
U.S. Coast Guard

B. Interagency Coordination Procedures

With respect to the Facility Grant Program, it is the general policy of the Marine Board to work cooperatively with all local, state and federal agencies with an interest

in or responsibility for boating facilities, marine development, related natural resources and recreation. Any agency with concerns or interests about the need for or the development of a particular project is encouraged to contact the Board.

There are several number of methods which the Board will use to coordinate with other agencies about boating facilities, including those projects assisted under the Facility Grant program. Such methods consist of:

1. Inviting agency participation in the preparation and updating of the "Statewide Boating Facilities Plan."
2. Agency review and comment on individual facility grant requests, including involvement in preapplication meetings.
3. Informal communications and meetings with Board staff.
4. Participation in meetings of the Board involving actions affecting others agencies such as rule making, review and adoption of long range facility plans, etc.
5. Provision by the Board of meeting notices, reports, draft rules or other materials upon request by an agency.

C. Interagency Coordination Contact

The Board's contact for interagency coordination is the Director, or a staff person designated by the Director. The Director can be reached at the following address and phone.

Director
Oregon State Marine Board
3000 Market Street, NE
Salem, OR 97310-0650
(503) 378-8587

Section V

Marine Board Program for Cooperation and Technical Assistance to
Local Governments

A. Marine Board Participation in and Coordination with City
and County Land Use Planning

It is the general policy of the Board to participate in and coordinate with city and county planning programs only when requested, or if specific issues arise involving facility development or boating matters relating to the functions or activities of the Board.

As noted above, the Board has only one program which affects land use, the Facility Grant program. Because of this fact, and in view of very limited staffing, there is no need or capability for the Board to become involved with most comprehensive plans. Involvement with local plans, where it does occur, will usually be confined to issues relating to the approval of a particular marine facility by the city or county.

B. Contact for Cooperation and Technical Assistance

Same as under III.C above.

C. Technical Assistance and Information to Aid Cities and
Counties

The Board, acting through the Director or other designated staff, will attempt to provide technical assistance or information when requested by local jurisdictions. The kinds of assistance available from the Board include assessing facility needs, feasibility analysis of particular projects, and boating and related statistical information.

D. Participation in Periodic Review Process

The Board does not anticipate a need with respect to the Facility Grant program to participate in the periodic review process unless a specific facility situation requires it. A request for the Board to become involved in a particular jurisdiction's periodic review should be made through the Director.

The Board does not have or anticipate a need to request that local governments address any new or amended Board programs affecting land use through the periodic review process as provided under ORS 197.640(3).

E. Special Programs or Procedures to Provide Technical Assistance to Coastal Cities and Counties

The Board does not conduct or anticipate providing any special assistance to cities and counties on the coast. Please refer to item V.C above for a description of the technical assistance available from the Board to aid local governments.

F. Special Technical Assistance for Local Public Facility Funding and Planning, Permit Issuance and Economic Development (See ORS 197.712(2)(f) and 197.717(1-2))

These statutory requirements do not apply to the Marine Board or its Facility Grant program.