



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

September 22, 2022

Ms. Lisa Phipps, Manager
Oregon Coastal Management Program
Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

Dear Ms. Phipps,

Thank you for the August 19, 2022 request for approval of changes to the Oregon Coastal Management Program (OCMP) pursuant to the National Oceanic and Atmospheric Administration (NOAA) Coastal Zone Management Act (CZMA) regulations at 15 CFR part 923, subpart H.¹ NOAA's Office for Coastal Management approves the request subject to the clarifications, qualifications, and exceptions below.

NOAA's regulations require that the state post this decision by the Office for Coastal Management for public notice.² The public notice should state that as of the date of this decision letter the enforceable policies identified in the attached Table of Approved Changes shall be applicable in reviewing federal actions pursuant to the federal consistency requirements of the CZMA and its implementing regulations found at 15 CFR part 930.³ Please send a copy of the public notice to the Office for Coastal Management for our records to close out this file.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management did not receive any comments on this program change submission.

CLARIFICATIONS, QUALIFICATIONS AND EXCEPTIONS

As a standard qualification applying to all program changes, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the

¹ This program change request was submitted under NOAA's revised CZMA program change regulations at 15 CFR part 923, subpart H. The Office for Coastal Management's decision due date was September 21, 2022 subject to extension. The Office for Coastal Management extended its review of this program change request to October 14, 2022.

² 15 CFR § 923.81(e)(5).

³ 15 CFR § 923.81(f).

CZMA. No referenced policy may be applied for CZMA federal consistency review purposes unless that policy has been separately reviewed and approved as an enforceable policy by the Office for Coastal Management.

In the review of the proposed enforceable policies, the Office for Coastal Management has found that two of the proposed enforceable policies do not qualify as such.

OAR 736, Division 51, 736-051-0060 (2) states that "It is the policy of the Oregon Parks and Recreation Department (OPRD) and the Oregon State Historic Preservation Office (SHPO) that information pertaining to the location of archaeological sites, cairns, burials, human remains, funerary objects, sacred objects or objects of cultural patrimony is confidential information that will be disclosed only as required by law." This policy is a directive to state agencies and is not to be applied in the review of Federal actions pursuant to the federal consistency requirements of the CZMA.

OAR 736, Division 51, 736-051-0080 (11) states that "For purposes of this rule, no permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made, and without the approval of the appropriate Indian tribe." This proposed enforceable policy would put local governments and tribes in the position of making permit decisions and could, in effect, preclude the state from finding a proposed activity consistent with the OCMP. Such constitutes a delegation of decision-making authority for consistency review decisions to local governments and tribes. The CZMA and its implementing regulations confer no such authority on local governments or tribes, and such cannot be delegated by states. Nothing in this decision is intended to prevent the state from consulting with Tribes or considering the views of Tribes in making a consistency determination.

In the attached Table of Approved Changes, these provisions are approved for incorporation into the OCMP but they are not designated as enforceable policies for CZMA review purposes.

Thank you for your cooperation in this review. Please contact Kris Wall at 541-843-0252 if you have any questions. For future correspondence regarding these program changes, please refer to the file number assigned to this action, OR-2022-1.

Sincerely,



Joelle Gore
Chief Stewardship Division

Attachment: Table of Approved Changes OR-2022-1

TABLE OF APPROVED CHANGES TO THE OREGON COASTAL MANAGEMENT PROGRAM (OR-2022-1)

Please reference the Office for Coastal Management September 22, 2022, decision letter for clarifications, exceptions and qualifications pertaining to this approval

Legal citation	Title of policy, section, or other descriptor	Is the change new, revised, or deleted	Date effective in state <i>MM/DD/YYYY</i>	Enforceable policy <i>Yes or No</i>	Enforceable mechanism citation
ORS 97.740	Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts: Definitions	New	10/04/1997	Yes	ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 97.745, Prohibited Acts; ORS 97.760, Civil action by Indian tribe or member
ORS 97.745	Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts: Prohibited Acts	New	01/01/1994	Yes	ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 97.745, Prohibited Acts; ORS 97.760, Civil action by Indian tribe or member
ORS 97.750	Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts: Permitted Acts	New	01/01/1994	Yes	ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 97.745, Prohibited Acts; ORS 97.760, Civil action by Indian tribe or member

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ORS 192.345(11)	Public records conditionally exempt from disclosure: Archaeological Sites	New	07/15/2019	No	N/A
ORS 192.345(13)	Public records conditionally exempt from disclosure: Fish and Wildlife Information	New	07/15/2019	No	N/A
ORS 358.905	Archaeological Objects and Sites: Definitions	New	09/09/1995	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes
ORS 358.910	Archaeological Objects and Sites: Policy	New	01/01/1994	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes

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ORS 358.920	Archaeological Objects and Sites: Prohibited Conduct	New	10/04/1997	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes
ORS 358.940	Archaeological Objects and Sites: Reinterment Required	New	01/01/1994	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes
ORS 358.945	Archaeological Objects and Sites: Notice required upon finding of object	New	01/01/2002	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes
ORS 358.950	Archaeological Objects and Sites: When notice to Indian tribe required	New	09/09/1995	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes

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OAR 736-051-0060 (2)	Application for Archaeological Permit; Confidentiality	New	01/03/1995	No	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes
OAR 736-051-0080 (1)	Archaeological Permits - Process for Applying for an Archaeological Permit on Public Lands: Circumstances requiring Archaeological Permits.	New	01/03/1995	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes
OAR 736-051-0080 (2)	Archaeological Permits - Process for Applying for an Archaeological Permit on Public Lands: Coordination with Tribes.	New	01/03/1995	No	N/A

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OAR 736-051-0080 (11)	Archaeological Permits - Process for Applying for an Archaeological Permit on Public Lands: Approval of Tribes	New	01/03/1995	No	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes
OAR 736-051-0090 (1)	Archaeological Permits - Process for Applying for an Archaeological Permit on Private Lands: Circumstances requiring Archaeological Permits	New	10/20/2017	Yes	ORS 358.920, Archaeological Objects - Prohibited Conduct; ORS 358.955, Archaeological Objects - Civil enforcement; ORS 390.235, Permits and conditions for excavation or removal of archaeological or historical material; ORS 390.240, Mediation and Arbitration of Disputes

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OAR 736-051-0090 (2a)	Archaeological Permits - Process for Applying for an Archaeological Permit on Private Lands: Coordination with Tribes and the State Historic Preservation Office.	New	10/20/2017	No	N/A