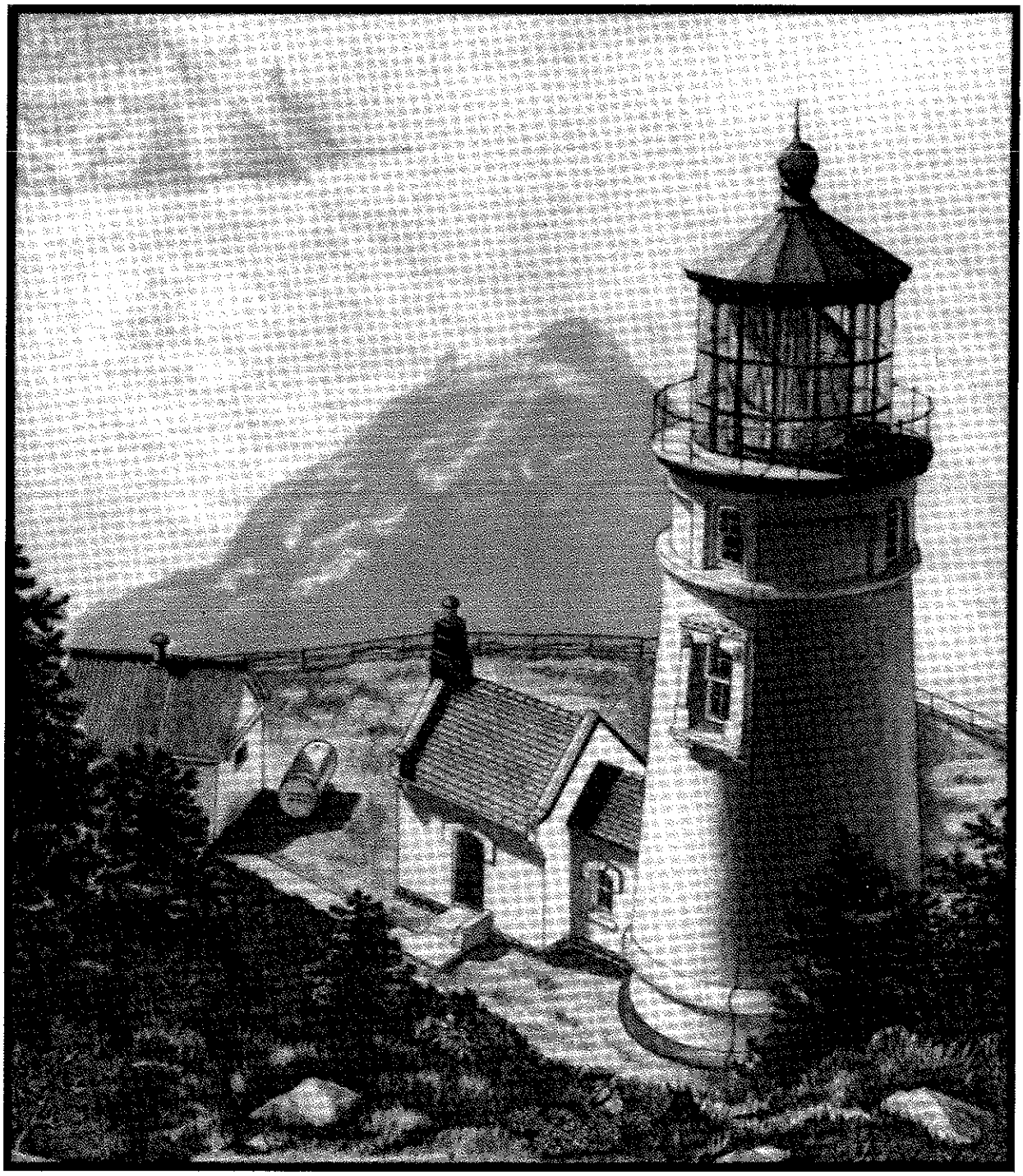

OREGON COASTAL MANAGEMENT PROGRAM

OREGON
COASTAL
MANAGEMENT
PROGRAM

ODOT Park

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Oregon Coastal Management Program

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Editor's Note: This document supersedes Oregon's Coastal Management Program which was originally written, printed and approved in 1977. This version reflects a series of changes to Oregon laws and administrative rules which have occurred since 1977. These changes have been incorporated as program changes pursuant to NOAA regulations implementing the Coastal Zone Management Act at 15 CFR 923.80 - 923.84.

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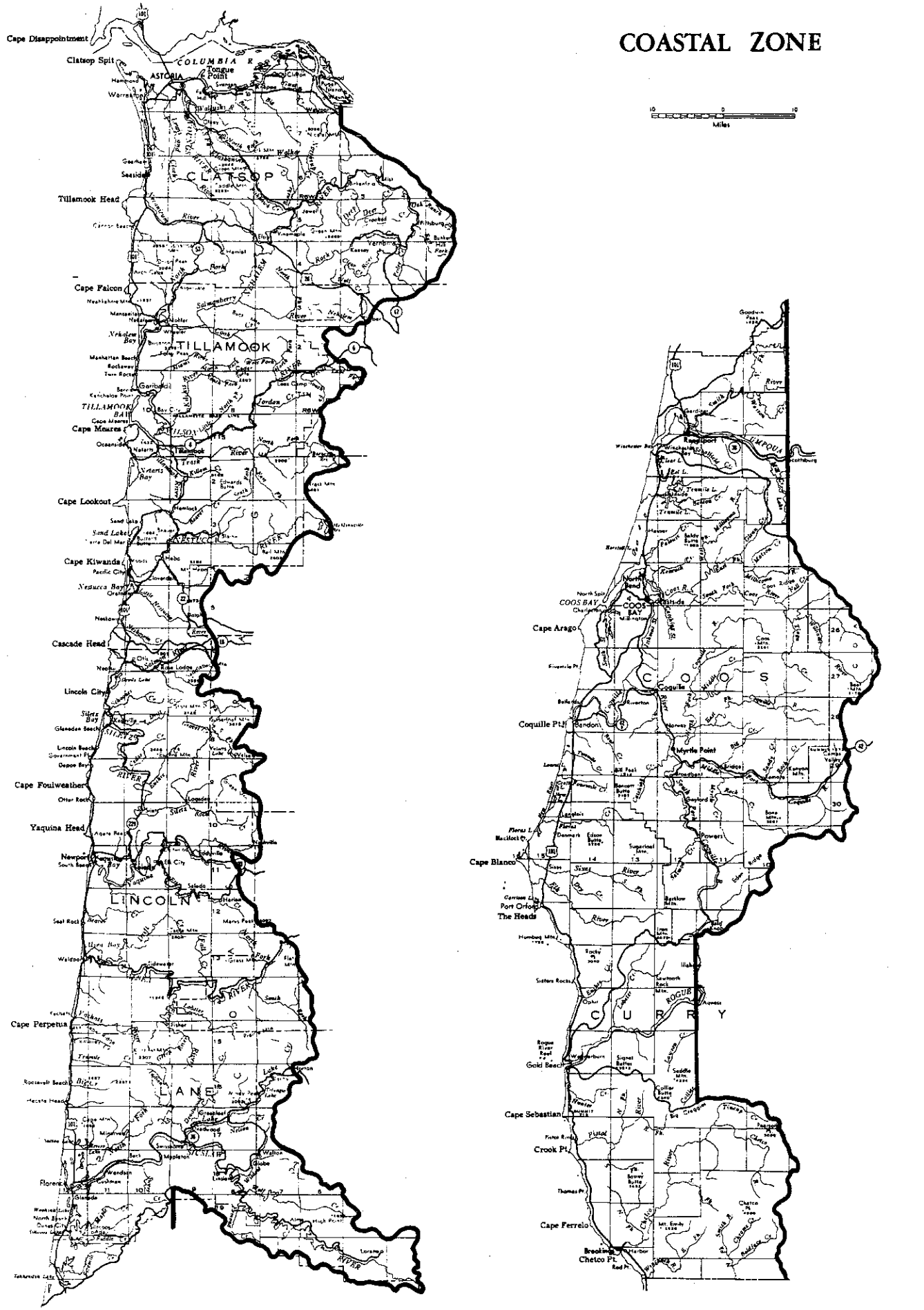
* The Appendix to the Oregon Coastal Management Program is a separate document. The appendix is updated periodically to reflect program changes.

COASTAL ZONE



Program Summary

The Oregon Coastal Management Program (OCMP) is part of Oregon's statewide program for coordinated land use planning. The program is a partnership between local governments and state and federal agencies to resolve general and often competing interests through land use plans and implementing measures for all lands in Oregon's coastal zone. The program is based primarily on the Oregon Land Use Planning Act (ORS 197) and its requirements including the statewide planning goals and requirements for state-approved comprehensive plans. The program also includes specific resource management authorities in other state laws.

The statewide planning goals are regulations adopted by the Land Conservation and Development Commission (LCDC) which set minimum standards for comprehensive planning and other government decisions affecting land use. The goals also express the state, regional, and national interests in land use. Four of the goals set specific standards for planning of coastal resources including estuaries, shorelands, beaches and dunes, and the ocean.

Comprehensive plans developed and administered by coastal cities and counties are the primary vehicle for implementing the goals. Plans must be fully coordinated with the needs and policies of state and federal agencies, special districts, and the public. Once approved by LCDC, a plan serves as the state's standards for all land use decisions within the geographic area it covers.

Several state laws for management of coastal resources are also included in the Oregon Coastal Management Program. These include the Removal-Fill Law, which regulates alterations to estuaries, lakes and other waterways, and the Oregon Beach Bill which regulates uses and alterations along the ocean shore.

Together, the goals, comprehensive plans, and state statutes express particular concern about the importance of protecting estuarine, agriculture and timber resources; about the needs for water-dependent development, port development, energy production and commercial fishing; about flooding and erosion hazards associated with development in shoreland and beach and dune areas; and about recreational access, urbanization and the maintenance of open space. Through the goals, coordinated comprehensive plans and provisions of other state statutes, Oregon has a program which addresses these issues.

The objective of the OCMP is to develop, implement, and continuously improve a management program which will, as appropriate, preserve, conserve, develop and restore the natural resources of the coastal zone. The program attempts to create and maintain a balance between conservation and development, and between conflicting private and public interests. This balance is intended to assure the greatest benefits to this and succeeding generations of Oregonians.

Oregon's participation in the federal coastal zone management program has resulted in increased technical, financial and legal assistance to local governments, regional agencies and state agencies in managing coastal resources. The state has received funds to foster the development and implementation of coordinated comprehensive plans, to acquire the South Slough Estuarine Sanctuary, to create a technical data base for use in making more informed decisions, and to identify and plan for the impacts of coastal energy development. The state expects that future funds will be available for these purposes as well as for ongoing research, public education and for beach access. Finally, because Oregonians have taken the lead in wisely and responsibly managing their coastal resources, participation in the federal program assures that, under federal law, actions of federal agencies which affect the coastal zone will be consistent to the maximum possible extent with Oregon's program.

I. INTRODUCTION

The United States Secretary of Commerce formally approved Oregon's Coastal Management Program in 1977, making Oregon the second state to have a federally approved coastal management program. Federal approval followed a process of program development and public review which had lasted almost five years.

In 1978, three amendments, addressing issues of energy facility siting and shoreline erosion were formally distributed for review and received federal approval. In succeeding years, Oregon's program has been refined both through legislative and administrative actions. This document describes the current Oregon Coastal Management Program and incorporates the amendments and other program changes which have occurred since the federal government originally approved the program.

The Oregon Coastal Management Program balances the needs for long-term growth, development, and protection of the state's coastal resources. Relying on a partnership among the public, local governments, and state and federal agencies, the OCMP is based on three separate but coordinated sets of planning and regulatory authorities:

- Statewide planning goals adopted by LCDC;
- Acknowledged comprehensive plans which local governments have developed and LCDC has approved; and
- Specified statutory authorities of various state agencies.

Together, these authorities establish policies and procedures for planning and managing the balanced preservation, conservation, use, development and restoration of the natural resources in Oregon's coastal zone.

These authorities are tied together by two requirements in Oregon's Land Use Planning Act (Oregon Revised Statutes, Chapter 197) and the statewide planning goals. First, the act requires all units of government to coordinate their actions affecting land use with affected citizens and with local, state, and federal agencies. Second, the act requires that the plans and actions of all agencies and local governments must comply with the statewide planning goals and acknowledgment comprehensive plans.

When Oregon initially submitted its coastal management program for federal review, the program, and particularly the land use planning requirements underlying it, were largely untested. Authorities, policies, and standards were in place, but no coastal comprehensive plans had been acknowledged, and no large body of experience or precedent was available to work from. Since then, as state agencies and local governments have developed and exercised their responsibilities under new statutory and administrative directions, the program has matured.

As the OCMP has been implemented, administrative, legislative, and judicial actions have clarified and refined the program policies and procedures. As a result, the state is now better able to describe the program and its policies.

BACKGROUND

Oregon's Coastal Management Program is a comprehensive management program for the state's coastal resources. It reflects Oregonian's traditional concern for protecting their quality of life and for wisely managing the state's natural resources. The program was developed as one element of the continuing statewide concern for land use, to balance the great benefits of and demands for the valuable and vulnerable land and water resources of the Oregon coast.

Other major resource-related actions which demonstrate the state's continued commitment to wise resource management include:

1913 — Passage of the Oswald West Act, declaring all wet sand beaches to be public highways.

1967 — Passage of the Oregon Beach Bill, providing for public use, recreation and enjoyment of the ocean shore in perpetuity.

1969 — Passage of ORS 215, requiring that all lands of the state be subject to local government comprehensive plans and zoning ordinances.

1970 — Passage of the citizen's initiative creating Scenic Waterways legislation.

— Gubernatorial executive order (March 3) establishing a moratorium on all state agency activity associated with estuarine filling.

1971 — Passage of bill organizing coastal citizens and local officials to form Oregon Coastal Conservation and Development Commission (ORS 191).

1973 — Passage of the Oregon Land Use Act, Chapter 197, Oregon Revised Statutes, establishing the Oregon Land Conservation and Development Commission and the basic policies of Oregon's Land Use Program.

1974 — Designation of the South Slough, in Coos Bay, as the nation's first Estuarine Sanctuary.

1975 — Submittal to the Legislature of the Oregon Coastal Conservation and Development Commission report and recommended policies and actions. Legislature makes LCDC Oregon's coastal zone management agency. LCDC adopts the first 14 statewide planning goals.

1976 — LCDC adopts the statewide planning goals on Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources (Goals 16-19).

1977 — Formal approval of Oregon's Coastal Management Program by the Federal Office of Coastal Zone Management. Amendments to ORS197, and repeal of ORS191, underscoring the state's commitment to coastal zone management and land-use planning.

1979 — Oregon Legislature refines and codifies requirements for mitigation in Oregon's estuaries and establishes the Land Use Board of Appeals.

1981 — Oregon Legislature establishes "Post-Acknowledgment" procedures for the amendment and periodic review of acknowledged comprehensive plans.

1983 — Oregon Legislature refines post-acknowledgment procedures and makes the Land Use Board of Appeals a permanent quasi-judicial body.

1984 — LCDC amends statewide planning goals, including Goal2 (Land Use Planning), Goal 8 (Recreation Needs) and Goals 16-19 (Coastal Resource Goals).

ISSUES

The laws and regulations on which Oregon's program is based reflect the state's concern about wise management and use of its coastal resources. This concern began in earnest in the early 1960's, when a series of economic, environmental and institutional problems became apparent on the Oregon coast. Accelerated growth on the coast was damaging fragile ecosystems; it also was aesthetically displeasing. Problems included the filling of estuaries, strip developments along coastal highways, draining of wetlands for development, and unplanned commercial and residential developments. In addition to private development, several state agencies were proposing or constructing projects which would significantly affect the natural environment of the coast.

In 1971, the Legislature responded to those concerns by establishing the Oregon Coastal Conservation and Development Commission (OCCDC) to study these problems and recommend solutions. Early in its planning efforts, OCCDC identified several economic and environmental problems facing the Oregon coast. The economy of the Oregon coast is characterized by over-specialization, persistent unemployment, low per-capita income and a narrow tax base. These economic limitations are compounded by the highly seasonal nature of local employment and economic activities dominated by seasonal nature of local employment and economic activities dominated by forestry, fishing, and tourism. Recurring national recessions together with decreasing amounts of harvestable timber on private lands have resulted in less employment in the forest industry. Most traditional fisheries are exploited at or beyond resource limits. However, tourism shows continuing opportunities for both more growth and a year-round base for employment.

Through the 1960's, problems in natural resource management and environmental protection existed throughout the coastal zone. Inappropriate use and development of sensitive resource areas was leading to a long-term loss of resources and their benefits. Development without proper consideration of geologic and hydrologic hazards threatened life and property and the loss of coastal resources. Encroachment on productive estuaries and shorelands and intense water demands for limited seasonal supplies were among the most serious problems. Also, aesthetic values and historical and archaeological resources were not recognized.

OCCDC also found that a solution to these economic and environmental problems had generally been hampered by the fact that the governmental jurisdictions managing the coast did not adequately or effectively coordinate their activities. Limited financial resources and the need for effective citizen participation at all levels of government also required a cooperative and state-coordinated program to achieve wise use of coastal land and water resources.

OBJECTIVES

In response to these problems and issues, and with comment and guidance from the public, resource specialists, and government officials of all levels, OCCDC identified a series of objectives for management of coastal resources.

In 1975, the Legislature assigned LCDC the task of completing the development of the coastal management program which OCCDC had initiated. Using the OCCDC recommendations, LCDC established several technical advisory groups and conducted a series of public hearings. After several rounds of technical and public review, LCDC formally adopted four additional statewide planning goals and the Oregon Coastal Management Program, all based on the recommendations which OCCDC made. The objectives of this program are to develop, implement, and continuously improve a management program that will preserve, conserve, develop, and restore the natural resources of the coastal zone. The objectives of this program are to:

1. Create and maintain a balance between conservation and development, and between conflicting public and private interests, that will assure the greatest benefits of this and succeeding generations of Oregonians;
2. Guide public and private uses of natural resources of the coastal zone to avoid irreversible damage;
3. Protect the unique character of life on the coast; and
4. Manage the natural resources and uses of the coast on an evolving and flexible basis so as experience with and knowledge of the coastal zone increases, the program can be revised accordingly.

Using the OCCDC recommendations, the tools provided by ORS 197, and the funds provided by the state and the Federal Coastal Zone Management Program, LCDC has conducted a series of ongoing activities to attempt to achieve the OCCDC objectives. The following activities were deemed essential for the successful management of the state's coastal resources:

- Establishing a working partnership between local, state, and federal governments to ensure the coordination of coastal management, planning, and administration through clearly established authorities and responsibilities.
- Encouraging research on coastal resources so as to develop a sound data and information base for planning and management decisions.
- Strengthening the planning and decision-making responsibilities of cities and counties by providing them with financial and technical assistance.
- Ensuring substantive citizen participation during the development and administration of comprehensive plans.
- Evaluating local, state, and federal government performance and progress in developing and implementing coordinated comprehensive plans.
- Assuring that local units of government, state, and federal agencies, and the public are full, continuous participants in efforts to improve Oregon's Coastal Management Program.

ACCOMPLISHMENTS

Since program approval in 1977, LCDC, local governments and state agencies have worked diligently to implement and continually improve and refine the state's Coastal Management Program. There have been a number of major accomplishments thus far in program implementation.

- Completion and acknowledgment of comprehensive plans for almost the entire coastal zone. These plans now provide specific management guidance for coastal land uses, which provides both predictability for development and protection of important resources areas. (Appendix 5 lists acknowledged comprehensive plans.)
- Substantial improvement of local government's ability to make resource management decisions based on improved technical advice.
- Improvement of coordination between local, state, and federal agencies in making coastal management decisions.
- Establishment and refinement of standards for determining the consistency of governmental actions with the OCMP, for the acknowledgment and compliance of local government plans, and for alleged violations of the statewide goals or acknowledged comprehensive plans.
- Coordination of activities relating to port development, estuarine mitigation, inventory standards and habitat protection with state and federal agencies.
- Establishment of standards and procedures for the coordination of state agency programs affecting land use.
- Establishment of the South Slough Estuarine Sanctuary and received a federal grant for the acquisition of sanctuary lands.
- Creation and coordination of the Governor's Outer Continental Shelf Offshore Oil and Gas Development Task Force.
- Maintenance of a variety of advisory groups to assist in the implementation and continued refinement of the program.

The OCMP has evolved into a program which meets both federal objectives and the objectives of Oregonians. The following chapters describe the program's components, processes, and how the OCMP fulfills federal coastal program requirements.

II. PROGRAM COMPONENTS

Oregon's Coastal Management Program consists of three major components: the planning authorities which LCDC administers under ORS 197, the planning authorities of cities and counties under ORS 215, 221, 227, and 197, and several special-purpose statewide statutes for management of particular coastal resources. Supplementing these laws are authorities and capabilities derived from the federal Coastal Zone Management Act.

THE OREGON LAND USE ACT AUTHORITIES

The Oregon Land Use Planning Act, codified as ORS 197, created a state-level program to coordinate the administration of land use planning by all levels of government. The Land Conservation and Development Commission administers the statute through the adoption of statewide planning goals and the review of state and local comprehensive plans and actions for conformance with the state-mandated goals.

ORS 197 sets planning requirements for all levels of government. Cities and counties, the state's general purpose local governments, are required to adopt comprehensive plans and implementing ordinances to manage development in conformance with the statewide planning goals. Interim land use decisions which local governments make are also bound by the goals. Special districts, such as fire districts, sewer and water districts, as well as state agencies, are also required to carry out their planning and land use related functions in a manner consistent with the goal requirements. Once acknowledged, comprehensive plans also bind the actions of special districts and state agencies.

This section describes each of the authorities created or affected by the requirements of ORS 197 and how they interrelate with each other.

Land Conservation and Development Commission

The Commission is a seven-member, unpaid, lay board appointed by the Governor, subject to Senate confirmation. Commissioners may serve no more than two four-year terms and may only be removed for cause. The statute requires at least one representative from each of the state's five congressional districts. The Commission's principal responsibilities are to coordinate the administration of land use planning activities and to assure compliance with the statewide planning goals.

The 1973 Land Use Act directed LCDC to establish statewide policies and standards for land use planning and resource management. By 1977, LCDC had met that directive by adopting 19 statewide planning goals and guidelines.

LCDC provides grants and technical assistance to local governments for preparation of comprehensive plans. It also reviews those plans for compliance with the statewide planning goals. The statute also authorizes LCDC to ensure that state agency and special district plans, administrative rules, and land use decisions comply with the goals.

LCDC was initially vested with the authority to hear appeals of local and state-agency land use decisions alleged to violate the statewide planning goals. The 1983 Legislature transferred this authority to the Land Use Board of Appeals (LUBA).

ORS 197 also vests the Commission with a variety of tools to carry out its responsibilities:

- Authority to review and acknowledge city and county comprehensive plans for compliance with the statewide planning goals and periodically review plans after acknowledgment;
- Ability to issue enforcement orders to compel plan completion or compliance with the statewide planning goals;
- Authority to review and certify state agency administrative rules and coordination programs to assure their compliance with the statewide planning goals;
- Authority to adopt administrative rules to interpret requirements of the statewide planning goals and carry out its other procedural responsibilities under ORS 197;

- Authority to appeal amendments to acknowledged plans and land use decisions which the Commission believes violate the goals;
- Authority to recommend areas of critical state concern to the legislature; and
- Authority to withhold certain state-shared revenues from jurisdictions that do not comply with statewide planning standards.

Statewide Planning Goals and Guidelines

The statewide planning goals, and the process for developing, approving and implementing them, form the foundation not only for Oregon's land use management activities, but also for compliance with the requirements of the Coastal Zone Management Act. The goals set standards for management of land and water uses, establish priorities for the use of various resources, and define informational needs and inventory requirements for sound planning. Although the word "goal" often connotes vague or discretionary statements, Oregon's planning goals are mandatory and have the force of law. They are binding on local governments, special districts, and state agencies when they make land use decisions. Prior to plan acknowledgment, local governments must weigh the goals and the state agencies are bound by the requirements of the goals and, once comprehensive plans are acknowledged, by the requirements of coordinated comprehensive plans. Court decisions have held that local governments and state agencies must provide findings of fact explaining how their land use decisions comply with the goals or with acknowledged comprehensive plans.

To suggest ways the goals may be carried out, the Commission is also authorized to adopt guidelines. Guidelines are suggested directions for achieving the mandated requirements of the goals. They are intended to be instructive; however, they do not limit governments to a single course of action when some other course would achieve the same result.

In December, 1974, LCDC adopted the first 14 planning goals and guidelines providing basic direction for the preparation of comprehensive plans throughout the state. In December, 1975, a fifteenth goal, guiding planning for the Willamette River Greenway, was adopted. (Note: The Willamette River Greenway is entirely outside Oregon's coastal zone.) On December 18, 1976, LCDC adopted four additional statewide planning goals for coastal resource planning. These four goals govern planning for Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. With greater specificity than the other statewide goals, they address the particular needs and problems of Oregon's coast. All four require that the natural resources and values associated with these areas be protected, that development be planned to minimize the threat from natural hazards to life and property, and that appropriate areas and facilities be reserved for water-dependent uses and activities. The goals establish the principle that the long-term benefits from proper management and use of renewable resources will greatly exceed the short-term gain from consumptive use of nonrenewable resources.

The Commission has the authority to amend the existing goals and to adopt additional statewide planning goals. Goal adoption or amendment requires LCDC to hold at least ten public hearings around the state to obtain public comment. After evaluating the effectiveness of comprehensive plans in carrying out the goals, LCDC may adopt new goals or goal amendments.

All of the goals are of equal importance. They provide both prescriptive and instructive guidance for carrying out planning, management, and regulatory responsibilities. A summary of goal requirements appears in Table1. The text of the goals and guidelines appears in the appendix.

Coordinated Comprehensive Planning

ORS 197 requires that the comprehensive plans adopted by cities and counties reflect the concerns of all affected government units and the public. These plans carry out the goals and provide the basis for specific ordinances and other implementing regulations. The plans ensure that all public and private land use actions are consistent and coordinated with the policies expressed in the goals.

The statute provides a detailed definition of the term "comprehensive plan":

> "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the government body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities and natural resources, and air and water quality management programs. "Comprehensive" means all-inclusive, both in terms of the geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air. (ORS 197.015(5))

An important element of the planning process is the requirement that comprehensive plans be coordinated with the plans, programs, and authorities of other levels of government. A coordinated comprehensive plan serves as the single, common basis for decisions regarding conservation and development within an area.

To coordinate locally prepared plans, cities, and counties must provide opportunities for state and federal agencies and other interested groups and persons to express their interests in the planning area or the terms of the comprehensive plan and its implementing measures. Local governments are obligated also to consider and accommodate these views as much as possible in their plans. Since some local, state, and federal objectives are mutually exclusive when applied to a particular area, it is certain that a comprehensive plan will not fully accommodate every concern. However, if state or federal agencies feel that a plan has not accommodated their concerns as much as possible, they may object to acknowledgment of the comprehensive plan. The Land Conservation and Development Commission will then consider and resolve the objection at the state level.

The development of comprehensive plans and land use regulations takes time and requires all of the affected agencies to commit themselves, but once affected parties are in basic agreement, plans can save time and money. Public agencies, private firms, and individuals are able to rely on the plan in making decisions and investments. Public investments in water and sewer systems and in schools and their facilities may be made in an orderly manner, as the public is able to pay for them. Businesses can invest in new sites, confident that those sites will be used for their intended purpose, and the needed services will be provided. Delays in state and federal agency review of permit applications, as well as delays in the development of land management plans and public works projects, can be reduced because through the comprehensive plan, agreement on many decisions has been reached in advance.

Statewide Planning Goal 2, which sets general requirements for land use planning, specifies that these land use regulations be consistent with and adequate to carry out the policies and requirements established in the comprehensive plan. For the purposes of ORS 197, land use regulations are part of the acknowledged comprehensive plan. Amendments to land use regulations are subject to review for continued compliance with goal requirements, including the requirements of Goal 2.

Comprehensive plans are static documents; they must be periodically reviewed and adjusted as local, state, or federal needs or priorities change. Citizens and affected government agencies are given opportunities to participate in plan revision.

Acknowledgment, Amendment, and Periodic Review of Comprehensive Plans

LCDC's principal function is to continuously ensure that comprehensive plans comply with the statewide planning goals and are coordinated with the plans and programs of other units of government. The major step in this process is LCDC's acknowledgment of compliance review. Once comprehensive plans have been acknowledged, LCDC makes sure they stay in compliance with the goals by reviewing post-acknowledgment amendments and periodic plan updates.

Plan Review and Acknowledgment

Cities and counties trigger LCDC acknowledgment review by submitting an adopted comprehensive plan (including supporting inventories, policies and implementing measures). LCDC acknowledges the comprehensive plan, after a detailed public and agency review process, if it determines that the plan is coordinated and complies with the statewide planning goals. LCDC has promulgated a series of administrative rules which establish procedures for review of plans and interpret the requirements of the statewide planning goals. LCDC's Acknowledgment of Compliance Rule (OAR 660-03) establishes specific procedures for notice of acknowledgment requests, requirements for comments, and objections by interested parties, and LCDC action on plans. (LCDC applies several other administrative rules through the acknowledgment review process including OAR 660, Division 4-10.) LCDC's action approving a plan, an acknowledgment of compliance, means that the comprehensive plan replaces the goals as the primary standard for program implementation.

Post-Acknowledgment Plan Amendments

To assure that plans remain coordinated and in compliance with the goals over time, ORS 197 requires that proposed plan amendments be circulated for review by affected agencies and other interested persons. This process gives state and federal agencies a continuing opportunity to ensure their interests are considered as plans are amended to reflect changing needs and circumstances. DLCD provides notice of all proposed and adopted plan amendments on request. Strict timelines and local participation requirements are established in the law. Interested persons, including state and federal agencies, must participate in the local amendment proceeding, either in person or in writing, in order to challenge a local amendment. DLCD reviews plan amendments to assure continued compliance with the goals. Post-acknowledgment amendments may be appealed to LUBA where they violate the statewide planning goals, another comprehensive plan provision or other statutory and constitutional requirements. Further discussion of the plan amendment appeal factors can be found in Chapters IV and V. (Notice, review, and adoption of post-acknowledgment plan amendment is governed by ORS 197.610-.625 and OAR 660-18.)

Periodic Plan Review and Update

In addition to an incremental review of plan changes, ORS 197 requires comprehensive plans to be periodically reviewed and updated to reflect changing needs and circumstances. This process gives LCDC and other state and federal agencies the opportunity to identify new information to be considered and new programs or requirements to be addressed in comprehensive plans. By participating in periodic updates, agencies can assure that plans continue to be based on the best available information.

As with post-acknowledgment amendments, DLCD provides notice of pending periodic reviews to interested persons, groups, and agencies. DLCD also provides notice of pending local amendments and prepares a report analyzing compliance of the proposed plan update with four factors. LCDC can mandate plan changes if it finds:

(a) There has been a substantial change in circumstances;

(b) New goals or rules have been adopted since the date of acknowledgment;

(c) New or amended state agency plans or programs have been adopted since the plan was acknowledged; or

(d) There has been a failure to perform additional planning agreed to at the time of acknowledgment or agreed to in receiving state grants.

(See ORS 197.640 and OAR 660-19)

Based on DLCD's review and comments received, LCDC adopts an order either approving the plan update or directing the local government to make further plan amendments.

The plan review and acknowledgment process provides a forum both for assuring that plans comply with the goals and for coordinating plans among various levels of government.

State Agency Coordination

A major objective of Oregon's land use program is an agreement between local governments and state agencies on the appropriate use of lands throughout the state. The major tool for achieving this agreement is locally prepared comprehensive plans. By participating in plan development, acknowledgment amendment, and update, agencies have many opportunities to assure that plans reflect their needs and interests. Agencies can also provide important technical information for planning decisions.

To ensure state agency conformance with goals and plans, and to encourage agency participation in plan development, ORS 197.180 requires agencies to abide by the goals and acknowledged plans. The statute specifically requires agencies, within their statutes, to administer their programs in a manner which complies with the goals and is compatible with acknowledged comprehensive plans. To assure this, agencies are required to adopt "coordination programs" which outline agency plans, programs, and actions affecting land use and set forth procedures for assuring goal compliance and plan compatibility. These programs also set forth opportunities for local governments to participate in agency decisions affecting land use and describe how the agency will provide technical assistance to local governments for comprehensive planning. (A detailed discussion of individual agency authorities is provided on pages 16-18.)

Enforcement Orders

ORS 197.320 establishes procedures and requirements for LCDC to assure that local governments and state agencies implement their land use authorities in compliance with the statewide planning goals. ORS 197.320 compels LCDC to adopt an enforcement order if it has good cause to believe a city, county, state agency, or special district is not making satisfactory progress toward implementing an acknowledged plan, or an approved coordination program, or the goals. Through an enforcement order, the Commission can restrict or prohibit land use decisions in a particular geographic area or withhold grant funds to an affected local government. Further discussion of enforcement orders is included in Chapter V.

Land Use Board of Appeals

Given the controversy often accompanying land use decisions, the success of Oregon's program is very much dependent upon a speeding, fair, and consistent process for resolving contested decisions. To ensure that these objectives are met, authorities for judicial review have been carefully evaluated and refined as the program has been implemented. The Land Use Board of Appeals (LUBA), created in 1979 (SB 435), now has original jurisdiction over virtually all land use decisions. This authority, combined with broad opportunities for standing, provides all interested parties the ability to assure that the program is administered fairly.

The Board is composed of three hearings referees, one of whom is selected as the Chief Referee. All are appointed by the Governor, must be members in good standing of the Oregon Bar, and are subject to removal only for good cause.

Aggrieved persons, including DLCD and other government agencies, may appeal land use decisions alleged to violate the goals or comprehensive plans to the Land Use Board of Appeals (LUBA).

LUBA has the authority to uphold, reverse, or remand a land use decision. It also is authorized to stay land use decisions which a petitioner demonstrates are based on a colorable claim of error and would cause the petitioner irreparable injury without the stay. LUBA, upon appeal, also reviews state agency land use decisions which are not the result of contested case hearings, and plan amendments, and other local legislative decisions for compliance with the statewide planning goals. Decisions made pursuant to an acknowledged comprehensive plan are subject to substantive review only against the requirements of the plan and its implementing ordinances.

The Land Conservation and Development Commission is specifically authorized by statute to appeal land use decisions or to participate as an intervenor in LUBA cases in which it has an interest.

Areas of Critical State Concern

LCDC may recommend to the Legislature geographic areas to be designated as areas of critical statewide concern (ORS 197.405-.410). As part of its recommendation, LCDC must specify the reasons for the proposed designation and include a suggested plan for management of the area. (Note: Although the terminology is similar, areas of critical state concern are not the same as geographic areas of particular concern (GAPC) under CZMA. Oregon's GAPC's are discussed in detail on page 30.)

In 1978, LCDC considered recommending that Yaquina Head, near Newport, be designated as an area of critical statewide concern because of conflicts between quarrying and aesthetic and natural values. While the recommendation was not adopted, the federal government, through the Bureau of Land Management, has since acquired the site and intends to manage it to protect natural values. Identification of other candidate areas for critical area designation will await an evaluation of the effectiveness of comprehensive plans and other programs in protecting especially important coastal areas.

TABLE 1
SUMMARY OF GOAL REQUIREMENTS

Goal	*Requirement*
Goal 1 (Citizen Involvement)	• Requires cities and counties to establish citizen involvement programs and committees for citizen involvement. • Requires opportunities for citizen participation in all phases of planning. • Requires state and federal agencies to utilize local citizen involvement programs. • Requires annual evaluation of citizen involvement programs.
Goal 2 (Land Use Planning)	• Sets requirements for inventories and plan policies. • Requires implementing measures to be consistent with and adequate to carry out a comprehensive plan. • Requires all government land use decisions to be consistent with acknowledged plans. • Requires plans to be periodically updated.
Goal 14 (Urbanization)	• Requires cities and counties to cooperate in establishing and amending urban growth boundaries, and in managing urbanizable lands.
RESOURCE PROTECTION	
Goal 3 (Agricultural Land)	• Requires statutory Exclusive Farm Use Zoning (EFU) to protect agricultural land (ORS 215).
Goal 4 (Forest Land)	Requires conservation of forest lands for forest uses.
Goal 5 (Natural Resources)	Requires appropriate planning for and protection of important natural, ecological, historical and scenic sites based on an analysis of economic, social, environmental, and energy consequences of alternative uses.
Goal 16 (Estuarine Resources)	Requires management of important estuarine habitat for long-term protection through preservation of certain areas and careful management of other areas.
Goal 17 (Coastal Shorelands)	• Requires protection of shorelands with significant resource value, including headlands, major marshes, and significant wildlife habitat.
Goal 18 (Beaches and Dunes)	• Requires protection of active foredunes, conditionally stable foredunes, and other dunes subject to flooding and erosion.
Goal 19 (Ocean Resources)	• Requires conservation of the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.
	DEVELOPMENT MANAGEMENT
Goal 8 (Recreation Needs)	• Requires plans to provide for recreational needs of citizens and visitors. • Allows counties to approve qualified destination resorts on certain rural lands without exceptions to Goals 3, 4, 11, or 14.
Goal 9 (Economy of the State)	• Requires diversification and improvement of state economy; coordination of local and regional needs with state needs; inventory of economic growth areas.

Goal 10 (Housing Needs)	• Requires the planning and zoning of an adequate amount of buildable land to provide types and levels of housing to meet identified housing needs.
Goal 11 (Public Facilities and Services)	• Requires planning for and provision of public facilities and services appropriate for but limited to those necessary for the uses planned for the area.
Goal 12 (Transportation)	• Requires provision and encouragement of safe, convenient, and economic transportation system.
Goal 14 (Urbanization)	• Requires planning for the transition from rural to urban land use; establish urban growth boundaries.
Goal 16 (Estuarine Resources)	• Requires recognition and protection of economic and social values of each estuary to maintain natural diversity and benefits; designate estuarine areas for water-dependent and water-related development.
Goal 17 (Coastal Shorelands)	• Requires designation of appropriate coastal shorelands for water-dependent uses. • Requires designation and protection of mitigation sites and dredged material disposal sites to offset impacts of development.
Goal 18 (Beaches and Dunes)	• Allows appropriate development of coastal beaches and dunes.
	MINIMIZE IMPACTS OF DEVELOPMENT
Goal 5 (Open Space, Scenic Historical, and Natural Resources)	• Requires analysis of environmental, economic, social, and energy consequences of allowing, limiting or prohibiting conflicting uses proposed for resource sites.
Goal 6 (Air, Water, and Land Quality)	• Requires assurance that planned development complies with standards for air, water, and land quality.
Goal 7 (Natural Disasters and Hazards)	• Prohibits development in natural hazard areas unless adequate safeguards are provided.
Goal 16 (Estuarine Resources)	• Requires a clear presentation of the impacts of proposed estuarine alteration. • Requires maintenance of water quality and minimization of man-induced sedimentation in the estuary.
Goal 17 (Coastal Shorelands)	• Requires mitigation for dredge or fill activities in tidal or intertidal marsh areas. • Requires management of floodplain areas in coastal shorelands consistent with hazards to life and property. • Requires protection of mitigation sites. • Requires designation and protection of dredge material disposal sites. • Requires that riparian vegetation be maintained. • Requires priority of nonstructural solutions to erosion over structural solutions.
Goal 18 (Beaches and Dunes)	• Prohibits new development on dunes subject to ocean erosion. • Requires local government and state and federal agencies to regulate actions to minimize beach and dune erosion. • Requires local, state, and federal plans, actions and permits to protect against groundwater drawdown. • Prohibits breaching of foredunes in situations other than emergencies. • Allows limited grading of foredunes to maintain views of existing homes in developed areas where a detailed plan has been done and where dunes are more than four feet above the 100year flood elevation.

CITY AND COUNTY PLANNING AUTHORITIES

The planning authority of local governments is a pivotal component of Oregon's land use program. ORS 221 and 227 authorize cities and counties to adopt and implement comprehensive plans and zoning ordinances and to regulate land use within their jurisdiction. ORS 197 supplements these authorities by requiring cities and counties to adopt or amend their comprehensive plans and implementing ordinances to comply with the Statewide Planning Goals. These plans are the primary mechanism for establishing long-term, site-specific land use policies and decisions. They also are central to providing effective coordination among all levels of government. Once comprehensive plans are acknowledged, all land use decisions must be consistent with the plans.

Cities and counties have a variety of authorities to implement their plans. These authorities have been refined through statutory changes and evolving case law in Oregon.

Comprehensive Plans and Land Use Regulations

A comprehensive plan is the controlling land use planning instrument for a city or county. Comprehensive plans usually have three parts: factual base, plan policies and designations, and implementing measures. The factual base is the information from which plan decisions are made. This includes detailed inventories of lands and resources and development in the planning area, an analysis of the local economy, projections of future population growth and demands for residential, industrial and commercial land. Typically, comprehensive plans assemble the best information available for the planning area.

Comprehensive plan policies and designations include decisions about permissibility of particular land uses in specific areas. Plan policies provide both general and specific guidance for land use decisions of local, state and federal agencies. Plan designations and plan maps set site specific requirements for permissible and prohibited uses.

Implementing measures or land use regulations are locally adopted ordinances for implementing a comprehensive plan. (ORS 197.015(11)) The most common local land use regulations are zoning or development ordinances and land division ordinances.

All land use regulations, including zoning ordinances, must conform to the plan. Actions which would allow more intensive uses than those permitted by the plan are improper (Baker v. City of Milwaukie, (271 Or 500, 533 P2d (1975)). While a zoning ordinance may allow less intensive uses, Goal 2 compliance requires that zoning be adequate to carry out the plan as well as consistent with it.

Interpretation of comprehensive plan requirements is largely the province of the affected city or county. In Green v. Hayward, (275 Or 693, 552 P2d 815 (1976)), the Supreme Court held that a zone change must be consistent not only with the plan map, but also with the plan document as a whole, including plan policies. While deference is given to a local government's interpretation of its own plan, decisions which are contrary to the express terms of a comprehensive plan are not allowed (Damascus Community Church v. Clackamas County, (320 Or App 3, 573 P2d 726, rev den (1978)).

Comprehensive plans and plan amendments are legislative decisions of local governments, and as such, cities and counties have broad policy-making authority. This authority is limited by the goals and the terms of several state statutes which grant exclusive or overriding planning authority to state agencies. (For example, the Energy Facility Siting Council has peremptory authority to approve the siting of certain types of energy facilities.) Some small-tract plan amendments, as well as most specific zone map amendments and other implementing actions, are considered quasi-judicial actions since they apply general rules or standards to specific properties or situations. In such cases, Oregon courts have ruled that local governments are obligated to:

- Provide notice to affected persons;
- Refrain from ex parte contacts;
- Provide opportunities for presentation of evidence and cross-examination of witnesses; and
- Provide findings of fact supporting their decisions.

These procedural requirements were thoroughly enunciated in a 1973 Oregon Supreme Court decision (Fasano v. Washington County, 264 Or 574, 507 P2d 23 (1973)). At that time, the Oregon Supreme Court also found that changes must be supported by the finding of a "public need" for the use, and that this need could not be met at another location.

Zoning is the most common means of implementing comprehensive plans. Zoning districts, shown on zoning maps, prescribe uses which are permitted outright or allowed as conditional uses subject to some quasi-judicial review. Permitted uses are generally considered ministerial decisions which simply involve application for a building permit and conformance with simple objective standards like setbacks or height restrictions. Conditional uses involve the review of the proposed use for conformance with certain criteria or standards listed in the ordinance or the comprehensive plan (see ORS 215.416(5)). Those standards are usually more general and require some judgment on the part of either a local planning official or planning commission. Uses not listed as permitted or conditional uses are generally considered to be not allowed.

Most cities and counties use overlay zones or special standards to protect important resources or regulate development on sensitive lands, such as shorelands or floodplains. The requirements of these overlay zones supplement or modify the permitted and conditional uses of the parent zone.

ORS 92 grants counties and cities statutory authority over land divisions. Local governments must administer their land division ordinances so that they are consistent with the requirements of plans and other ordinances.

Findings

An important hallmark of Oregon's land use planning program is its requirement that land use decisions include findings explaining how applicable ordinance standards have been complied with.

Beginning with Fasano v. Washington County Board of Commissioners in 1973, the Oregon Supreme Court has held that adequate findings are needed to support quasi-judicial land use decisions. The court discussed the reasons for findings in Green v. Hayward, (1976):

- To facilitate judicial review;
- To ensure more careful administrative consideration;
- To help parties plan their cases for rehearings and judicial review; and
- To keep agencies within their jurisdictions.

The Court has also indicated that both findings of fact and a statement of reasons are needed to support land use decisions. A statement of reasons is important in telling the court what the governing body really determined and what standards it applied to the decision. This also provides a safeguard against arbitrary decision-making and ensures that the court will have available the governing body's interpretation of its comprehensive plan, ordinances and policies.

The court elaborated on the nature of the findings required to support a quasi-judicial land use decision in Sunnyside Neighborhood v. Clackamas County (280 Or 3, 569 P2d 1063 (1977)). Findings must make clear what specific objectives or policies the local government has applied to the decision in question. In addition, the findings must describe how or why the proposed action will in fact serve these objectives or policies. Finally, the findings must indicate specifically what fact the decision-making body considers relevant and important to its decision.

This case law is reinforced by statutory requirements for city and county planning. ORS 215.416(6) and 227.173(2) require that "discretionary county or city decisions approving or denying a proposed development of land shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth."

Organization

Ultimate local authority for planning and zoning decisions rests with local elected officials — the city councils and county boards of commissioners. However, state statutes and local ordinances provide for most of the day-to-day administration to be done by local planning commissions and their staffs. State law also allows appointment of hearings officers to decide quasi-judicial land use decisions. Decisions of both hearings officers and planning commissions may be appealed to the local governing bodies. (Local governing bodies are city councils and county boards of commissioners.)

Membership on local planning commissions and potential conflicts of interest are regulated by statute. No more than two planning commission members can be involved in buying, selling or developing real estate, nor can more than two members be involved in the same occupation, business, trade or profession (ORS 215.030 and 227.030). Planning commissioners must disclose in any proceeding where there is a direct or substantial financial interest by the commissioner or a relative (ORS 215.035 and 227.035).

Coordination of City and County Planning

Counties have the responsibility of assuring that city and county plans are consistent with one another. This coordination occurs at a number of points in the planning process:

- Setting or changing of population projections for cities and the rural area of the county;
- Establishment or amendment of urban growth boundaries (UGB) and preparation of a management plan or agreement for the unincorporated area within the UGB;
- Preparation or revision of estuary management plans; and
- Preparation or modification of other regional special-purpose plans (e.g., for solid waste, transportation, etc.).

STATE AGENCY AUTHORITIES

The third major component of Oregon's Coastal Management Program is the state's authority for managing specific natural resources of the coastal zone. This authority is expressed in a number of state statutes which are included in the OCMP. Implementation of these authorities is governed by individual statutes and rules, the state Administrative Procedures Act and the consistency requirements of ORS 197.180.

State authority over natural resources varies, depending on the level of state control or interest in the resource expressed in statute. Standards for managing resources are set forth generally in statute and more precisely through administrative rules. The principal state authorities and standards for managing coastal resources are summarized below.

Statutory standards are implemented by state agency personnel directed by appointed boards or commissions. Oregon government has a long tradition of open government supervised by lay boards and commissioners. The Open Meetings Law (ORS 192.630) requires that virtually all meetings of these boards and commissions be open to the public. In addition, the State Administrative Procedures Act (ORS 183), governs administrative actions of all state agencies. The Act sets specific requirements for providing notice and establishes appeal procedures. Each agency implements the statute through the adoption of rules and subsequent implementation of those rules.

Findings

At least two court decisions have reaffirmed state agency obligations to make findings and to comply with the statewide planning goals. In 1981, the State Supreme Court affirmed the reversal of a Fish and Wildlife Commission decision approving a salmon aquaculture facility. The Court found that the Commission did not provide adequate facts to support approval against its own statute as well as the requirements of Goals 16 and 19. (Federation of Seafood Harvesters v. Oregon Fish and Wildlife Commission, 291 Or 452, 460-61, 622 P2d (1981)). In an earlier case (Morse v. Oregon Division of State Lands), the court found that DSL was obligated to make findings of public need to determine whether its statutory mandate to protect the public interest in water resources of the state had been met.

State Authorities for Resource Management

By the nature of their mandates, several agencies have closer ties to the land use program than others. The agencies with authorities particularly related to management of coastal resources are described below.

Division of State Lands (State Land Board): Has ownership and management responsibilities for submerged and submersible lands. The Removal-Fill Law requires state permits for fill and removal in waterways up to the line of nonaquatic vegetation. The statute establishes an overall policy to assure that fill and removal do not interfere with the state's interest to preserve the use of its waters for navigation, fishing and public recreation. Considerations in this decision include public need and benefits, conformance to sound policies of conservation and to existing public uses, zoning, and whether the proposed use is in streambank protection.

DSL also administers the state statute requiring mitigation of intertidal dredging and filling by creation, restoration or enhancement of an estuarine area (ORS 541.626). DSL must consider adverse impacts of the proposed activity, availability of alternative sites, comprehensive plans, recommendations by affected state or local agencies, and the extent of compensating activity inherent in the proposed activity. The director of DSL may waive mitigation in part if there is not an alternative method to complete the project, if there is no feasible method for mitigation, if the economic and public need benefits clearly outweighs the potential degradation to the estuary, if the project is a public use, and if the project is water-dependent or publicly owned and is water-related.

Department of Transportation, Parks Division (Transportation Commission): Through the Beach Bill (ORS 390), Oregon has established a perpetual public easement to ocean shores and beaches to a surveyed line at or near the 16-foot contour. The Parks Division manages this easement in the public interest. Parks regulates the ocean shores and beaches for public use and recreational access and issues permits for improvements on the ocean shore and for the removal of driftwood. Parks also regulates vehicular and equestrian access to and along the ocean shore.

The Department of Transportation (ODOT) is also the state's led agency for providing coastal access and recreation. ODOT's Parks and Recreation Division manages the network of state parks, waysides, access points and botanical gardens that provide areas for recreation, research and preservation of historic sites and unique natural areas. The State Parks Division generally administers the Oregon Scenic Waterways Act, although other agencies have complementary roles. In the coastal zone, this Act protects scenic and environmental aspects of portions of portions of the Rouge River and a small portion of the Illinois River.

Water Resources Department (Water Policy Review Board): Promulgates policies and programs for the use and conservation of surface and groundwater resources, issues permits for the appropriation for surface and groundwater resources, issues permits for the appropriation of water and for dams, and coordinates water basin programs with plans. The Board also has the authority to establish minimum stream flows and to designate critical groundwater areas and regulate water withdrawal.

State Forestry Department (State Board of Forestry): Administers the Forest Practices Act (ORS 527), which establishes policies and standards for forest management and harvest practices. The agency also manages state forests and other state-owned forest lands.

Department of Environmental Quality (Environmental Quality Commission): Administers air, water, land and noise pollution control programs; regulates sewage treatment and disposal systems and solid waste disposal sites; and manages solid waste control programs, including control of environmentally hazardous wastes. Administers non-point pollution control programs under Section208 of Federal Water Pollution Control Act 1972. Specific DEQ land, air and water quality permit programs which also affect land use are listed in Table 6.

Department of Energy (Energy Facility Siting Council): Regulates siting of energy facilities; provides general guidance on the suitability and unsuitability of locations for thermal and nuclear power plants in Oregon. Has preemptive authority over other state and local authorities to approve site certificates for new energy facilities. Also issues certificates for transmission lines larger than 230 KV.

Department of Fish and Wildlife (Fish and Wildlife Commission): Regulates the harvest of fish, shellfish, wildlife and marine invertebrates in the coastal zone. Also conducts research, manages refuges, propagates fish, and reviews land use plans and water use activities to assure protection of fish and wildlife habitat. ODFW has developed standards and criteria for designating land as "riparian" for the purpose of establishing personal and corporate tax credits. Regulates the introduction of toxic substances into waters of the state.

Department of Agriculture: Regulates approval of areas for the commercial cultivation of oysters in estuarine areas.

Health Division: Establishes sanitary boundaries for harvest of cultivated shellfish from state waters. Reviews and approves construction of modification of public water systems, sets standards for new and existing water systems. Also has authority to require annexation to a city or formation of a sewer or water district to alleviate a danger to public health.

Other state agencies whose authorities and responsibilities are complementary parts of Oregon's Coastal Management Program include the following.

Department of Geology and Mineral Industries: Regulates oil, gas and geothermal activities, including the issuance of drilling permits for wells below submerged lands. Also regulates surface mining.

Public Utility Commissioner: Reviews plans for the transportation of hazardous wastes. Issues certificates for overhead transmission lines of 230 KV and less.

Department of Commerce: Through the Housing Division, provides state guidance on housing policies expressed through plan review. Also subsidizes construction of new housing. Administers state building codes and issues building permits in those jurisdictions that do not employ local building officials.

Economic Development Department (Economic Development Commission): Provides state guidance on economic planning and port planning. Issues industrial development revenue bonds for development or expansion of job-producing businesses.

Other State Agency Ties with Land Use

State agencies in general have a broad capacity to work with local governments in the development, implementation and evaluation of local and state actions and plans affecting land use. This tie plays an important role in meeting both local and state needs and management program objectives.

The county is the key link between local planning efforts and state agency programs. This local-state coordination is encouraged as early in the planning process as possible in order for local government and state agencies to work toward mutual objectives. In addition to helping in plan preparation, agencies also contribute to the land use process by reviewing plans during LCDC acknowledgment proceedings and by helping local governments to implement their plans.

Oregon's Coastal Management Program is more than land use planning. It also includes the systematic and centralized collection of data for the management of coastal resources. Agency expertise is therefore available to develop an inventory of selected coastal resources as an information base. This inventory also suggests opportunities for further research on these resources.

Coordination with Goals and Comprehensive Plans

Individual agency authorities for resource management are also guided by the statewide planning goals and acknowledged comprehensive plans.

ORS 197.180 requires that state agencies carry out their land use planning responsibilities in compliance with the goals and in a manner compatible with acknowledged comprehensive plans. Two administrative rules implement ORS 197.180. The first requires state agencies whose programs affect land use to prepare "coordination programs" for LCDC approval (OAR 660-30). These programs list agency rules and programs which affect land use, describe how the agency will assure its decisions are consistent with the

statewide planning goals and compatible with acknowledged comprehensive plans. Programs also describe how the agency will cooperate with and provide technical assistance to local government and coordinate its decisions with other agencies and affected persons.

The second rule is the State Permit Compliance and Compatibility Rule (OAR 660-31). It establishes procedures and requirements for state agencies to ensure that their permit decisions address applicable statewide planning goals and acknowledged comprehensive plans. An agency may make a decision that is inconsistent with a plan only when it finds:

1. That a state statute or federal law mandates the action;
2. That the action is consistent with the goals; and
3. That the action has objectives which cannot be achieved in a manner consistent with a comprehensive plan or with the state land use regulations (ORS 197.640(2)(c)).

In such a case, LCDC may require the local government to amend its plan or ordinances during periodic review in order to make them compatible with the state plan or program.

III. SUBSTANTIVE ELEMENTS

Through the combination of the statewide planning goals, comprehensive plans, special state statutes and LCDC's coordination authority, the state has established:

- Requirements and objectives for planning;
- Inventory and data prerequisites for adequate planning and management programs;
- A priority of uses for various categories of coastal lands and waters;
- A mechanism for coordinating the various levels of decision-making in comprehensive management efforts; and
- A mechanism for keeping plans up-to-date.

A summary follows of the major substantive elements of the Oregon program.

SCOPE OF THE MANAGEMENT PROGRAM

Two factors establish the scope of Oregon's Coastal Management Program, the geographic area to be managed (defined by the boundaries) and the uses to be managed. Both of these factors were determined after the development of extensive resource and economic inventories and after the analysis of biophysical processes and the problems and the social and political characteristics of the coast. They were examined and reaffirmed following meetings with the public and with resource specialists. Because both of these factors relate to the kinds of uses in coastal waters and the impacts which these uses have, they are discussed together.

Boundaries

Oregon's coastal zone extends from the Washington border on the north to the California border on the south; seaward to the extent of state jurisdiction as recognized in federal law; and inland to the crest of the coastal mountain range, excepting;

1. The Umpqua River Basin, where the coastal zone extends to Scottsburg;
2. The Rogue River Basin, where the coastal zone extends to Agness; and
3. The Columbia River Basin, where the coastal zone extends to the downstream end of Puget Island or, as defined by CREST, RM 38.5, to the "Bradwood Site" on the shorelands.

Excluding the territorial sea, the coastal zone ranges in width from about 8 to 45 miles and includes about 7,811 square miles of land area. These boundaries define a coastal zone which approximates a natural ecological unit: the coastal watershed. The size of the unit is necessary to address such important coastal issues as erosion and sedimentation in the coastal estuaries, and to reflect the natural features and process, such as extensive rainfall, steep slopes and soil types, which characterize the coast. Because the ridge of the coastal mountains closely approximates county boundaries as well as state agency administrative districts, the boundary it creates facilities administration of the program.

Most of the Columbia River estuary is within Oregon's boundary and is subject to Oregon's planning requirements. Oregon and Washington are participants, along with affected local units of government and federal agencies, in jointly developing a management program for the Columbia River estuary. The Land Conservation and Development Commission and the Washington Department of Ecology are the state lead agencies for both the coastal zone management programs and the Columbia River estuary studies. An organization of Oregon and Washington local governments, the Columbia River Estuary Study Task Force (CREST), has prepared a coordinated estuary management program and corresponding land and water use plans for each member government. Accordingly, both the management boundaries established by the two states and the local management programs within those boundaries are consistent.

According to CZMA Section 304(a), certain federal lands are excluded from the boundaries of a state's coastal zone. In Oregon, these lands, managed primarily by the Forest Service and BLM, represent about 36 percent of the land area of Oregon's coast. While this area is technically excluded from the coastal zone, federal actions on these lands are not automatically exempt from the consistency requirements of the CZMA. Activities or development projects conducted on excluded federal lands may be subject to consistency review by the state if they directly affect the state's coastal zone. Those uses and actions must be consistent with the approved program to the maximum extent practicable. Moreover, Congress has indicated that, in general, even the uses of those excluded lands which do not have impacts extending beyond the federal boundary should be coordinated with state management efforts.

Uses to be Managed

Inventory efforts also have identified a series of uses and activities in the coastal zone which affect coastal lands, air, and water. Only those uses or activities found to have impact on coastal lands, air, and water have been made subject to the management program. The significance of the impacts of these uses relates to the nature of the resource, the hazards of use and development, and the distance from water.

Table 2 lists the uses subject to the management program, as identified by inventories and input from resource specialists.

One or more of the goals or state statutes address each of these uses. Goal 2 provides an exceptions mechanism to allow uses which would otherwise be prohibited by the goals. Together these goals and statutes form the substantive basis of the OCMP (Table 3). No uses have been prohibited on a coastwide basis; however, some uses have been restricted, limited or controlled as to the manner or area in which they may occur. The final selection of boundaries for the coastal zone reflects the need to include enough area to manage these uses to the extent that they directly and significantly affect coastal waters.

TABLE 2

IDENTIFICATION OF USES TO BE MANAGED

Use	*Impacts On Water Characteristics*					
	Water Quality	Water Quantity	Water Circulation	Living Resources of Water	Water Aesthetics	Water Surface Area
1. Navigation and Transportation	X		X	X	X	X
2. Residential/Urban/ Industrial, Including Energy Production	X	X	X	X	X	X
3. Agriculture and Forestry	X	X		X	X	
4. Recreation	X			X	X	X
5. Fish and Wildlife Production and Utilization	X			X		X
6. Public Facilities	X	X		X	X	
7. Mining and Mineral	X			X	X	X
8. Restoration	X	X	X	X	X	X

"X" denotes a direct and significant impact on the water characteristics.

TABLE 3

CONTROLLING AUTHORITIES

Uses to be Managed	*Applicable Controlling Authorities*	
	LCDC Goal	**Other State Statutes**
Navigation and Transportation	Transportation Estuarine Resources Coastal Shorelands Ocean Resources	Dept. of Transportation (ORS 366-390); Economic Development Dept. (ORS 777.835); Div. State Lands (ORS 541.605 and 541.630)
Residential/Urban/ Industrial Including Energy Production	Land Use Planning Energy Conservation Estuaries Shorelands Housing Urbanization Natural Resources	City and County Planning and Zoning (ORS 92, 215 and 277); Dept. of Energy (ORS 453); Div. of State Lands (ORS Chapter 541); Dept. of Environmental Quality (ORS 454, 459, 467, and 468)
Agriculture and Forestry	Agricultural Lands Forest Lands Coastal Shorelands Estuarine Resources	Exclusive Farm Use Zoning (ORS 215) Dept. of Forestry (ORS 526 - 530)
Recreation	Recreational Needs Estuarine Resources, Natural Resources, Coastal Shorelands, Beaches and Dunes, Ocean Resources	Dept. of Geology and Mineral Industries (ORS 516; ORS 520-522); Div. of State Lands (ORS 273-274); Dept. of Environmental Quality (ORS 468.815 and ORS 468.350) Parks and Recreation Division (ORS 390)
Fish and Wildlife Production and Utilization	Estuarine Resources, Coastal Shorelands Ocean Resources, Natural Resources	Dept. of Fish and Wildlife (ORS 496, 498, 501, and 506); Dept. Agriculture (ORS 622.210 to 623.300); Health Division (ORS 622.010-080)
Public Facilities	Air, Water and Land Resources Quality Public Facilities and Services	Dept. of Environmental Quality (ORS 454, 459, 467, and 468); Health Div. (ORS 222.840 and ORS 431.705
Mineral Extraction	Natural Resources, Estuarine Resources, Ocean Resources	Dept. of Geology and Mineral Industries (ORS 516; ORS 520 to ORS 522); Division of State Lands (ORS 273 and ORS 274); Dept. of Environmental Quality (ORS 468.780-ORS 468.815 and ORS 468.350)
Restoration	Estuarine Resources, Shorelands, Beaches and Dunes	Division of State Lands (ORS 541)

PLANNING ISSUES OF NATIONAL INTEREST

Geographic Areas of Particular Concern

During the initial stages of the OCCDC planning effort, members of the public and resource specialists identified several geographic areas of special concern. The Oregon Legislature indicated particular state concerns with certain classes of resources and activities. In ORS 197.230(2), the Legislature required that in developing and adopting the goals and guidelines LCDC give priority consideration to the following areas and activities:

1. Activities of statewide significance;
2. Lands adjacent to freeway interchanges;
3. Estuarine areas;
4. Tidal, marsh and wetland areas;
5. Lakes and lakeshore areas;
6. Wilderness, recreational and outstanding scenic areas;
7. Beaches, dunes, coastal headlands and related areas;
8. Wild and scenic rivers and related lands;
9. Floodplains and areas of geologic hazard;
10. Unique wildlife habitats; and
11. Agricultural land.

The subsequently adopted statewide planning goals establish specific planning and management requirements for geographic areas of particular concern. Through subsequent amendments to ORS 197, the Legislature has directed LCDC to continue giving priority to these areas and activities in preparing, adopting, and revising statewide goals.

At a variety of OCCDC and LCDC meetings and workshops, concerned citizens, planners, representatives of state, local and federal agencies and governments, and natural resource specialists extensively discussed the threats to these candidate areas and the need for special state regulation of them. These meetings refined the problems pertaining to the coastal zone. The series of detailed resource and use inventories which OCCDC developed addressed these specific needs and problems. From these inventories came policy statements, setting standards for use of these areas.

On the basis of OCCDC's work, LCDC developed goals addressing beaches and dunes, estuaries and associated wetlands, ocean resources and coastal shorelands. It is primarily through these goals that the State of Oregon has expressed its increased interest in the management of these geographic areas. The coastal goals provide for the protection and the development of these areas. For example, the Estuarine Resources Goal (Goal 16) addresses the need to preserve certain estuarine areas, while utilizing other estuarine areas for development and water-oriented industry and commerce.

In addition to these special goals, special-purpose state statutes cover other areas of particular concern. These statutes, which are coordinated and enforced as part of the OCMP, include:

- The Oregon Ocean Shores Act (ORS 390.600), which provides for public access to and recreational use of beaches;
- The Oregon Kelp Fields Act (ORS 274.885 et seq.), which regulates the harvest of kelp beds;
- The Department of Energy and the Energy Facility Siting Council Act (ORS 469), which has examined and set suitability standards and classifications for power plan siting; and
- The Oregon Removal-Fill Law (ORS 541.605 et seq.), which regulates the filling and removal of material from submerged and submersible lands and the administration of mitigation requirements.

The locations of geographic areas of particular concern are shown by mapped designations in acknowledged comprehensive plans. Oregon coastal headlands, a unique geologic and aesthetic resource, were identified as another potential area of particular concern. Most of Oregon's headlands are already in state or federal ownership. The Coastal Shorelands Goal (Goal 17) requires protection of the headlands identified and mapped in the OCCDC Visual Resource Analysis in the Oregon Coastal Zone.

State and federal management plans adopted for publicly owned headlands have been consistent with Goal 17's requirement to protect headlands. In addition, the BLM has recently completed acquisition of Yaquina Head, formerly the site of a quarry and once proposed for consideration as an area of critical statewide concern.

This general process for the identification, designation and management of areas of particular concern is an ongoing one, responsive to the public and private resource needs of the state. A variety of management tools is available to respond to new needs for resource protection: state agencies can adopt or revise regulations and local governments can amend comprehensive plans. Other techniques include: new or amended statewide planning goals, special state statutes, critical area designations and public acquisition.

Areas for Preservation and Restoration

Oregon has also identified areas of particular concern. Identification and protection of appropriate areas has occurred primarily through the comprehensive planning process. The grounds for nominating an area for preservation and restoration are somewhat narrower and more stringent than those for general areas of particular concern. An area is considered for preservation only if the benefits it offers are of exceptional environmental, aesthetic, economic or cultural value, and if other uses or activities actually or potentially threaten these benefits or values. For example, under these criteria areas, might be preserved to provide or maintain recreation and aesthetic benefits, ecological values of fish and wildlife refugees, or educational or research areas. Designation of areas for preservation reflects a refinement of management policy rather than a change to the broader geographic areas of particular concern.

Several of the goals (especially Goals 3, 5, 16, and 17) require that certain kinds of areas be considered for preservation or protection. These areas are identified in the inventories required during plan development. For example, Goal16 includes a general requirement (to protect the estuarine ecosystem, including natural biological productivity, habitat, diversity, unique features and water quality) and specific requirements, including the protection of major tracts of salt marsh, tideflats and seagrass and algae beds. Goal 17 requires that shoreland sites are designated to implement Goal16's requirement to mitigate or compensate for the loss of intertidal and tidal marsh areas caused by dredging and filling. These are all considered areas for preservation and restoration.

The actual means of preservation depends on site-by-site analysis of resources, potential uses, threats to preservation, ownership and other factors. This analysis occurs through the planning process. Preservation usually occurs through the regulation of private lands by city and county comprehensive plans. Several basic tools are available for the preservation of special areas. If the land is already in public ownership, it can be designated for preservation or as a natural area. State-owned lands also can be placed in the Oregon Natural Area Program. Federally owned lands can be placed in the Federal Ecological Reserves Program.

Should the regulation of land use for preservation of private lands deprive the owner of all economic uses of the land, acquisition of the property for conservation easements is the only legal means to effect preservation. Acquisition is a tool which state and federal agencies and local governments can use. Several areas have been acquired for specific uses. These include coastal state parks and Yaquina Head for recreational uses and scenic values and the South Slough Estuarine Sanctuary, which has been designated for scientific and educational uses. Acquisition by private conservation groups such as The Nature Conservancy is an effective alternative to government purchase. Such groups can often acquire land through a combination of purchase and donation, reducing cost of land acquisition but assuring a fair price to the seller because of the tax advantage of donation.

The preservation of a particular parcel frequently can be assured without acquisition. Various tools for this purpose are available to state agencies, and especially to local governments. The state can ensure preservation by designating an area to be of critical state concern, or by using favorable property tax

incentives or special assessment policies. Statutory provisions for tax deferral are already in place for agricultural lands, open space lands and riparian habitat (ORS Chapter 308).

Local governments have ensured preservation of numerous areas through several plan and ordinance techniques. Protective zoning districts, compatibility standards, overlay zones, and siting requirements (such as setbacks) are used in most plans to protect resources that comprehensive plans designate for preservation. Other techniques can be applied on a case-by-case basis. These include land dedication, planned unit developments, and transfers of development rights. As a requirement for a subdivision or permit, developers can be required to dedicate areas of easements for preservation or to provide other areas for mitigation of the development's impact. Planned unit developments are allowed by most ordinances and provide an effective way to allow development while assuring protection of sensitive areas. Many city and county land use regulations provide special procedures for protection of sensitive resource areas by allowing more intense development than would otherwise be permitted on portions of a parcel that are more suitable for development. Conservation easements are another mechanism available to preserve or protect sensitive resource areas.

Identification of areas for restoration depends heavily on the comment, advice and analysis of resource specialists associated with the coastal zone. Studies and evaluations by other state agencies are the major source of information in selecting areas for restoration. Some studies already have highlighted areas needing restoration. These include efforts by the Oregon Department of Environmental Quality to develop water-quality management plans for Oregon coastal basins, which identify areas where water quality needs to be restored to meet the conditions of the Federal Water Pollution Control Act. The Oregon Soil and Water Conservation Commission has evaluated streambank erosion in Oregon and recommended areas for soil stabilization. The Oregon Department of Water Resources is establishing minimum stream flow requirements for Oregon's rivers. The Oregon Department of Fish and Wildlife is developing water basin management plans for each commercially and biologically important species of fish and wildlife.

Agency studies and the inventories which local governments develop as they adopt and revise coordinated comprehensive plans will continue to identify areas for restoration. In many cases, the authorities, the responsibilities, and the funding of a variety of local, state, federal, and private agencies may be needed to achieve restoration. In addition to providing an impetus for identifying areas for restoration, the Oregon Coastal Management Program can provide necessary coordination to make restoration happen.

Priorities of Use

While state law considers each of the goals to be of equal importance, individual goals limit, prohibit or encourage certain uses in particular areas. The contents of the goals address the permissible uses for coastal zone resources which reflect local, state, and national interests. Likewise, other state statutes establish priorities of use by permitting, regulating, or encouraging particular uses.

General priorities for the use of estuarine resources, coastal shorelands, and ocean resources are established in each of the respective goals. These general priorities are: protection of coastal resources and water-dependent uses as the highest priority; protection of water-related uses of lower priority; nonrelated, nondependent uses are either prohibited or are the lowest priority. Specific use priorities are accomplished by applying particular plan and zone designations to individual areas.

The goals require that certain areas within estuaries and coastal shorelands be managed for preservation or protection purposes, certain others for long-term conservation of natural resources and still others for development, depending upon resources present at the site and identified development needs. Specific uses are identified as high priority or low priority in certain areas. For example, Goal 18 (Beaches and Dunes) establishes priorities of use for certain kinds of sand land forms. Similarly, Goal 19 (Ocean Resources) places a high priority on the long-term values of renewable resources. Specific priorities are listed in each of the coastal goals—Goal 16: Estuarine Resources (comprehensive plan requirement, management units); Goal 17: Coastal Shorelands (comprehensive plan requirements, coastal shoreland uses); Goal 18: Beaches and Dunes (implementation requirements); and Goal 19: Ocean Resources (implementation requirements).

State law (ORS 215) and Goal 3 (Agricultural Lands) establish clear priorities for the preservation of agricultural land for continuation of commercial farming. The statute and the goal express concern about the continued loss of agricultural lands and ensure their protection through special assessment standards and planning regulations. For this reason, agricultural lands are considered geographic areas of particular concern. Comprehensive plans both implement and refine these priorities of use by applying specific plan and zone designations to particular areas.

A local government can alter these priorities and plan for uses of lower priority in particular areas. This is done by applying either a conflict resolution process built into a particular goal or, if the use is not allowed by a goal, through the Goal 2 exceptions process. To justify an exception, a local government must document on an individual basis the social, environmental, economic, and energy consequences of its proposed action. The exceptions process requires that the government or agency seeking the exception balance land uses and demonstrate a substantial factual need for the exception. The Goal 2 exceptions process allows local governments to designate a site for a use which one or more of the goals would prohibit.

TABLE 4

PRIORITIES OF USE
(From highest to lowest)

Estuarine Areas
(including tidal Marshes)

1. Uses that maintain the integrity of the Estuarine ecosystem.
2. Water-dependent uses.
3. Water-related uses that do not reduce or degrade the natural estuarine resources and values.
4. Non-dependent non-related uses that do nt alter, reduce or degrade the estuarine resources and values.

Prohibited:

Non water-dependent uses that require fill.

Coastal Shorelands

1. Uses that maintain the integrity of estuaries and coastal waters.
2. Water-dependent uses.
3. Water related uses.
4. Non-dependent, non-related uses that retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses.
5. Development, including non-dependent, non-related uses, in urban areas compatible with existing or committed uses.
6. Non-dependent, non-related uses that cause a permanent or long-term change in the features of coastal shorelands, only upon a demonstration of public need.

Ocean Resources

1. Protection and use of renewable resources and activities.
2. Development and use of non-renewable resources.

Agricultural Land

1. Agricultural uses.
2. Conditional non-farm uses identified in ORS 215.
3. Urban uses within urban growth boundaries.

Prohibited:

Conversion of agricultural lands beyond the urban boundary to uses not allowed in the EFU zone (except lands subject to an approved goal exception—see Goal 2).

Goals with built-in conflict resolution processes require local governments to address certain factors in choosing to select a lower priority use. For example, Goal 5 requires local governments to identify and consider the economic, social, environmental and energy consequences of resource loss before allowing uses that conflict with identified natural resource sites. (A list of goals with built-in conflict resolution procedures is listed in the Goal 2 exceptions rule, OAR 660-04.)

Uses of Regional Benefit

Uses of regional benefit are incorporated into Oregon's Coastal Management Program through the participation of public and state agencies in the development and review of comprehensive plans and through the extensive expression of concerns by the public, units of government, and resource specialists.

The selection of the goal topics was essentially a determination that certain uses, activities and resources of statewide benefit were of greater than local interest and benefit: That a public need had been demonstrated, and that it was necessary for the state to express concern and establish standards for their management (i.e., the goals). The policies and standards of the goals require that regional and statewide interests, as well as national interests, be addressed during the development and implementation of local coordinated comprehensive plans. The review of plans by all interests, plan acknowledgment by LCDC and the opportunity for concerned agencies and government bodies to appeal plans or individual land use decisions (both approvals and denials) ensures that regional interests continue to be considered and accommodated as the program is implemented. Finally, the requirement that plans regularly be reviewed and refined provides opportunity to identify and accommodate regional needs unforeseen during initial plan development.

CONSIDERATION OF THE NATIONAL INTEREST

The Coastal Zone Management Act expresses a number of national interest issues to be addressed in the state's coastal management program. This includes national concerns and broad concerns about coastal management and specific concerns about siting of facilities and several particular uses.

Facility Siting

Table 5 lists national interests in siting facilities. The table indicates corresponding requirements in the statewide planning goals which provide for the siting of such facilities.

TABLE 5

CONSIDERATION OF THE NATIONAL INTEREST IN FACILITY SITING

National Interest In Siting Facilities for:	Associated Facilities	Cognizant Federal Agencies Modified From List Provided by OCZM (15 CFR 923.15)	National Interest Considered in These Goals for Comprehensive Planning
1. Energy production and transmission.	Oil and gas wells; storage and distribution facilities; refineries, nuclear, conventional, and hydroelectric power plants; deepwater ports.	Dept. of Energy, Federal Energy, Regulatory Commission, Dept. of Interior, Nuclear Regulatory Commission, Maritime Administration, Dept. of Transportation, Corps of Engineers, Coast Guard.	Transportation, Energy Conservation, and Ocean Resources.
2. Recreation (of an interstate nature).	National seashores, parks, forests; large and outstanding beaches and recreational waterfronts; wildlife reserves; wilderness and recreation areas.	National Park Service, Forest Service, Fish and Wildlife Service, Heritage Conservation and Recreation Service, Bureau of Land Management.	Recreation Needs; Open Spaces Scenic Historic and Natural Resources; Estuaries; Coastal Shorelands; Beaches and Dunes.
3. Interstate Transportation.	Interstate highways, airports, aids to navigation; ports and harbors, railroads.	Dept. of Transportation, Corps of Engineers, Maritime Administration, Interstate Commerce Commission.	Transportation, Estuaries; Ocean Resources.
4. Production of food and fiber.	Prime agricultural land and facilities; forests; mariculture facilities; fisheries.	Dept. of Agriculture, Fish and Wildlife Service, National Marine Fisheries Service.	Agricultural Lands; Forest Lands; Open Space Scenic and Natural Resources; Estuaries; Coastal Shorelands.
5. Preservation of life and property.	Flood and storm protection facilities; disaster warning facilities.	Corps of Engineers, Federal Insurance Administration, NOAA, Soil Conservation Service, ASCS, HUD.	Natural Hazards; Coastal Shorelands; Beaches and Dunes.
6. National defense and aerospace.	Military installations, defense manufacturing facilities; aerospace launching and tracking facilities.	Dept. of Defense, NASA.	Relies on input from Defense Agencies plan review and approval.
7. Historic, cultural aesthetic and conservation values.	Historic sites, natural areas; areas of unique cultural significance; wildlife refuges; areas of species and habitat preservation.	Register of Historic Places, National Park Service, Fish and Wildlife Service, National Marine Fisheries Service, HUD.	Open Space, Scenic, Historical and Natural Resources; Estuaries; Coastal Shorelands.
8. Mineral resources.	Mineral extraction facilities needed to directly support activity.	Bureau of Mines, Geological Survey.	Open Space, Scenic, Historical and Natural Resources; Ocean Resources.

National Interest Areas

Section 303 of the Coastal Zone Management Act identifies nine areas of national interest of the coast to be addressed by state coastal management programs. This section describes how Oregon's program responds to each of these requirements. This section also addresses how the program carries out the 1976 amendments to the Coastal Zone Management Act regarding energy facility siting, beach access and shoreline erosion protection. Generally, the statewide planning goals (which have been carried out through or integrated into comprehensive plans) respond in detail to each national interest area. The authorities and processes for implementing these requirements are described in Chapters II and IV.

1. ***The Protection of Natural Resources, including Wetlands, Floodplains, Estuaries, Beaches, Dunes, and Fish and Wildlife and their Habitat Within the Coastal Zone.***

   The statewide planning goals generally require that natural resource values be protected or conserved unless there is a demonstrated public need for another use. This philosophy is implemented as comprehensive plans are adopted and administered and by several state agencies.

   Natural Resources - Generally

   Statewide planning goals include several specific mandates to protect lands with high natural resource values. Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) require conservation of agricultural and forest lands for farm and forest uses through adoption of protective plans and land use regulations. Conversion of lands to other uses requires a goal exception. Protective zones limit or prohibit potentially incompatible uses and regulate creation of new parcels to assure continued commercial production. Typically farm and forest zones have 40 acre minimum lot sizes.

   Statewide Planning Goal 5 establishes a process and considerations for protection of several specific types of resource sites:

   - Open spaces;
   - Fish and wildlife areas and habitats;
   - Ecologically and scientifically significant natural areas;
   - Water areas, wetlands, watersheds, and groundwater resources;
   - Wilderness areas;
   - Historic areas, sites, structures, and objects;
   - Cultural areas;
   - Potential and approved Oregon recreational trails; and
   - Potential and approved federal wild and scenic waterways and state scenic waterways.

   Plans must include an inventory of the quality and location of each of these types of resource sites. Resource sites that are identified as "significant" must be protected unless a conflicting use is proposed for them. Where conflicting uses are proposed, the goal requires the local government to assess the economic, social, environmental and energy consequences of alternative courses of action. Local governments may choose, based on an assessment of consequences, to protect the resource, to allow the conflicting use or develop a program which balances protection and development of the resource. Findings explaining the jurisdiction's analysis and supporting its decision must be included in the plan.

   The Goal 5 process provides substantial protection for many of the natural resources listed in the national interest area. In addition, requirements of Goals 16 through 18 require specific measures be adopted in coastal plans and ordinances to protect unique values of coastal resources. Goals 16 and 17 both supplement Goal 5 requirements for protection of wetlands.

   Estuarine and Shoreland Wetlands

   Goal 16 (Estuarine Resources) applies to all estuarine areas. It requires the division of estuaries into management units based on biophysical characteristics. Natural management units must include all major tracts of salt marsh, tide flats, and seagrass and algae beds. These areas must be managed to

preserve the natural resources in recognition of dynamic natural geologic and evolutionary processes. Permissible uses of these areas are limited to undeveloped low intensity water-dependent recreation, research and education objection, and navigation aides such as beacons and buoys. Protection of habitat, nutrient, fish, wildlife and aesthetic resources, and passive restoration measures are also allowed. Where consistent with the purposes of a particular area, aquaculture, communication facilities, and active restoration measures may be permitted.

Wetland areas that are smaller or of lesser significance than those included in natural management units are generally included in conservation management units. Conservation management units are designated for long-term uses of renewable resources that do not require major alteration of the estuary except for the purposes of restoration. They must be managed to conserve the natural resources and benefits of the area. Alterations in these areas are limited to be consistent with these objectives.

Designations that would permit more intense development in areas that qualify as natural or conservation management units require a Goal 2 exception. In addition, Goal 16 and the state removal-fill law only allow dredging and filling for water-dependent uses where public need is demonstrated.

Goal 17 provides protection for nontidal wetlands located around estuaries, coastal lakes, and along the ocean shore. Areas that resource agencies and local governments identify as major marshes or significant habitats must be protected. Uses allowed by local comprehensive plans must be consistent with the protection of these natural values. Goal 2 exceptions are required to designate such resource sites for incompatible uses.

Floodplains

Most coastal floodplains that are undeveloped are also agricultural land subject to Goal 2 and must be placed in exclusive farm use zones. In addition, provisions of Goals 7 and 17 direct local governments to avoid development in floodplain areas unless adequate safeguards have been provided to protect the development. Most local governments implement the requirements of these goals through adoption of HUD/FEMA floodplain regulations. DLCD considers adoption of these regulations to be an appropriate implementing measure for Goals 7 and 17.

Beaches and Dunes

The historical concern of Oregonians for protection of beaches is expressed in the beach bill. The beach bill sets in statute a perpetual easement for public use of the ocean beach and prevents upland land owners from encroaching or interfering with that easement. By itself, the beach bill has had a dramatic effect: Oregon's beaches are relatively unaltered by adjacent development. Encroachment of development onto a public beach area (across the beach zone line) is regulated by the Oregon Department of Transportation under the Oregon beach law (ORS 390.605 through 390.770). DOT only issues permits after a careful public review which assures that:

- A structure is necessary to protect the adjacent property;
- Encroachment onto the beach zone line is the minimum amount necessary to accomplish property protection, visual impacts are minimized, access to the beach is maintained, negative impacts on adjacent property are minimized and long-term or recurring costs to the public are avoided; and
- New structures are not allowed where development did not exist on January 1, 1977.

Oregon's dune areas are afforded protection in several ways. First, large areas of open dunes are in public ownership, either as state parks or part of the Oregon Dunes National Recreation Area. Second, undeveloped dunes that remain in private ownership are partially protected by development by requirements which limit development outside of urban growth boundaries. Third, in areas that are developed or planned for development, Goal 18 and local comprehensive plans manage development to minimize impacts on dunes and dune processes. Where development is permitted, local governments are required to make decisions based on specific findings that include:

- The type of use and its effects,
- Temporary and permanent stabilization programs for maintenance of new vegetation;

- Methods to protect the surrounding area from adverse affects of development; and
- Hazards to life and property that might be created by the proposed use.

Goal 18 specifically prohibits development of foredunes that are subject to ocean flooding or wave overtopping. Other requirements compel protection of groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality or intrusion of salt water into water supplies.

2. ***The management of coastal development to minimize loss of life and property caused by improper development in flood prone, storm surge, geologic hazard, and erosion prone areas and in areas of subsidence and salt water intrusion and by the destruction of natural protective features, such as beaches, dunes, and wetlands.***

   Goals 7, 17, and 18 include several requirements for protection of life and property from natural hazards and disasters. These requirements both independently and as they are implemented through local plans and ordinances prevent or minimize development in hazardous areas. The overall philosophy of the goals regarding development in natural hazard areas is expressed by Goal 7 (Natural Hazards). It prohibits development in areas of known natural disaster or hazard unless adequate safeguards are provided to protect the development. Comprehensive plans must be based on an identification of areas of known natural disaster and hazard. This includes areas of flooding, groundwater, erosion and deposition, landslides, earthquakes, weak foundations, soils, and other hazards unique to local or regional areas. Local ordinances typically require developers to provide detailed engineering studies showing how property in potentially hazardous area can be safely developed. The Commission has interpreted appropriate safeguards to mean measures adequate to protect proposed development from identified hazards for the life of the structure.

   Most undeveloped floodplain areas are agricultural lands which are protected from most development through provisions of the goals. In addition, virtually all of Oregon's cities and counties have adopted federal floodplain regulations to manage development in floodplains.

   Goals 16 and 18 recognize and require protection of the natural protective features of beaches, dunes, and wetlands. Goal 16 requires the protection of virtually all estuarine wetlands from filling that is not demonstrated to be needed for a water-dependent use. Alteration of beaches is only allowed to provide modest protective structures for existing development. Goal 18 also limits manipulation of dunes by prohibiting both breaching of foredunes and development of foredunes that are subject to ocean flooding.

   These measures will be effective in directing new development away from areas that are subject to natural disasters and hazards. Like other areas of the country though, Oregon does have a number of existing developments that are located in flood and hazard prone areas. Remedial protective measures for these areas are allowed and encouraged consistent with avoiding impacts on adjacent properties. Damage to these developments serves to reinforce public support for proper planning in undeveloped areas with hazard potential.

3. ***Priority consideration be given to coastal dependent uses and an orderly process for siting major facilities for national defense, energy, fisheries development, recreation, ports, transportation, and to the location to the maximum extent practicable of the new, commercial and industrial developments in or adjacent to areas where such developments already exist.***

   Coastal dependent uses are provided for primarily through local plan provisions which implement requirements of Goals 16 (Estuarine Resources) and 17 (Coastal Shorelands). Goal 16 requires the identification of development management units and development estuaries to provide for water-dependent and water-related uses including:

   - Navigation and water-dependent commercial enterprises and activities;
   - Water transport channels where dredging may be necessary;
   - Disposal of dredge material;
   - Eater storage areas where needed for products used in or resulting from industry, commerce, and recreation;

- Marinas;
- Aquaculture; and
- Extraction of aggregate resources.

Goal 16's development management unit requirements mandate that local plans protect for these uses and from incompatible uses. Goal 17 complements these requirements by requiring that plans identify and protect shoreland areas needed to support water-dependent uses.

Shorelands and urbanizable areas that are "especially suited for water-dependent uses" must be protected for water-dependent uses. Upland sites that are suitable for disposal of dredged material or that could be used to mitigate for estuarine dredging and filling must be identified and protected from new activities and uses which would prevent their ultimate use for dredged material disposal or restoration. In addition, identification of areas needed for water-dependent uses is based on a general analysis of the economy of the area and development needs forecast by the plan.

The comprehensive planning process established by ORS 197 is consistent with the national interest objectives expressed for siting of major facilities. A principal objective of this state law is to assure that comprehensive plans provide for needs expressed by all levels of government, including needs and interests expressed by federal agencies.

In preparing their comprehensive plans, local governments have utilized state and federal studies to identify sites suitable for increased economic activity. After careful analysis (coordinated with state and federal agencies), local governments have planned and zoned lands both for general industrial development and for the particular needs of water-oriented industry. These plans provide a basis for capital improvement planning to extend facilities and services to make sites readily available for industrial development.

Coastal comprehensive plans have been especially considerate of national needs for new facilities for energy development, fisheries development, recreation, ports and transportation. Major deep and shallow draft ports have identified shoreland areas for new port facilities to support energy resource transshipment, development of new fish processing facilities and areas for expanded marinas. Other areas have been identified for expanded waterway commerce, for transshipment of traditional products including wood products and grain. Sites suitable for new or expanded recreational marinas or moorages have been designated in all conservation and development estuaries.

The plan designations and ordinances reflect a deliberate consideration of available national and regional economic forecasts. Local governments have also been responsive to specific national needs expressed by federal agencies. State and local governments have not yet received specific requests for the Department of Defense regarding needs for defense-related facilities. Consequently, local plans have not made any specific provision for national defense facilities in their plans. However, defense facilities may be constructed in areas where the uses and activities proposed are consistent with the plan and zone designations. Cities and counties will consider amending their plans if and when specific information on the need for defense facilities is provided to them.

The requirements of Goal 14 (Urbanization) and Goal 9 (Economy of the State) encourage industrial and commercial developments in and adjacent to areas that have already been developed for these uses. Goal 14 requires cities and counties to cooperatively establish urban orderly and efficient provision of public facilities and services, and maximum efficiency of land uses within and on the fringe of the existing urban area. Urbanization of areas outside existing urban areas is generally only permitted when there are not suitable sites within the urban area or there is a particular characteristic of the land or the industrial activity which requires location outside an urban growth boundary.

In addition to requirements of statewide planning goals implemented through local comprehensive plans, the state has independent suitable or unsuitable for siting of energy facilities. In addition, the Energy Facility Siting Council (EFSC) operates the state's energy facility siting process. All major generating or transmitting facilities are subject to EFSC jurisdiction.

4. *Public Access to the Coast for Recreational Purposes.*

   Public access to ocean beaches has been a long-standing state concern. A series of state mandates culminated in the 1967 Beach Bill which preserves in perpetuity of the public's right to use the ocean shore. This area is managed by the Park and Recreation Division of the Oregon Department of Transportation. The beach includes the dry sand area up to the 16 foot elevation identified by a surveyed beach zone line. ODOT reviews any proposed alteration, such as construction of a beachfront protective structure or removal of driftwood, to assure that it does not conflict with the public's right to use the ocean shore.

   In addition to assuring the public's right to use the ocean shore, the state has developed an extensive series of parks and waysides providing access to the beach. ODOT estimates it has completed acquisition of 98 percent of the areas where it wants to provide public access and constructed improvements on 95 percent of areas intended for access. In addition to ODOT's efforts, cities and counties are obligated through Goal 8 to provide for the needs of citizens and visitors to the state. Some cities have identified needs for improved public access to the ocean shore or to estuarine shorelines. Many local ordinances include requirements for providing public access to beaches, subdivisions, or planned development approvals. In addition, the Oregon Department of Fish and Wildlife administers a program designed to provide access to hunters and fishermen to coastal lakes, rivers, and streams. This supplements a series of parks and access points provided by the Department of Transportation along with local cities and counties. In 1984, LCDC amended Statewide Planning Goal 17 (Coastal Shorelands) to require cities and counties to develop public access plans to provide increased access to all coastal waters. The goal also limits local and state governments from relinquishing easements or rights of way that provide access to or along coastal waters.

5. *Assistance in the redevelopment of deteriorating urban waterfronts and ports and sensitive preservation and restoration of historic cultural and aesthetic coastal features.*

   Under the provisions of Goal 5 (Natural Resources) and Goal 17 (Coastal Shorelands), local governments have identified sites and structural areas suitable for preservation and restoration because of their historical, cultural, or aesthetic value. As described above, Goal 5 requires an identification of areas with significant resource value and requires protection of these areas unless conflicting uses are identified. Where conflicting uses are proposed, local governments must assess the economic, environmental, social, and energy consequences of alternative courses of action. Based on this analysis, a local government chooses to protect the site, allow the conflicting development, or strike a balance between protection of the site and its development. Goal 17 supplements this by requiring that historic and archaeological sites be protected and that uses in these areas be consistent with protection of historic and archaeological values.

   By applying these requirements, local comprehensive plans identify waterfront and other areas that are suitable for rehabilitation, restoration, and redevelopment. Through appropriate zoning designations and ordinance requirements, local governments can limit incompatible uses and encourage rehabilitation consistent with identified values.

6. *The coordination and simplification of the process in order to ensure expedited government decision-making for the management of coastal resources.*

   As described elsewhere in the program document, the purpose of Oregon's Land Use Act is to encourage coordinated administration of land uses among all levels of government. This is accomplished by the development of coordinated comprehensive plans which interrelate the functional and general plans of state agencies and special districts with the general plans of local governments. Through the process of plan development and acknowledgment, potential conflicts are identified and reconciled as much as possible. The result is acknowledged comprehensive plans which provide a predictable general pattern for development and conservation of resources. This expedites decision-making by other governmental agencies by incorporating their concerns into plan designations.

   In general, comprehensive plans should resolve many of the basic conflicts between conservation and development. By designating areas for both development and preservation, potential developers, as well as state and federal agencies, are on notice as to what areas are available for development and what

areas are off limits. Plans and ordinances also list specific conditions that must be met for particular types of development. This puts developers on notice as to what conditions must be met to allow development at a particular site. This process simplifies the permit review by narrowing the scope of considerations to the direct and unique effects of the proposed use and activity at a particular site as opposed to the more general or cumulative effects about development in an area. If federal agencies make their needs, interests and concerns known through the local planning process, the scope of both permit reviews environmental impact statements can be narrowed.

The Oregon Land Use Act includes a number of specific provisions designed to simplify decision-making. First, the land use appeals process is designed to result in rapid resolution of disputed land use decisions. Most cases are decided by the Land Use Board of appeals (LUBA) in under six months. In controversial cases, where legal challenges are more likely, this means that there will be fast fair decisions on the merits rather than effective denial by procedural delay. Second, ORS 197 requires local governments to establish consolidated procedures so that applicants may apply for all local permits and zone changes at one time. This expedited procedure which requires a final action by local government within four months of the application and assures that potential developers will receive a prompt response to their development proposals.

Coordination of state and federal permit processes is also an important step toward permit simplification. Since 1981, the Corps of Engineers and the Division of State Lands have operated a joint permit program that combines state and federal notices of waterway development projects. This assures simultaneous processing of permits avoiding a potential source of delay for many applicants.

7. ***Continued consultation and coordination with, and giving added consideration of, affected federal agencies.***

Consideration of the range of interests that make up the "federal interest" has and will continue to be an important element of Oregon's Coastal Management Program. The purpose of Oregon Land Use Act is to incorporate the concerns of all levels of government into land use planning decisions made by state and local governments. LCDC considered federal agency views both in drafting statewide planning goals and in developing Oregon Coastal Management Program. Federal agency views will be solicited if and when LCDC develops or adopts additional statewide planning goals.

Federal agencies have been routinely informed of and involved in the development of comprehensive plans. Through the plan development process, federal agencies were given the opportunity to express general or particular interests in Oregon's coastal zone that should be reflected in comprehensive plans. Under Oregon law, cities and counties are obligated to "consider and accommodate as much as possible" the concerns and interests expressed by federal agencies. When locally adopted plans are submitted to LCDC for acknowledgment, federal agencies are notified of that request and given an opportunity to comment or object to the request. LCDC determines whether or not local government has adequately considered and accommodated the needs or concerns expressed by federal agencies.

The interests and concerns of federal agencies will continue to be considered by local governments and LCDC as plans are amended and updated. LCDC provides notices of incremental plan and ordinance amendments to acknowledged plans upon request. Plan amendments are subject to the requirement to coordinate (i.e., consider and accommodate as much as possible). In addition, at three to five year intervals, local governments will be required to review and update their plans to account for changing needs and circumstances. Federal agencies will be notified of these pending updates and given the opportunity to suggest areas where local plans need to more fully consider and address the national interest. Federal agencies will also be given an opportunity to review adopted amendments to see that they incorporate the national interest.

Federal agencies are also given opportunities to participate in administrative proceedings before various state agencies as these agencies implement their programs affecting land use. Most federal agencies have developed a close working relationship with their counterpart or constituent state agencies and are familiar with these administrative processes. Pursuant to the requirements of Oregon's Open Meetings law, federal agencies may request notice of administrative proceedings.

8. *The giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decision making.*

Oregon law and statewide planning goals include extensive requirements for notice and opportunity to participate in government decision making at all levels. Cities and counties are obligated to provide public notice of all planning commission, citizen advisory committee, and governing body meetings where public decisions are contemplated. All of these meetings must be open to the public. In addition, each city and county has adopted (pursuant to Goal 1) a citizen involvement program which describes what steps the city or county will take to provide citizens with opportunities to participate in each phase of the planning process. These programs include opportunities for two-way communication between citizens and governmental officials, availability of technical information in an understandable form, and guarantees that citizens will receive response from policy makers.

Individual planning decisions of local governments are also subject to specific statutory notice requirements. Legislative decisions (that affect a broad area), require notice in a newspaper of general circulation. Quasi-judicial land use decisions, which affect only one or a few properties, require notice to surrounding property owners.

The Land Conservation and Development Commission and other state agencies provide public notice of their meetings and provide agendas to interested citizens and groups who request to be notified. Most state agencies provide opportunities for public comment on general issues at their meetings, and all agencies are required to provide for public comment on new programs and administrative rules. In addition, the Commission provides, through its own citizen involvement program, for public review and comment on proposed changes to the coastal management program. The Commission specifically provides notice to local governments pending rulemaking and other policy matters. Because of their primary role in preparing, implementing, and revising comprehensive plans, local governments are integrally involved in coastal management decision making. Affected local governments are almost always parties in Commission decisions affecting their plans or land use decisions. Finally, the Commission's process for making federal consistency determinations is based in part on responses provided by the affected local government. The Commission, like other state agencies, is bound to comply with the provisions of acknowledged comprehensive plans including implementing ordinances.

9. *Assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between the state and federal coastal zone management agencies and state fish and wildlife agencies.*

Comprehensive Planning

Oregon's Coastal Management Program is clearly supportive of comprehensive planning since it is primarily based on adoption implementation, and refinement of locally developed, coordinated comprehensive plans. As described elsewhere in the program document, comprehensive plans consider and accommodate as much as possible the needs and interests of all levels of government. State statutes give comprehensive plans overriding legal weight in guiding all land use decisions made by local and state governments in Oregon's coastal zone. Plans reflect a balance between needs for future economic development and protection and conservation of important natural resources of the coastal zone.

Living Marine Resources

Both the statewide planning goals and state statutes for management of fish and wildlife provide clear direction for protection and management of living marine resources. Through Statewide Planning Goals 5 and 16, local governments are required to identify and protect habitat areas that are important to maintenance of marine resources. In particular, Goal 16 requires that areas important to the estuarine food chain be designated either as natural or conservation management units and managed to protect or conserve the long-term natural productivity of those areas. Coordinated comprehensive plans and implementing ordinances which carry out this requirement limit use and alteration of these areas to assure that these values are protected. In addition, the goals include a number of specific implementing requirements which compel assessment of actions which may affect estuarine environments.

The Oregon Fish and Wildlife Commission and the Department of Fish and Wildlife implement state laws for the protection and management of marine resources. The overall objective of these laws is to manage fisheries to provide the optimum economic, commercial, recreational, and aesthetic benefits for present and future generations of the citizens of the state (ORS 506.109). To carry out this overall public policy, the Commission is given the authority to:

- Regulate the taking and selling of fish;
- To acquire land easements or access to construct hatcheries and fishways; and
- Regulate placement of any substance in public waters which may injuriously affect the life, growth, or flavor or shellfish in or under such waters.

State statute also establishes a Fisheries Conservation Zone for the maintenance, preservation, and protection of all coastal species of fish and other marine fisheries resources for mean or high water seaward to a distance of 50 statute miles (ORS 506.755). Within this zone, the Fish and Wildlife Commission is authorized to study and regulate taking of fish. This authority has been supplemented by the provisions of the Federal Fisheries Conservation and Management Act. The state has coordinated implementation of this Act with the requirements of federal law through the Pacific Fisheries Management Council.

Oregon also implements protection of marine fisheries through Statewide Planning Goal 19 (Ocean Resources). Goal 19 applies to local, state, and federal actions which would affect the nearshore ocean and outer continental shelf. The overall priority set by the Ocean Resources Goal is to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf. The goal requires that renewable ocean resources and uses, such as food production, water quality, navigation, recreation and aesthetic enjoyment be given clear priority over use of nonrenewable resources. Prior to taking actions affecting ocean resources, local, state, and federal agencies are required to prepare information sufficient to describe the long-term impacts of the proposed action on resources and uses of the continental shelf and the nearshore ocean.

Siting of pollution control facilities is regulated directly by the Oregon Environmental Quality Commission. The Environmental Quality Commission is required to apply Goals 16 and 19, as well as the provisions of acknowledged comprehensive plans to its decisions regarding the siting of these facilities. Generally, comprehensive plans have identified locations for new or expanded sewage treatment facilities and other waste disposal facilities. Through application of Goal 16, plans prohibit estuarine filling for sewage treatment plants and prohibit sewage discharge into natural estuaries and natural management units. Discharge into other areas must be based on a demonstration that it will not adversely affect the estuary or that the impacts are outweighed by public benefits of disposal.

Goal 19 includes specific requirements to encourage protection and proper management of marine resources. For fisheries resources these include:

- Development of scientific information on stocks and life histories of commercial, recreationally important species of fish, shellfish and marine mammals and other marine fauna.
- Designate and enforce fishing regulations to maintain the optimum sustainable yield while protecting the natural marine ecosystem.
- Develop and encourage improved fishing practices and equipment to achieve the optimum sustained yield while protecting the natural marine ecosystem.
- Develop scientific understanding of the effects of man's activities, including navigation, mineral extraction, recreation and waste discharge on a marine ecosystem.

For important habitat areas needed to support marine resources the following measure:

- Identification and protection of areas important biological habitat, including algae beds, sea grass beds, rock reef areas, and areas of important fish, shellfish, and invertebrate concentration.
- Identify and protect important feeding areas, spawning areas, nurseries, migration routes, and other biologically important areas of marine mammals, marine birds, and commercially and recreationally important fish and shellfish.

- Determine and protect the integrity of the marine ecosystem, including its natural biological productivity and diversity.

Goals 16 and 19 in combination with the Department of Fish and Wildlife's responsibility to regulate aquaculture facilities are part of the state's overall policy to manage living marine resources. The primary responsibility to determine that aquaculture facilities are consistent with the state's overall objectives for management of living marine resources as well as compatible with affected estuarine and nearshore habitat areas is vested in the Fish and Wildlife Commission. Applications for new fish hatcheries including the amounts and type of fish released are subject to the approval of the Fish and Wildlife Commission.

Coordination

The programs of the Fish and Wildlife Commission have been integral to implementation of Oregon's Coastal Management Program. ODFW coordinates implementation of its authorities with implementation of local comprehensive plans through state agency coordination program developed cooperatively between ODFW and DLCD and approved by the Land Conservation and Development Commission. The program describes Fish and Wildlife's activities affecting land use and describes how these activities will be carried out in a manner consistent with the statewide planning goals and acknowledged comprehensive plans. The program also describes assistance to be provided by ODFW to local governments. Programs administered by ODFW include its regulation of aquaculture facilities, identification of habitat locations and values, regulation of oyster culture, and placement of materials injurious to shellfish in the waters of the state.

The Department of Fish and Wildlife has played an important role in the development of comprehensive plans, particularly the estuarine management elements of those plans. In 1978, ODFW completed a coastwide summary of inventory information on estuarine habitats for use by local governments. ODFW has subsequently participated in development of individual estuarine plans identifying areas qualifying for habitat protection under Goal 16. ODFW, along with other state and federal resource agencies, has also assisted in identifying uses and activities can be consistent with continued protection and conservation of habitat values. This level of participation has been instrumental to making plans provide predictability for future land use decisions.

Special Area Management

The Congressional Declaration of Policy in Section 303 also encourages state coastal management programs to address two other areas. While these are not mandatory elements of state coastal management programs, Oregon's Coastal Management Program carries out both of these congressional mandated policies. Section 303(3) encourages the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal dependent economic growth, improved protection of life and property in hazardous areas, and improved predictability in government decision making.

Comprehensive plans in Oregon are in essence special area management plans. Comprehensive plans prepared by cities and counties implement state requirements in specific geographic areas for protection of specific resources while at the same time providing for anticipated economic growth. Comprehensive plans through map designations, planned policies, and site specific implementing measures (i.e., zoning) limit land uses in particular areas to either assure resource protection or encourage proper development. Specifically, the goals mandate that local plans zone agricultural, forest, and estuarine lands for resource protection and conservation. Only where these lands are committed to or are demonstrably needed for development may they be converted to nonresource use through the exceptions process. Comprehensive plans implement these protections through implementing ordinances which can only be changed through a comprehensive plan amendment which is subject to state review and coordination with affected agencies. As noted above, the goals also limit development in hazardous areas through zoning designations and ordinance requirements which either prohibit development or require site specific studies assuring appropriate safeguards prior to development.

Finally, cities and counties have also identified their capabilities for economic growth and projected land needs necessary to provide for new economic development over the next 20 years. The result is plan policies and zone designations which provide and protect land for industrial and commercial uses. In

particular, coastal local governments have identified land especially suited for water dependent uses and zoned these lands to protect them for only water dependent use. To assure that these shoreland areas will be available for development, plans also identify and protect sites for mitigation and for disposal of dredged materials for expected port improvements.

Importantly, all of these planning decisions have been coordinated with interested and affected state and federal agencies. ORS197 requires that state and federal agencies be given an opportunity to participate in the development of plans. Local governments, in turn, are obligated to consider and accommodate as much as possible the concerns and interests expressed by state and federal agencies. Through this process, federal agencies can be assured that locally developed plans will also reflect federal interests in a particular geographic area. State and federal agencies feel that local governments have not accommodated their interests or concerns as much as possible may object to acknowledgment of the plan by LCDC. The state will then consider and attempt to further accommodate the state or federal interest. Finally, acknowledged comprehensive plans are integrated into Oregon's Coastal Management Program as program changes. If federal agencies continue to be unsatisfied by the balance struck in local plans, they may elevate the decision to the Secretary of Commerce.

Through development of coordinated comprehensive plans, Oregon local governments distill general and often conflicting state and federal policies for resource conservation and development to particular use designations for specific areas. This process both provides a careful balance between protection of coastal natural resources and economic development and the increased predictability for state decision making intended by the Coastal Management Act. Requirements for refinement and update of local comprehensive plans assure that this balance and predictability will continue to be provided as circumstances change and as new needs arise.

Energy Facility Siting, Beach Access and Shoreline Erosion

The 1976 amendments to the Coastal Zone Management Act required three new elements for state coastal management programs: a planning process for (1)siting energy facilities and identifying their impacts, (2)for protecting and maintaining access to public beaches, and (3)for assessing the effects of—and evaluating ways to control—shoreline erosion. As with other elements of the program, Oregon relies upon the existing state agency and local government authorities and activities to meet these federal mandates.

The authorities of the Department of Energy and the Energy Facility Siting Council (EFSC) and the requirements of the statewide planning goals are used to satisfy federal requirements for an energy facility planning process.

EFSC regulates the siting of major energy facilities including all nuclear and thermal power plants and all large hydropower facilities. Many small scale facilities, while not covered by EFSC siting requirements, must meet the requirements of acknowledged plans and other state resource protection requirements (e.g., water resources). EFSC's two major authorities are set forth in ORS 469.470. First, EFSC has adopted rules for the entire state which designate areas as either suitable or unsuitable for major types of energy facilities. Second, they have adopted, pursuant to ORS 469.470, standards for the review and approval of site certificates for energy facilities under its jurisdiction. Importantly, EFSC siting process preempts and consolidates all other state and local procedures for reviewing energy facilities subject to EFSC jurisdiction. EFSC is required to address requirements of the goals and comprehensive plans, but once it approves siting of an energy facility, its decision binds all other state and local agencies' approvals.

Siting of energy facilities not regulated by EFSC is done directly by the affected city or county and a variety of state agencies. The particular state and local approvals needed will vary primarily on the resource impacts of the proposed facility.

The national interest in siting particular energy facilities is a consideration in application of the statewide planning goals both by EFSC and affected local governments. Goal 2 requirements for coordination explicitly require consideration and accommodation of all interests, including national interests, in land use planning decisions.

In addition, the Land Use Planning Goal (Goal 2) specifically requires that comprehensive plans be coordinated. To be coordinated, a plan must consider and accommodate, as much as possible, public and private interests, including policies expressed by state and federal agencies. Each local government has prepared an agency coordination program to solicit comments from affected state and federal agencies and local special districts.

The principal authorities for meeting the beach protection and access requirements are those of the Parks and Recreation Division of the Department of Transportation (Parks) and the planning and implementation requirements of the statewide planning goals. Parks has lead responsibility for administering Oregon's Ocean Shores Act (also known as the Beach Bill) and for providing public access to the ocean shore. Together, the Beach Bill's establishment of a perpetual public easement along the beach and the coastwide system of state parks, waysides and accesses have resulted in public access the length of the coast. ODOT's authority to provide access is supplemented by requirements of Statewide Planning Goals 8 (Recreation Needs) and 17 (Coastal Shorelands). Goal 8 requires comprehensive plans to provide for recreation needs of visitors and residents while Goal 17 requires that comprehensive plans include public access plans and prohibits relinquishing public access in most situations.

Management of shoreline erosion problems is a major objective of the statewide planning goals and comprehensive plans. Goals 7 (Natural Hazards), 17 (Coastal Shorelands) and 18 (Beaches and Dunes) all include specific requirements which either prohibit development in areas subject to erosion or regulate development to minimize erosion. For example, Goal 17 requires that riparian vegetation, which plays an important role in erosion control, be maintained and enhanced. These goals and comprehensive plans require nonstructural solutions be considered and that the adverse effects of erosion control structures, if needed, be minimized. Several state agencies play important roles in managing erosion problems. The Division of State Lands, which regulates structures along all waters of the state, shares jurisdiction with the Parks Division in managing beachfront protective structures. Through the Forest Practices Act, the Department of Forestry regulates forest operations on forest lands to minimize erosion and sedimentation.

IV. PROCESSES FOR IMPLEMENTATION

Oregon's Coastal Management Program is implemented through application of the authorities described in preceding chapters. This chapter describes how each of these authorities is used to implement the program's objectives. The major procedures include development of coordinated comprehensive plans, LCDC review and acknowledgment of plans, plan implementation, plan amendment and periodic review, judicial review and the application of federal consistency requirements.

Program Funding Process

OCMP activities are funding largely from three sources: federal grants under Section 306 of the CZMA, biennial budgets of the DLCD and other state agencies, and annual budgets of cities and counties. Generally, state and local budgets have been sufficient only to support continued operation of the program at existing levels. However, federal grants have and are expected to give the state additional flexibility to address new or evolving coastal management issues.

Priority for federal funding is in support of key elements of the existing framework for coastal zone management. These include DLCD's responsibilities to assure that: the requirements of the statewide planning goals are met as acknowledged comprehensive plans and land use regulations are amended and periodically updated; to ensure that state agency activities affecting land use are undertaken in a manner compliant with the goals and compatible with acknowledged plans; and to serve as the state's agent for assuring consistency of federal actions with the coastal management program.

DLCD will direct federal funds to addressing other coastal issues through its application for and administration of future 306 grants. State and federal agencies, local governments, interested groups and citizens as well as the Commission will be involved in identifying priority areas for new or enhanced coastal management efforts.

Prior to preparation of each 306 grant application, DLCD will solicit comments from interested persons, groups and units of government to identify unmet coastal management needs. In addition to a written solicitation, DLCD may meet with specific groups such as local planners and elected officials or state agency representatives. Suggestions received from these comments will be reviewed by Commission subcommittee and selected projects or types of projects will be listed in DLCD's 306 grant application.

The 306 grant application itself is subject to a formal notification and review process at the state level. The State Clearinghouse procedures will give state agencies and local governments an opportunity to respond to DLCD's proposed priorities for addressing additional coastal management issues. DLCD will supplement Clearinghouse procedures by providing relevant sections of the draft grant application to persons and groups that participated in the preapplication review process. All responses to the 306 grant application will be forwarded to OCRM and will be accommodated as much as possible through revisions to the pending grant application.

When the 306 grant has been awarded with tasks to be completed by competitive contract, DLCD shall solicit proposals to perform the specified program enhancement activities. Solicitations will generally occur in three steps. First, DLCD will inform eligible units of government and interested persons of the eligible activities. Second, DLCD will compile applications received and prepare a recommendation on each proposal. The Department's recommendations will be distributed to persons and groups that have participated in the funding process and a LCDC subcommittee for review. After receiving and reviewing comments, the Director will select projects for funding. The list of projects selected by the Director will be mailed to interested persons. Objections to the Director's decisions can be raised directly to the Commission through petition. Should the Commission choose to hear a petition, the Commission must either affirm, modify or revise the decisions of the Director.

COMPREHENSIVE PLAN DEVELOPMENT, IMPLEMENTATION AND REFINEMENT

Locally prepared coordinated comprehensive plans are the basis for implementing most of Oregon's Coastal Management Program. These plans express policy judgments about the future use of coastal lands and resources. The judgments reflect a combination of local, state and federal agency interests in the particular area which a plan affects. A balance among competing public, private and local, state and federal interests is achieved through the application of the statewide planning goals and the participation by affected persons and groups in the planning process. LCDC through acknowledgment review provides a forum for state-level conflict resolution. In addition, plans provide a continuing basis for coastal management through specific procedures which involve LCDC and other agencies and persons in plan implementation, amendments and periodic review and update. Through participation in all phases of the planning process, affected persons and agencies can assure that their interests are considered.

Application of Statewide Planning Goals to Land Use Decisions

While local governments' principal responsibility is to prepare a plan that complies with the goals, they are also obligated to apply the goals to land use decisions before their plans are acknowledged. Until comprehensive plans are acknowledged by LCDC, cities and counties must apply the goals to all decisions affecting land use. In its 1977 decision in Sunnyside Neighborhood v. Clackamas County Commission 0 Or3, 569 P2d 1063), the Oregon Supreme Court found that certain goal requirements established "site-specific" state policies applicable to local land use decisions prior to acknowledgment. This requirement to apply the goals as interim land use policies was necessary to assure that the objectives of Oregon's Coastal Management Program were carried out prior to acknowledgment of comprehensive plans. Interim application can also be extended to new goals or goal amendments as they are adopted by LCDC.

The requirement to apply the goals before acknowledgment means that the local government must apply both its existing plan requirements and goal requirements. Local governments do this by adopting findings of fact and a statement of reasons addressing both the plan and applicable goal requirements. Proposed actions which were not allowed by either the plan or the goals could not be approved. (Note: Since unacknowledged plans are not part of the OCMP, federal consistency under Section 307 of the Coastal Zone Management Act does not apply to the implementation of these plans. Rather, the state standards in the statewide planning goals define the coastal program for federal consistency purposes. Only when a local plan is acknowledged by LCDC, approved by OCMP, and approval published in a public notice does federal consistency apply to the implementation of a plan.)

Plan Preparation

City and county governing bodies are responsible for preparing and adopting comprehensive plans and implementing measures. While each plan must comply with the goals, the format of plans and ordinances varies widely based on local needs and objectives. Several procedural requirements for plan development and adoption are set in Goal 2 and the City and County Planning Acts (ORS 221 and 227). Basic steps include:

Preparation of Inventories and Projections

Basic information about the community is assembled and analyzed. Past trends, present conditions, and future expectations are examined in detail. Inventories of data concerning the physical, economic, and human resources of the area are gathered. From forestland to fish, education to income, transportation to topography, these inventories describe past and present conditions. Based on analysis of these facts, projections are made for the future, usually for a period of 20 years.

Identification of Local Needs and Objectives

Local objectives identify the particular emphasis a community places on matters such as economic growth, downtown development, recreational facilities, and other matters of special local concern. Identification of such goals is generally accomplished by local planning commission, staff, and citizen advisory committees, but ultimately is the responsibility of local elected officials. All local objectives must in turn comply with the statewide planning goals.

Integration of Functional Plan

Each plan interrelates functional components that reflect the potential and concerns of the community as a whole. Housing, commercial and industrial land, recreation and open spaces, public facilities, agriculture and forest land—each component is integrated through the planning process into a coordinated pattern of land use within the community.

Agency Coordination and Citizen Involvement

Local governments provide opportunities for its citizens as well as other interested persons, groups and agencies to participate in each phase of plan development. State law and the goals, as well as comprehensive plans themselves, set requirements for notice of proposed planning meetings and public hearings on proposed plan elements. In addition, most local governments provide additional review opportunities for agencies through special advisory committees or task forces.

LCDC monitors plan development by reviewing the comprehensive plans as they are developed. This begins with an analysis by LCDC of the tasks needed to bring the comprehensive plan into compliance with the statewide planning goals. This is formalized through a Compliance Schedule adopted by LCDC which identifies deadlines for completion of specific planning tasks. LCDC monitors local adherence to the compliance schedule through annual progress reviews and the approval or denial for planning extensions. If the Commission determines that a jurisdiction is not making satisfactory progress towards completing its compliance schedule, an extension would be denied. In addition, LCDC is compelled to begin enforcement order proceedings (pursuant to ORS 197.320) requiring the local government to take necessary steps to complete an acknowledgable plan. Enforcement orders also allow the Commission to control or prohibit land use decisions and withhold state-shared revenue.

Conflict Resolution Procedures

The goal requirements provide a common basis for planning, but allow for local flexibility in addressing specific needs and conditions. This flexible approach produces comprehensive plans which interrelate the capability of each area's natural resource and man-made systems to support existing and future needs to economic stability, housing, environmental quality, and efficient public facilities and services.

The statewide planning goals enable local governments and state agencies to balance the needs of the community and to meet statewide objectives. Several goals contain general requirements to guide planning and decision-making. In the process of preparing plans, local governments often find conflicting demands for the use of coastal lands and resources. In addition to the general requirement to coordinate all land use decisions, the goals include some specific procedures and requirements for resolving certain conflicts. There are three types of procedures or requirements in the goals for balancing conflicting interests which can be summarized as: general considerations, required considerations and exceptions standards.

General Considerations

All of the goals include general considerations which direct how comprehensive plans are prepared. These requirements do not compel local governments to designate particular lands for certain uses but rather require that a particular use or resource be addressed in the plan. These requirements give cities and counties broad discretion in making plan decisions. Local decisions are only limited by the responsibility to coordinate with interested persons, agencies and groups and stay within the limits of their planning authority. Such requirements include: Goal 6 (Air, Water and Land Resources Quality). Goal 8 (Recreational Needs), Goal 9 (Economy of the State), Goal 10 (Housing), Goal 11 (Public Facilities and Services), Goal 12 (Transportation), and Goal 13 (Energy Conservation).

Required Considerations

The second type of conflict resolution process in the goals are required considerations. This type of goal requirement establishes specific standards or factors which local governments must address as they prepare plans. Usually the plan must include specific findings or reasons showing how the local government addressed the required consideration. For example, Goal 5 requires that local governments evaluate the economic, social, environmental and energy consequences of conflicting uses for inventoried natural

resource sites. While the comprehensive plan must include findings which show that the local government considered these consequences, the goal does not compel a particular decision by local government. (OAR 660-16 sets forth the specific procedure for resolving conflicts at Goal 5 sites.) Several other goals establish specific standards or considerations which guide plan decisions for particular areas or resources. These include: Goal 5 (Natural Resources), Goal 7 (Natural Hazards), and portions of Goal 14 (Urbanization), Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands) and Goal 18 (Beaches and Dunes).

Exceptions Process

The third method for conflict resolution is the Goal Exception process. Goal 2 (Land Use Planning) provides this mechanism for allowing uses which are otherwise prohibited by a goal requirement. This provides communities with the flexibility to meet needs for specific land use through a process which carefully considers and balances state objectives and local needs. The exceptions process cannot be used to indicate a disagreement with a goal or to avoid goal compliance.

Use of the Goal 2 exceptions process is limited to those portions of statewide planning goals which prescribe or restrict certain uses of resource land. Goal 2 provides for two types of exceptions: "developed or committed" and "reasons." The developed or committed exceptions excuse lands from goal requirements if they are no longer available for resource use because they are physically built upon (developed) or because the pattern of surrounding development and land uses makes it impractical to continue resource uses (committed). Developed and committed exceptions apply primarily to requirements in Goals 3 and 4 (Agricultural Land and Forest Land). "Reasons" exceptions are required when a local government proposes to convert undeveloped or uncommitted resource land to a use not permitted by an applicable goal.

Reasons for exceptions must be supported by specific findings of fact describing why it is not possible to apply a goal to particular properties or situations. Findings of fact must address the four factors outlined in Goal 2:

1. Reasons justify why the state policy embodied in the applicable goal should not apply;
2. Areas which do not require a new exception cannot reasonably accommodate the use;
3. The long-term environmental, economic, social, and energy consequences resulting from the use at the proposed site, with measures designed to reduce adverse impacts, are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
4. The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

Exceptions may also be proposed for Goal 4 (Forest Lands), portions of Goal 14 (Urbanization), Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands) and Goal 18 (Beaches and Dunes).

Goal 2 requires that local governments provide public notice of proposed exceptions. Complete procedures and requirements for exceptions are set forth in the Goal 2 Exceptions Rule (OAR 660-04).

Taken together the coordination requirements and the various conflict resolution procedures in the goals provide for accommodation of state and national interests in locally prepared comprehensive plans.

Plan Review and Acknowledgment

Locally adopted comprehensive plans are subject to review by LCDC to ensure that they are fully coordinated and that they comply with the statewide planning goals. Procedures for review of comprehensive plans are specified in the Commission's Acknowledgment of Compliance Rule (OAR 660-03). The acknowledgment review process includes the following major steps:

Plan Submission	With its request for acknowledgment, a city or county includes 8 copies of its adopted comprehensive plan, including inventories, implementing ordinances and plan and zone maps.
Completeness Check	DLCD reviews submitted materials to determine if they are properly adopted and include all relevant material.

Notice of Review	DLCD provides general public notice and individual mailed notice to affected agencies and interested persons. The notice includes a deadline for comments and notifies reviewers where plan material can be reviewed.
Comments and Objections	Interested persons and affected agencies have 45 days to review the plan and provide DLCD with written comments or objections. Objectors must allege specific goal violations and are asked to indicate whether they participated in the local review process.
DLCD Staff Report	The Department prepares a report evaluating compliance of the plan with applicable goal requirements. The report also reviews and responds to objections. The report is mailed to the Commission, the local government, objectors, and other persons who request it.
Filing Exceptions	After reviewing the report, local governments and objectors may file exceptions to the report for consideration by the Commission. (The Department responds to these either in writing before the Commission's hearing or at the Commission's hearing.)
Commission Hearing	The Commission holds a public hearing to review the staff report and decide whether or not to acknowledge the comprehensive plan. Interested persons including local governments and objectors may present oral testimony.
Commission Order	The Commission action is made in the form of an order, including the staff report, which either acknowledges the plan as complying with the goals (an acknowledgment order), returns the plan for further work to be done within 150 days (a continuance order), or returns the plan for substantial revisions requiring longer than 150 days (a denial order).

Statutorily, LCDC has 90 days from the date of plan submission to complete its acknowledgment review unless it finds there are "extenuating circumstances" for extending the review. Commission acknowledgment, continuance and denial orders are all subject to judicial review by the Court of Appeals. Only parties who participate in the acknowledgment proceeding have standing to appeal a Commission Order.

If a city or county refuses to comply with the adopted goals, LCDC may apply one of several remedies. The Commission's basic recourse is to issue an enforcement order when it determines that a local government is "not making satisfactory progress toward acknowledgment and a good faith effort" to meet deadlines. Through an enforcement order the Commission can preempt local authority to make land use decisions or cause all or a portion of the jurisdictions' state-shared revenue to be withheld. LCDC can also seek an injunction or a writ of mandamus to compel goal compliance.

As of 1987, LCDC has virtually completed its acknowledgment of city and county comprehensive plans. Those plans are being (or have been) incorporated into Oregon's Coastal Management Program through approval by the Office of Ocean and Coastal Resource Management. (A list of acknowledgment and federal approval dates for comprehensive plans is included in Appendix 5.)

Plan Implementation

Once acknowledged, comprehensive plans become the guiding documents for land use decisions for the areas they cover. Through zoning and other land use regulations, plans establish permitted and conditional uses for lands subject to the plan.

Plans are implemented through two types of decisions: ministerial and quasi-judicial decisions. Ministerial decisions, such as the issuance of building permits only involve the application of clear and objective standards. For example, most ministerial decisions require only a simple checkoff for proper zoning, lot size and adequate setbacks. Ministerial decisions are technically not "land use decisions" under ORS 197.015(10). Since these decisions are so explicitly permitted by the terms of previously approved

plans and ordinances, the legislature determined it was inappropriate to subject them to further administrative or judicial review.

Comprehensive plans and implementing ordinances, particularly zoning ordinances, defer many decisions on the permissibility or appropriateness of a particular use to some subsequent review. These decisions, which involve the application of some less than explicit policy or standards to a particular property or situation, are quasi-judicial decisions. Such decisions typically include but are not limited to: conditional use permits, zone changes, variances, subdivision plat approvals and planned unit development approvals.

Local ordinance provisions may vary; however, all quasi-judicial decisions must meet a number of specific procedural requirements:

- Notice must be provided to persons in the area affected.
- There must be an opportunity for a public hearing to consider testimony.
- Findings of fact and conclusions must explain how the local government determined each of its applicable plan and ordinance standards was complied with.

While most quasi-judicial decisions are made directly by the planning commission or governing body, some local ordinances provide for administrative approval, usually by the planning director.

Plans and land use regulations typically defer many decisions to a conditional use process because it is difficult to anticipate the effects of a particular use on adjacent uses or sensitive resource areas without detailed knowledge of both the nature of the use and its impacts and the limitations of the site. Through the conditional use process, local governments obtain and weigh information necessary to determine whether a project meets the applicable standards. These standards and criteria are typically intended to assure minimization of adverse impacts, compatibility with adjacent uses and implementation of plan objectives. As a result of conditional use review, many development proposals are modified or limited to assure resource protection or compatibility with surrounding uses. Specific conditional use standards are necessary to carry out the requirements of Goals 16, 17 and 18.

The requirements of the goals establish fundamentally new planning responsibilities for local governments, compelling them to carefully consider resource management implications of land use decisions. Coastal program funds are used to enhance technical staff capabilities at the local level so that local governments are more capable of weighing technical information and making informed judgments.

Post Acknowledgment Amendments

In addition to implementing plans, local governments will periodically amend and update their plans to reflect changing circumstances, needs, and new information. ORS 197 specifies two ways that local governments can change their comprehensive plans: plan amendments, and periodic review and update.

When a local government proposes to amend a plan or land use regulation to make major refinements, it must submit a copy of the proposal to DLCD 45 days before the final adoption hearing. If the local government determines that the goals do not apply or if emergency circumstances exist, it may waive or shorten this notice requirement. Twice a month, DLCD circulates notices of proposed plan amendments to interested agencies, groups, and other persons. The notice includes a brief description of the pending amendment allowing reviewers to decide whether or not they are interested in or affected by the proposed amendment.

DLCD reviews all post-acknowledgment amendments to determine whether or not they comply with the goals, other plan provisions and statutory requirements. When DLCD believes a proposed amendment would not comply with the goals or wishes to provide technical assistance or advise it participates in the local proceeding. DLCD provides the local government with a statement of its position on the amendment and recommends changes which would make the amendment comply with the goals or any other relevant requirement. The Department's decisions on local participation are reviewed on an ongoing basis by the Commission. DLCD or any other interested person or agency may appeal an adopted amendment to the Land Use Board of Appeals (LUBA) if the person participated in the local consideration of the amendment. To establish standing, a person (including agencies and interest groups) must participate by either com-

menting at a public hearing or providing written comments within established comment deadlines. LUBA may reverse or remand an amendment which does not comply with the goals, another plan provision, or a statutory or constitutional requirement.

Periodic Plan Review and Update

Oregon has long understood the need to update plans to reflect changing needs and circumstances. Of necessity, plans were written using the best available information and projections and assumptions about future growth and development needs. As new inventory information becomes available and as growth trends change, plans need to change too if they are to continue to effectively manage land use.

The post-acknowledgment plan amendment process is the vehicle for assuring that individual amendments comply with the goals and are coordinated. The periodic review process is a forum for a thorough evaluation of changes in circumstances, needs and available information. This broader review also provides a means of evaluating the cumulative effect of plan decisions and amendments.

The Land Use Planning Goal (Goal 2) requires that local governments update their plans every two to five years. In 1983, ORS 197 was amended to require LCDC review of periodicpdates. The law also established specific procedures for scheduling and conducting periodic review and standards for requiring comprehensive plan amendments.

Statutory requirements for periodic review took effect July 1, 1984. Unless a local government requests otherwise, the first periodic review can be no sooner than two years after the acknowledgment. The first periodic review must be conducted with two to five years of acknowledgment and subsequent reviews will occur at three to five year intervals.

Agency Participation in Comprehensive Planning

As noted above, state, and federal agencies, as well as other affected local governments and interest groups, are given opportunities to participate in each step of the development, approval and implementation of comprehensive plans. The role of state and federal agencies in planning is particularly important to fulfilling the objectives of ORS 197 and Oregon's Coastal Management Program. While local governments make the planning decisions, they also have an obligation to consider the information, recommendations and programs of affected agencies. Plans should be developed through a process of negotiation and accommodation by all affected parties. The role of agencies is to make their needs and interests clearly known so that they can be considered in each step of the process.

There are several ways that federal agencies can assure their interests are considered throughout the planning process.

First, local governments have developed agency coordination programs which provide notice to agencies of the availability of comprehensive plan materials and opportunities for agency involvement. Second, most counties have a designated planning coordinator which can advise agencies on the status of plans and facilitate agency participation. Third, for several estuaries, local governments have established interagency task forces to provide a more direct forum for consideration of agency views and consensus decision-making.

The Department of Land Conservation and Development (DLCD) is responsible for assuring that agencies receive notice of acknowledgment requests, post-acknowledgment plan amendments and schedules for periodic plan review and update. In addition, local governments will provide individual notice of all proposed land use decisions upon request. LCDC field representatives and plan review specialists, as well as local government planners, can assist agencies in reviewing proposed plans, plan amendments and actions.

In addition to articulating their interests in comprehensive plans, state and federal agencies are an important source of technical advice and information for local governments.

APPLICATION OF STATE AGENCY AUTHORITIES

The coordinated administration of land uses is a major objective of Oregon's Land Use Planning Act. For state agencies, the Act provides for the realization of this objective in two ways: by requiring the coordination of state and federal agencies and interests in locally developed plans, and by requiring state agencies to comply with the goals and to be compatible with acknowledged comprehensive plans as they adopt rules or make land use decisions.

Tables 1 and 6 indicate the scope of state authorities and programs which govern the planning, management and regulation of land and water uses and natural resources. The type of authority that each agency possesses determines at what stages in the comprehensive planning process interaction occurs—and what kind of role or interaction is necessary. The statutes for many state agency authorities, especially permit programs and resource agencies, provide specific standards which complement those of the goals and comprehensive plans.

ORS 197 requires that state agencies with broad planning authorities, such as those for public facilities or services, review their planning procedures to ensure that they apply goal requirements in appropriate stages of agency plan development. State agencies also are required to provide technical assistance to local governments. State agencies with managerial or proprietary interests in lands or resources are required to coordinate their needs with local government. They should provide local governments with information, participate in identifying and resolving potential conflicts, and develop specific plans for their own lands. They also should review and revise their management policies in compliance with the goals.

State agencies with regulatory authorities should assist local governments and other state agencies by commenting on consistency of specific land use decisions and proposed comprehensive plans with agency policies and standards. While comprehensive plans do not preempt state agency review of individual actions, the consideration of these standards during plan development should simplify permit review and reduce conflict over permit decisions.

Finally, ORS 197.180 law requires regulatory agencies to examine their standards and procedures for consistency with the goals. Table 6 lists major state permit decisions which affect land use.

State statutes establish a variety of state regulatory and management authorities which complement the goals and comprehensive plans. These statutes provide direct state control over a number of uses, activities and resources. The most important of these are the state's regulatory and management roles for beaches and state waterways. Also included are state authorities regulating forest practices, energy facilities and fish and wildlife management. The procedures and standards for implementing these authorities are set forth in state statutes and administrative rules. They vary considerably from agency to agency. The particular state authorities included in the program are summarized in Chapter II. The relevant agency statutes and rules are included in the Appendix.

LCDC has an important role in coordinating state agency programs with the objectives of the OCMP through the development of coordination agreements with state agencies. These agreements will identify state agency programs and activities in the coastal zone which affect coastal resources, manage or regulate coastal resources, or provide technical assistance to local governments. LCDC reviews and certifies these state agency agreements.

The State Permit Consistency Rule (OAR 660-31) divides state agency permitting decisions affecting land use into categories: Class A and Class B. (See Table 6.) Class A permits provide an opportunity for the public to request that the agency hold a public hearing. In most instances agencies develop findings of fact concerning whether the issuance of a permit is "consistent" with the acknowledged comprehensive plan or with the statewide planning goals. If local government does not make a determination of consistency, the permitting agency must make such a finding before issuing a permit. For Class B permits, the agency must either make this determination or advise the applicant that a land use approval may be required from the appropriate local government.

TABLE 6

State Agency Permits Affecting Land Use

Agency	Permit
Class A Permits	
Department of Energy	Energy Facility Site Certificate
Department of Fish and Wildlife	Salmon Hatchery Permit
Division of State Lands	Fill and Removal Permit
Department of Environmental Quality	Hazardous Waste Disposal, Collection, or Storage Permit
Department of Transportation	Ocean Shore Improvement Permits
Class B Permits	
Department of Environmental Quality	Subsurface Sewage Disposal System Permit Waste Discharge Permit (NPDES) Indirect Source Construction Permit Water Pollution Control Facility Permit Solid Waste Disposal Site Permit
Department of Geology and Mineral Industries	Surface Mining Operation Mining Permit to Drill—Geothermal Well Permit to Drill—Oil or Gas Well
Water Resources Department	Appropriate Groundwater Appropriate Surface Water Water Storage Hydroelectric
Division of State Lands	Geophysical and Geological Survey Permits
Public Utility Commissioner	Railroad Highway Crossing Project
Department of Transportation	Road Approach Permit Airport Site Approval On and Off Premise Signs
Department of Agriculture	Oyster Plat Applications
Department of Fish and Wildlife	Placing Explosives or Harmful Substances in Waters Permit
Health Division (Protection Health Services Section)	Public Water Supply Plan Organization Camp Plan Review Recreational Vehicle Park Plan Review

(State Permit Compliance and Compatibility Rule—OAR 660-31-012)

REVIEW OF FEDERAL ACTIONS

A primary objective of the Coastal Zone Management Act of 1972 is to improve cooperation among all levels of government to increase the effectiveness of land and water use planning and management. In addition to the general requirements for cooperation that the CZMA places on all federal government agencies (e.g., Section 303(c)), four additional requirements address the consistency of (1) federal activities, (2) development projects, (3) licenses or permits, and (4) financial assistance (Section 307(c)(1, 2, 3) and 307(d)). (NOAA's regulations for implementing federal consistency requirements are set forth at 15 CFR 930.)

These federal consistency provisions are important to the State of Oregon because they assure close cooperation between the local, state, and federal governments. They give local and state governments a significant role in determining the use and allocation of coastal resources. These are the same coastal resources affected by the land and water use decisions of federal agencies. The CZMA federal consistency provisions effectively extend the requirements of ORS 197.180 to federal agencies as well.

Based on the separate requirements of the CZMA for the different types of federal activities involved, LCDC has established different procedures and roles for reviewing and responding to the different kinds of federal actions subject to federal consistency requirements.

Three major factors relate to the consistency review: (1) what kind of actions should be reviewed for consistency; (2) what are the criteria for judging consistency; and (3) what process will be used for making the determination.

The general criteria for assessing consistency are whether the activity or project conforms to the mandatory policies set forth in:

a. The statewide planning goals;

b. Acknowledged comprehensive plans, including implementing ordinances; and

c. Applicable state statutes and rules.

Activities and projects should be reviewed specifically with respect to impacts on:

- Water quality, quantity, and discharge patterns.
- Air quality.
- Living resources.
- Scenic resources as viewed from the coastal zone.
- Social and economic resources and characteristics of the coastal zone.
- Hydrocarbon or mineral deposits which might be shared across noncoastal/coastal zone boundaries.
- Effect on public services, facilities, and costs.
- Plan and zone designations of the affected local jurisdictions.

In other words, federal agencies have the responsibility to determine which of their activities directly affect the coastal zone. However, if any activity or project would affect one of the resources or activities listed above, federal agencies should presume that the activity will directly affect the coastal zone. Federal agencies should use their environmental assessment procedures to further examine the effect of proposed actions on the listed activities and resources. Such procedures should provide information to support a federal agencies determination that either a project has no direct effect or that a consistency determination to LCDC is required. The manner in which an activity or project is to be implemented must also be considered at the time a consistency determination or negative determination is made.

Throughout the process, the federal agency has the responsibility for demonstrating that the project or activity is consistency with the OCMP.

Federal Licenses and Permits

Section 307(c)(3)(A) of the CZMA requires that any applicant for a federal license or permit to conduct an activity affecting land or water uses in the coastal zone must certify that the proposed activity will comply with, and be conducted in a manner consistent with, the Oregon Coastal Management Program. (Those licensed or permitted activities which are described in OCS exploration, development, and production plans submitted to the Department of Interior pursuant to the Outer Continental Shelf Lands Act, and which affect land and water uses in the coastal zone are covered by another section of the CZMA, Section 307 (c)(3)(B)).

Upon application for a federal license or permit, the applicant must supply a copy of its consistency certification to the state, along with all necessary information, as described at 15 CFR 930.58. The state then reviews the application and at the earliest possible time, but within six months of receipt of a complete consistency certification, notifies the federal agency and the applicant of its concurrence or objection.

Section 307(c)(3)(A) of the CZMA requires that, "no license or permit shall be granted by the federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act (within six months), the concurrence is conclusively presumed . . ." At the same time, the applicant must supply a copy of such certification to the state, along with all necessary information. The state then reviews the application and at the earliest possible time, but within six months, notifies the federal agency of its concurrence or objection. Section 307 of the CZMA requires that: "No license or permit shall be granted by the federal agency until the state or until, by the state's failure to act (within six months), the concurrence is conclusively presumed . . ."

Having reviewed the array of federal licenses and permits, Oregon has determined that at least 17 of them have potential for affecting coastal land and water uses (see Table 7). If Oregon finds that the issuance of other federal permits and licenses affect coastal land and water uses, LCDC will expand the list through administrative action. Before adding any other license or permit, LCDC consults with the issuing federal agency, state agencies, coastal local governments, and other interested groups and individuals. Addition of any other federal or license or permit to this list will be done as a program change and must be approved by NOAA/OCRM.

Federal regulations allow the state to selectively review unlisted licenses or permits (15 CFR 930.54). When DLCD identifies an unlisted license or permit which it believes would affect the coastal zone, it will provide notice to OCRM and the federal licensing or permitting agency. If OCRM does not object to state consistency review, DLCD shall promptly conduct its consistency review by:

(1) Obtaining a certification of consistency and supporting information from the applicant; and

(2) Circulating the certification and other relevant information to interested persons and units of governments.

Following this review, DLCD will make a consistency determination and provide a copy of its concurrence or objection to the affected federal agency and OCRM.

Grants and Financial Assistance

Section 307(d) of the federal agency consistency provisions applies to state and local government applications for federal financial assistance for activities affecting Oregon's coastal zone. This provision is important to prevent the expenditure of public funds on projects which are not consistent with the OCMP. However, a finding of consistency by the state does not require that the federal government fund the project.

Applications for financial assistance are subject to a consistency review if the proposed activity to be funded will affect the coastal zone. The Intergovernmental Relations Division (IRD) of the Executive Department, administers a clearinghouse process review in Oregon, which provides notice of proposed federal actions, including applications for federal grants, to state agencies, and local governments.

Federal agencies are responsible for notifying the state of pending applications for federal actions. IRD circulates notices of applications to regional Councils of Government (COGs) which coordinate review by local government and to state agencies. Once notified, reviewers have 45 days to return comments on the proposal to IRD. In extenuating circumstances, IRD may grant requests for 15-day extensions of time.

TABLE 7

FEDERAL ACTIVITIES, LICENSES AND PERMITS WHICH MUST BE CERTIFIED FOR CONSISTENCY WITH THE OREGON COASTAL MANAGEMENT PROGRAM*

Environmental Protection Agency:

A) Permits and licenses required under Sections 402 and 405 of the Clean Water Act as amended.

B) Permits and applications for reclassifications of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

C) Permits and licenses required under Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972.

D) Permits for at-sea incineration of chemical or toxic wastes.[1]

Department of Defense—U.S. Army Corps of Engineers:

A) Permits and licenses required under Sections 10 and 11 of the River and Harbor Act of 1899.

B) Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (Ocean Dumping of Dredging Spoils).

C) Permits and licenses required under Section 404 of the Clean Water Act as amended.

Nuclear Regulatory Commission:

A) Permits and licenses required for siting and operation of nuclear power plants.

Department of Interior—Minerals Management Service:

A) Permits for geological and geophysical exploration in the Outer Continental Shelf approved under Section 1340(a) of the OCSLA (43 USC 1340) and regulated pursuant to 30 CFR 251.[2]

B) Plans for the exploration, development, and production in areas leased under OCS Lands Act (43 USC 1331 et seq.).

C) Permits and licenses required for offshore drilling, mining, and development.

Department of the Interior—U.S. Fish and Wildlife Service

A) Permits for taking of endangered species or acts affecting endangered species issued under Section 1539 (1) of the Endangered Species Act (16 USC 1539), except for permits for taking for scientific research purposes.

Department of Transportation—U.S. Coast Guard:

A) Permits for construction of bridges under 33 USC 401, 4591-507, and 525-534.

B) Permits for deep-water ports (33 CFR 158 et seq.).

Federal Energy Regulatory Commission:

A) Permits and licenses required for power plant siting and transmission lines.

B) Permits and licenses required for interstate pipelines.

C) Licenses and exemptions for construction and operation of facilities needed to import or export natural gas.

Interstate Commerce Commission:

A) Certificates for Rail Line Abandonments to the extent abandonment involves removal of trackage or disposition of right of way.[3]

* A consistency certification is required if the activities allowed by the license or permit would affect land or water uses in the coastal zone.

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[1] The geographic area included extends from the territorial sea to 128°W and from 48°N to 40°30'N.

[2] The geographic area included extends from the territorial sea to 125°W and from 46°15'N to 42°N. Permits covered by the Memorandum of Agreement between DLCD, Oregon Department of Fish and Wildlife and Minerals Management Service dated June 15, 1983 will be reviewed against the standards in the state's federally approved coastal management program. Review will occur within the timelines set forth in the MOA as approved or as subsequently agreed to by the parties.

[3] Rail line abandonments included are the Burlington Northern Branch line from Portland to Astoria, the Southern Pacific Branch line from Portland to Tillamook, the Southern Pacific Branch line from Corvallis to Toledo, and the Southern Pacific Branch line from Eugene to Myrtle Point.

The state notice of a federal project using or involving federal assistance programs that affect the coastal zone specifically requests reviewing agencies to comment on whether the proposal is consistent with Oregon's Coastal Management Program. As with licenses and permits, the criteria for determining consistency with the OCMP are compatible with acknowledged comprehensive plans, and compliance with the statewide planning goals and any applicable state statutes. Applicants should consult closely with affected local governments and state agencies while developing their proposals.

DLCD reviews notices for conformance with relevant elements of the OCMP. If DLCD does not identify any conflicts with program policies, and if DLCD receives no comments suggesting that a project is inconsistent, IRD's review states that the project is consistent with the OCMP. However, if DLCD does receive comments suggesting that a project is inconsistent, IRD convenes a conflict resolution meeting which includes concerned parties and DLCD. The meeting attempts, through negotiations, to modify the proposal to remove any inconsistencies. If the conflict cannot be resolved to the mutual satisfaction of all reviewers, LCDC reviews all comments and makes a determination of consistency or lack of consistency on behalf of the state.

Federal Activities and Development Projects

Section 307(c)(1) and (2) of the consistency provisions of the CZMA require that federal development projects in the activities directly affecting the coastal zone "shall be conducted in a manner which is, to the maximum extent practicable, consistent with approved state management programs" (Section 307 (c)(1), (2)). Federal activities on lands which have been excluded from the coastal zone solely by reason of federal ownership, but which directly affect private and public lands and water resources within the coastal zone are subject to this provision, as are federal activities beyond the landward and seaward boundaries of the coastal zone which directly affect these resources. (As a result of the U.S. Supreme Court decision in Secretary of the Interior v. California (464 US.312, 104 S.Ct. 656, 78 LEd 2d 496 (1984)), OCS oil and gas lease sale activities are not subject to the consistency requirements of Section 307(c)(1).).

As with the other consistency provisions, the review and consistency determination for federal activities and development projects depends on the good faith efforts of all parties, early and full involvement and assessment, sharing of information, and sincere negotiations. Although the CZMA provides for mediation by the Secretary of Commerce in the case of an irreconcilable conflict between the state and a federal agency over the consistency of a proposed action or a development project, the state believes that it is in the best interest of all parties to resolve differences before they reach that point. Should a serious disagreement between LCDC and a federal agency not be resolved, the agency may proceed with its proposed activity without state concurrence. However, LCDC is authorized to seek appropriate injunctive relief in federal court.

Certain categories of federal actions generally can be considered as not directly affecting the coastal zone—for example, actions involved in normal office procedures, radio transmission and maintenance of navigational aids. However, other kinds of activities generally can be considered as directly affecting the coastal zone. Examples of these activities include:

- Road construction in the coastal watershed.
- Waste discharge in the coastal watershed.
- Activities affecting or altering surface runoff quantity, or hydro-period, in the coastal watershed.
- Timber harvest and other silvicultural activities near Class 1 or 2 coastal streams, according to the USFW stream classification system.
- Dredge, fill, development, or construction in all coastal waters.
- Activities resulting in alteration of visual qualities (scenic resources) visible from outside the federal land.
- Land acquisition, disposal, or exchange in the coastal zone.
- Management of anadromous fish species and other living marine resources which migrate between the coastal zone and the Exclusive Economic Zone.
- Outer continental shelf activities (except oil and gas lease sale activities).

Still other activities may have a direct effect on coastal resources depending on their magnitude, location, cumulative effects, or the manner in which they are undertaken. These activities would include the construction of buildings or facilities and the application of fertilizers, pesticides or herbicides on forest lands in a manner less protective than the criteria in Oregon's Forest Practices Act (ORS 527). They need to be reviewed only if they directly affect the coastal zone, including the air, water, scenic, living, economic, cultural and/or mineral resources of the coastal zone. The key issues in determining whether a consistency review is necessary are:

a. In the case of federal activities, whether the activity directly affects the coastal zone; or

b. In the case of federal development projects, whether the project is in the coastal zone.

Circumstances in which individual activities or development projects directly affecting the coastal zone would ***not*** have to be reviewed for consistency are:

a. If during the development of a comprehensive plan prepared pursuant to ORS 197, the federal agency specifically identified activities or development projects, and they are addressed in and coordinated with the acknowledged comprehensive plan;

b. If the federal agency has prepared a comprehensive plan for its own lands and resources, and if the plan has been reviewed by and fully coordinated with LCDC, affected local governments, and appropriate state agencies and is consistent with the mandatory policies of the OCMP as expressed in state statutes, acknowledged plans and the statewide planning goals; or

c. If a federal agency chooses to use this approach, it must provide a consistency determination to LCDC with its plan and supporting information. LCDC's concurrence will identify the specific federal actions which are consistent with the OCMP and which may be carried out without further consistency review. Activities which the federal plan does not describe in sufficient detail to assess consistency with the OCMP will require subsequent review. Subsequent review may occur through a plan revision, a more detailed implementing plan or through site or project review. If the federal agency has prepared a general consistency determination for a class of repetitive activities which cumulatively directly affect the coastal zone, subsequent consistency determinations for each individual activity of the class are not required.

In all cases, only activities which are not anticipated or addressed in the plan or general consistency determination, or which are not in compliance with the plan or general consistency determination, are subject to separate consistency review.

Federal agencies should notify DLCD at the earliest possible time of a decision or pending decision that any proposed activity would not directly affect the coastal zone. This way DLCD can provide an expeditious review of the project and concur, object to the federal agencies' decision or request additional information about the effects of a project on the coastal zone. DLCD will solicit comments on effects of such projects from the affected local government and interested state agencies. DLCD and LCDC will also work with the federal agency. If LCDC ultimately disagrees with a federal agency's determination that an activity does not directly affect the coastal zone, it shall adopt an order outlining the state's reasons for disagreement and shall seek secretarial mediation of the disagreement as provided for in federal regulations (Procedures for secretarial mediation are set forth in 15 CFR 930.110-116).

In order to save time and funds and to avoid conflicts involving substantial commitments of resources, consistency should be addressed at the earliest possible time—preferably, as an integral part of the earliest planning and budgetary decisions. The initial assessment and determination of consistency is the responsibility of the federal agency responsible for the project or action. The federal agency should notify LCDC of its review and determination at least 90 days before it is to begin the activity proposed in its consistency determination. With the participation of local governments, state agencies and other interested parties, LCDC then reviews the notice and responds to the federal agency. The LCDC must inform the federal agency of its agreement with the federal agency's consistency determination within 45 days of receipt of the consistency determination. The LCDC may request a 15 day extension, if necessary, to complete the review.

The 45 day state clearinghouse review and negative declaration processes (as provided for by the National Environmental Policy Act) are used as specific opportunities for state review of consistency determinations.

However, federal agencies are required by federal law to involve LCDC, any affected local government and appropriate state agencies in consistency determinations at least 45 days prior to the preparation and distribution of such notification. Delay could greatly increase the difficulty and cost of resolving significant conflicts.

If LCDC identifies any activity or project in the coastal zone which it considers inconsistent with the OCMP, it meets with the federal agency and attempts to resolve conflicts though negotiation. Other state agencies, local governments and individuals can assist LCDC by identifying inconsistent or potentially inconsistent activities and projects. If an inconsistency cannot be resolved through mutual negotiation, it can be referred to the United States Secretary of Commerce for mediation pursuant to Section 307(h) of the CZMA. Should the affected federal agency be unwilling to enter into mediation, or should the Secretary of Commerce choose not to mediate the dispute, LCDC may appeal to the federal courts for appropriate relief.

AREAS OF CRITICAL STATE CONCERN

As indicated earlier, the Land Conservation and Development Commission may recommend the designation of Areas of Critical State Concern. The overall purpose behind a critical area designation is to prevent loss of damage of an area having historical, natural, statewide and/or national importance.

The reasons cited in designating a critical area may vary widely, but in every case, designation must indicate that the area in question cannot be managed adequately under the appropriate comprehensive plan(s) and requires a higher or broader degree of control and management.

When recommending such a designation to the state legislature, LCDC is required to submit a report. This report must include:

- A boundary description of the area;
- A summary of the existing programs and regulations of state and local agencies applicable to the area; and
- The reason for implementing additional state regulations for the area.

This report also must include a management plan for the area; permissible use limitations for all or part of the area; and permissible use standards for all or part of the area or standards for the issuance or denial of designated state or local permits regulating specified uses of lands in the area.

JUDICIAL REVIEW OF LAND USE DECISIONS

The successful administration of the coastal management program requires that the state develop an effective way to resolve serious disagreements about interpretation or application of program policies. The process for appeal coastal management decisions has been carefully evaluated and refined as the program has been implemented.

Background

Prior to 1973, land use decisions were subject to challenge only through local circuit courts. Standing for appeals was limited, standards for review where unclear, and delay in deciding cases was typical. Until the Fasano v. Washington County decision, local land use decisions were remanded or overturned only if they were arbitrary or capricious. These factors frustrated the public, elected officials, developers, and environmentalists interested in an effective way of resolving land use disputes.

With the ***Fasano*** case, new procedural rules were established for the review of land use decisions. Quasi-judicial decisions of local governments, such as decisions about conditional use permits and zone changes, had to be based on substantial evidence, and basic procedural requirements of notice, hearing, presentation and rebuttal of evidence, and preparation of findings were required. ***Fasano*** also established a demonstration of public need.

Additional substantive tests for reviewing local decisions were established through adoption of ORS Chapter 197. First the interim goals set forth in statutes, then LCDC's adopted statewide planning goals became additional tests for review of land use decisions. In 1976, through its Sunnyside v. Clackamas County decision, the Supreme Court confirmed that the goals established a number of specific requirements to guide individual land use decisions.

Originally, ORS 197 vested in LCDC the authority to review land use decisions alleged to violate the statewide planning goals. Until 1979, LCDC operated in a quasi-judicial capacity reviewing and deciding contested land use decisions based on proceedings before appointed hearings officers. Since LCDC appeals process supplemented rather than replaced the jurisdiction of circuit courts, judicial review was still complicated and prone to delay. Consequently, in 1979, the Oregon Legislature consolidated most of the circuit court's general jurisdiction and LCDC's review for goal compliance in a new appeals panel—the Land Use Board of Appeals (LUBA).

As created, LUBA had original jurisdiction in all land use cases and retained LCDC as a final judge on goal issues. LCDC's review was limited to concurring with or modifying LUBA's proposed decisions on statewide planning goal compliance. In 1983, further amendments to ORS 197 consolidated goal and nongoal decision-making on appeals at LUBA.

Current Requirements

LUBA is authorized to review any land use decision of a city, county, special district, or state agency when a petition is filed by a person whose interests are adversely affected or who is aggrieved by a land use decision. LUBA's authority includes deciding both goal and nongoal issues of land use actions. The only actions not subject to LUBA review are certain ministerial acts which are statutorily excluded from the definition of land use decisions and state agency decisions arrived at through contested case hearings. The former are within the jurisdiction of state circuit courts while the latter go directly to the Court of Appeals. Also LCDC decisions, including acknowledgment and periodic reviews, are not subject to LUBA review. These also go directly to the Court of Appeals.

Appeal Procedures

Persons, including cities, counties, state and federal agencies, who are aggrieved or whose interests are affected by a land use decision have standing to file an appeal to LUBA. Also, an appellant must present testimony either orally or in writing before the jurisdiction when the decision is originally approved and must petition for review within 21 days after the decision is made.

Prior to acknowledgment, local government's land use decisions are subject to challenge for compliance with both existing comprehensive plan and ordinance provisions and the statewide planning goals. (Note: For purposes of federal consistency, only the statewide planning goals are mandatory, enforceable OCMP policies prior to plan acknowledgment by LCDC, approval by OCRM, and publication in a public notice.) After acknowledgment, challenges to local decisions must be based on failure to comply with provisions of the comprehensive plan and implementing measures.

As a result of its review, LUBA may affirm, reverse, or remand the land use decision. State circuit courts retain jurisdiction to grant declaratory, injunctive, or mandatory relief in proceedings arising from decisions involving a comprehensive plan provision or proceedings to enforce the provisions of an adopted comprehensive plan or land use regulations.

V. MONITORING, EVALUATION AND REFINEMENT

The success of the coastal management program is based on the state's ability to understand how effectively the program is managing coastal resources and development. To succeed, the state must refine and adopt the program to correct inadequate policies or procedures, and to reflect changing conditions and new state and national policies. Monitoring and evaluation of land use decisions and changes in coastal resources and their uses in integral to accomplishing this. LCDC, both under state law and as the designated lead agency for coastal management, bears this responsibility. This overall authority supplements the specific obligations of local governments and state agencies to evaluate and improve their plans and programs which are part of the OCMP.

MONITORING PROGRAM IMPLEMENTATION

The purpose of monitoring the implementation of the coastal management program is several-fold; the main purpose is to assure that the major policies of the management program (i.e., the goals, comprehensive plans and agency authorities) are being properly implemented. Monitoring is also needed for several other reasons:

- To assure that routine changes to the elements of the management program are consistent with its basic requirements (i.e., the goals and the general purposes of the Coastal Zone Management Act) and to assess the cumulative effects of changes.
- To assure that management program elements are updated to reflect changing needs and circumstances.
- To provide a basis for a general evaluation of the program's success or failure in achieving its overall objectives of balanced development and resource protection and conservation.

Monitoring focuses on how each of three major elements of the program are implemented: (1) locally adopted comprehensive plans; (2) application of state agency authorities; and (3) review of federal agency actions and decisions.

Comprehensive Plan Implementation

Since application of comprehensive plan requirements is the primary means of implementing program policies, most of the state's monitoring effort is devoted to a thorough and careful review of the implementation and revision of comprehensive plans. Plan monitoring is also important because of the reciprocal responsibilities that state and federal agencies (including DLCD) and the public have to participate in and abide by the policies in comprehensive plans. Monitoring occurs through review of local land use decisions, plan and ordinance amendments, and periodic review and update of comprehensive plans. (The authorities and procedures for these reviews are discussed in detail in Chapter IV.)

The Department reviews local land use decisions on an ongoing basis. Local governments provide notices and staff reports regarding pending actions to the Department. (Notices and reports are also available to interested state and federal agencies, and affected citizens.) The Department provides technical advice and suggestions on proposed actions and advises local governments if the proposed action is in compliance with the provisions of adopted plans or ordinances, and, where applicable, the goals. State and federal agencies also often provide important technical advice.

The Department evaluates all land use decisions and plan amendments to determine whether or not they involve a significant resource impact, are a major departure from the acknowledged plan or raise important policy issue. If a local government adopts an action contrary to be Department's recommendation, the Department shall negotiate a solution or appeal the action. The Department's appeal would typically first go to the local governing body (the city council or the county board of commissioners) and then to the Land Use Board of Appeals (LUBA). State and federal agencies and citizens that participate in local proceedings have the same rights to appeal.

Cities and counties are responsible for detecting and enforcing violations of the ordinances. This includes both unpermitted activities and permitted actions conducted contrary to conditions of approval. Under coastal implementation grant requirements, local governments must report quarterly and annually their efforts to detect and enforce ordinance violations.

City and county follow-up is supplemented by the Department's field representatives, local citizens, environmental groups, and state and federal agencies. The Department's coastal field representatives survey their field areas for violations and frequently check on the status of permitted projects under construction. Both the Department and local governments receive unsolicited inquires and reports from concerned neighbors, interested citizens, and environmental groups on both permitted and unpermitted land use actions.

When an unpermitted action is detected it is reported to the local government and, where applicable, the affected state and federal agencies. The Department cooperates in seeking compliance with local, state, and federal requirements. Where a local government or agency is unwilling to enforce a plan provision mandated by the coastal management program, the Department may seek a court order compelling the city or county to take enforcement action.

If the Department detects a pattern of local land use decisions which are in violation of the plan, it may also recommend that the Commission adopt an enforcement order compelling application of the plan policies or land use regulations (ORS 197.320).

Comprehensive Plan Amendments

Cities and counties may, on their own initiative or at the request of an individual or group, propose changes to their comprehensive plan and implementing ordinances, including zoning maps. Local governments are free to consider these changes as frequently as they like. Once adopted and certified by the Land Use Board of Appeals (LUBA), they become an effective binding part of the acknowledged comprehensive plans.

The Department reviews proposed amendments to determine whether or not the amendment is consistent with other policies in the plan and relevant requirements of the goals. The Department participates in the local hearing process depending on its determination of these issues.

The procedures for review and approval of post-acknowledgment amendments are set forth in statute (ORS 197.610-625) and through the Post-Acknowledgment Procedures Administrative Rule (OAR 660-18-005 through 140). (These are described in detail in Chapter IV.)

Periodic Review and Update of Comprehensive Plans

Beginning with the adoption of the initial statewide planning goals in 1974, the state has contemplated that comprehensive planning would be an ongoing process and that plans would be updated to reflect changing needs circumstances and policies. Goal 2 (Land Use Planning) requires that comprehensive plans include policies requiring that they be reviewed and revised at least every two to five years. The legislature has since reemphasized the importance of keeping plans up-to-date by adopting more detailed requirements for the periodic revision of plans. ORS 197, along with administrative rules adopted by the Commission, establish a review schedule, procedures, and standards for cities and counties to periodically review and update their comprehensive plans and implementing land use regulations.

ORS 197 and the periodic review rule (OAR 660-19) establish specific requirements for conducting periodic review. Generally, periodic review is a reassessment of the assumptions and requirements upon which the plan is based. Plans must be amended to reflect significant changes in needs or circumstances and must also comply with amended goals and rules. In certain circumstances, local governments must also amend their plans to be consistent with newly mandated state policies. The periodic review process, coordinated by LCDC, provides opportunities for all interested and affected persons to identify changed circumstances and suggest how they should to be addressed in plan and ordinance amendments. LCDC reviews locally proposed amendments and comments from interested persons to decide whether the statutory requirements for plan amendments are complied with. LCDC either approves the locally adopted amendments or directs the local government to make further amendments.

Procedures and requirements for conducting periodic review are more fully described in Chapter III: Processes for Implementing the OCMP. The applicable statutes and rules are included in the appendix.

State Agency Programs and Actions

The Department receives notice of all state agency Class A permits and most other agency land use decisions on an ongoing basis. (The procedures for notice are described in each agency's coordination program.) Agencies must also provide notice to the affected local government and also to other interested parties. The Department reviews pending actions and advises the agency on compliance with the goals and consistency with the comprehensive plan. Cities and counties comment on consistency with the comprehensive plan and advise the agency on whether or not a local land use approval is required to conduct the proposed activity.

If the agency takes an action contrary to the Department's advice on goal compliance or plan compatibility, the Department shall negotiate a solution or shall appeal the agency's decision. Most permit processes provide for an administrative appeal to the agency director or governing body. If the appeal is unsuccessful, the Commission can appeal the agency's action to the Court of Appeals. If the Commission determines that there is a pattern of agency actions which violate the goal, or is incompatible with a comprehensive plan, it can either adopt an enforcement order restricting agency approvals or seek an amendment to the agency's coordination program.

The Department relies primarily upon agencies to monitor permitted activities and to detect violations or unpermitted activities. The Department's field representatives supplement this on an ongoing basis in their travels throughout the coastal zone. Upon notice of a violation, the Department may participate if the violation is related to a goal provision or a comprehensive plan requirement.

Federal Agency Actions

The Department receives notification of proposed federal agency actions on an ongoing basis. The Department reviews these activities pursuant to the procedures and requirements of Section 307 of the Coastal Zone Management Act. The state has identified federal licenses and permits which it routinely receives and reviews for consistency with provisions of the coastal management program. The Department relies on federal agencies to identify and provide notice of federal agency activities which directly affect the coastal zone. The state's Intergovernmental Relations Division (IRD) has developed agreements with federal agencies for state and local review of federal financial assistance programs. The Department utilizes the IRD process to conduct consistency reviews and notify federal agencies of permit decisions.

The Department has had only minor problems receiving notice of federal agency actions which may affect the coastal zone. The Department's procedure for identifying unpermitted activities and violations of approval conditions is the same as that described above for local land use actions and state agency permits. The federal agency has principal responsibility for detecting violations which is supplemented by coastwide monitoring by the Department's field representatives, other state agency personnel, and interested citizens. The process for review of federal aid applications, which replaced the OMB Circular A-95 process, has proven adequate to notify the Department of all federal grants that might affect the coastal zone.

Monitoring of federal agency activities which may affect the coastal zone has required careful work with individual federal agencies. The Department's policy is to participate as early as possible in the federal agency planning process. The purpose of this involvement is twofold: (1) to identify possible coastal zone effects not apparent to the federal agency, and (2) to ensure that requirements and considerations of mandatory, enforceable policies in the program are properly applied. The state strongly encourages federal agencies to provide opportunities for state participation as early as possible in the planning and decision-making process.

In the event that a federal agency initiates an activity which affects the coastal zone without a consistency determination or contrary to an approved consistency determination, the Department takes the following steps:

(1) Notify the federal agency that an activity is being conducted without proper coastal zone review.

(2) Request that the agency suspend its activity pending a consistency determination, or modify the activity in a manner which avoids the coastal zone impacts, or manages the impacts consistent with applicable management program requirements.

(3) If the federal agency contends that are no coastal zone impacts or that the activity is being carried out in conformance with management program policies, the Department will request a meeting with the agency to resolve the disagreement and notify OCRM of the disagreement.

(4) If the disagreement cannot be satisfactorily resolved, the Department will seek mediation by the Secretary of Commerce as provided in 15 CFR 930.110-930.116.

PROGRAM EVALUATION AND REFINEMENT

Evaluation determines whether or not implementation of program policies has achieved program objectives. Evaluation should trigger amendments to program policies so that they better achieve program objectives. Evaluation requires clearly stated objectives, adequate information about the effects of existing policies, and means for changing policies to improve program effectiveness. Evaluation of Oregon's coastal management program is accomplished both by ongoing activity and through separate programmatic efforts.

Ongoing Evaluation Efforts

Most of the techniques for program implementation and monitoring described earlier are also used to evaluate program policies. These techniques include: plan review and acknowledgment, plan amendment review, periodic review, review of agency programs and actions, and judicial review of land use decisions. These processes implicitly provide the Department and Commission with information on how well program policies are meeting program objectives. Acknowledgment reviews, permit reviews, and court decisions at various times in the past have led to changes to administrative rules and the goals. As new problems with policies or procedures are identified, they are corrected by amending administrative rules or goals, changing state agency coordination agreements, or seeking legislative changes.

The public, the Governor, and the Legislature also play critical roles in evaluation the program. Through the initiative process, the state's citizens have a periodic opportunity to vote on changes to the land use program. The Governor, through Executive Orders and special task forces, can cause evaluation of program operation and policies. For example, a Governor's task force recommended major legislative changes which were adopted in 1983 and a Governor's request precipitated a review of destination resort siting in 1983 which led to Goal 8 amendments in 1984.

The Legislature evaluates the program through biennial budgets and changes to enabling legislation, as well as through interim oversight by the Joint Legislative Committee on Land Use. The Legislature has made procedural changes to the land use laws in every session since the original act, SB100, was adopted. Substantive changes to the exception requirements were adopted by the Legislature in 1983 and implemented by the Commission through goal and rule amendments in 1984. Similarly, an evaluation of the coastal goals directed by the Legislature in 1983 resulted in numerous amendments to the coastal goals after a nine-month review and evaluation by the Department and Commission.

These techniques are relatively straightforward. They are effective ways to identify and correct the most obvious problems with management program policies and procedures. The state will continue to rely on these methods of evaluation to refine and adopt the management program. However, these techniques are less effective for assessing the more subtle questions about the cumulative effects of program policies on conservation and development of coastal resources. Answering these types of questions requires a more systematic evaluation of decisions and changes in coastal resources over time to assess the effects of the program in achieving particular results.

Programmatic Evaluation

Programmatic evaluation involves a review of program decisions over time to determine whether or not the resulting land use pattern is consistent with program objectives. Such an evaluation requires a major commitment of time and resources to collect and compile information and review program results. LCDC has deferred such an evaluation to await full implementation of program policies through acknowledged comprehensive plans. LCDC is committed to conducting such an evaluation as resources permit.

A detailed methodology for conducting a program-wide evaluation is set forth in a study done for the Department in 1980 by Economic Consultants of Oregon (ECO). ***(Evaluating the Performance of the Oregon Coastal Management Program: An Analytical and Administrative Framework.)*** The ECO study sets forth the process that the Department will use to conduct programmatic evaluation efforts.

The evaluation will be conducted in four steps:

(1) Define program objectives in specific measurable terms to facilitate evaluation of the success or failure of particular policies (statewide planning goals and state statutes express the principal program objectives).

(2) Identify the information necessary to determine whether or not program objectives have been met. This includes information on changes to land use and evaluation of individual land use decisions and plan amendments.

(3) Evaluate the information and determine whether or not policies are being properly implemented and objectives are being achieved.

(4) Identify changes to management program policies that would better achieve program objectives.

Compilation of both inventory information and plan designations will be complicated because of the variety of inventory techniques and map scales used in comprehensive plans. For example, inventories of buildable residential land and residential zoning districts in urban and urbanizable areas are different for almost every city. In many cases, the Department will have to develop generalized classification to compile comparable data coastwide.

The Department will consult with local planners, agency staffs, and researchers to suggest how data should be compiled and also to analyze the data once it is compiled. The result should be both quantitative and qualitative assessment on how well the program has met its objectives. The Department's analysis will be reviewed with the Commission, as well as local governments, affected agencies, and the general public. The Department's analysis will also be the basis for specific recommendations to the Commission, local government, or the Legislature for amending program policies.

Initial programmatic evaluation efforts will be modest and will focus on the most important and overriding program objectives. Issues likely to be addressed in these program evaluation efforts include:

- Whether estuaries have been protected from inappropriate development;
- Whether or not coastal agricultural and forest land have been adequately protected;
- Whether urban growth boundaries include adequate land for commercial, industrial, and residential development; and
- Whether or not shorelands suitable for water-dependent development have been protected from incompatible uses.

DLCD will begin this broader effort by compiling land use designation information from acknowledged comprehensive plans. This will provide an important baseline on program outcomes and a foundation for further evaluation efforts. Products will include maps displaying plan designations and a tabular summary of acreages in different plan and one designations.

Methods for Program Refinement

Changes to program policies can be accomplished through a variety of means. The Commission can amend its administrative rules or the statewide planning goals. It is also authorized to prepare model ordinances to suggest other ways that local governments can more effectively implement the statewide planning goals. Local governments and state agencies can respond directly to an evaluation by adopting plan or rule amendments in place of a Commission mandated change. Finally, the Department and Commission can recommend legislative changes to the Governor and the Joint Legislative Committee on Land Use.

Each of these forums provide a means for considering and implementing changes to program policies. The methods chosen will depend on the nature of the program change and the perceiving need for the change.

LCDC uses administrative rules to outline procedures and policies, as well as to clarify goal requirements. It can amend existing rules or write new rules to meet the changing needs of the state. AS LCDC amends or adds to its rules, the public and any affected agencies have an opportunity to review them and to suggest changes which would make them more workable. With the exception of plan review, where policy is constantly being made, changing existing rules and adding new rules have been the most common form of program refinement to date.

ORS 197.245 describes the process for amendment of existing goals and the adoption of new goals. This second option LCDC has available for making program adjustments. New or amended goals are to be adopted as rules in the same manner LCDC adopted the original 19 goals in 1974 and 1976. The Legislature also can refine the goals. It already has done so on two occasions: once to change the Goal 2 exception process and once to clarify the Goal 16 estuarine mitigation requirements. By whatever means LCDC may establish a new or revised goal, it cannot require that a comprehensive plan, a new or amended land use regulation, or a land use decision be consistent with the new or amended goal until the plan or regulation is submitted for periodic review.

Procedure for Program Changes

The preceding sections and chapters describe how units of government will amend, refine, and update the plans and policies that make up the Oregon Coastal Management Program. This section describes how these program changes will be integrated into the federal approved program.

The Coastal Zone Management Act of 1972, as amended, recognizes that as states implement their coastal programs they will amend and revise program elements to meet changing state needs. To guide states in making needed changes and in retaining federal approval, NOAA established procedures by which program changes may be approved (15 CFR 923.80-923.84). Program changes are divided into "program amendments" and "routine program implementation." Amendments are defined as substantial changes to enforceable policies or authorities related to:

1. Coastal boundaries;
2. Uses subject to the management program;
3. Criteria or procedures for designating or managing areas of particular concern or areas for preservation or restoration; and
4. Consideration of the national interest involved in planning and siting facilities which are other than local in nature (15 CFR 923.80(c)).

An RPI is a less significant change. It represents a further detailing of a state's program that is the result of implementing provisions approved as part of a state's approved management program which does not quality as a program amendment (15 CFR 923.84). Most of the changes to Oregon's program have been considered routine program implementation. Changes adopted since program approval have applied and refined the policies set out in 1977 rather than making major changes in direction.