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**OREGON
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APPENDIX**

OREGON COASTAL MANAGEMENT PROGRAM
APPENDIX

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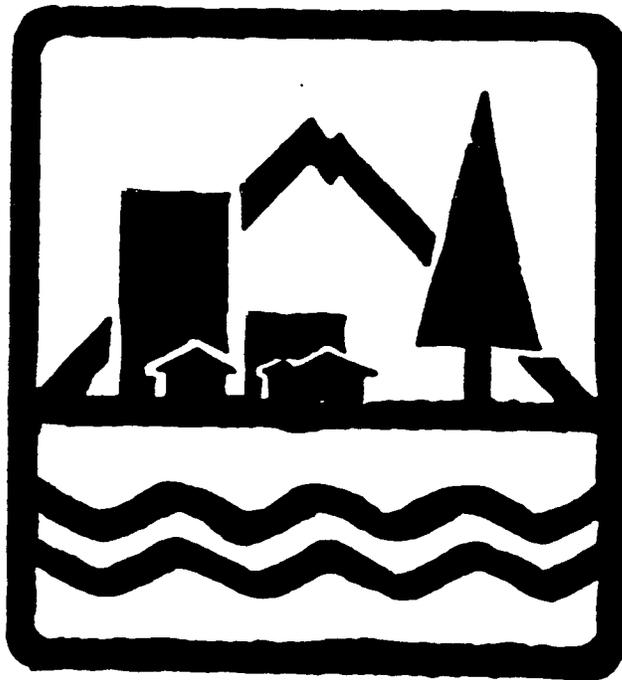
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OREGON LAND USE STATUTES



DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

Chapter 197

1985 REPLACEMENT PART

Comprehensive Land Use Planning Coordination

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COMPREHENSIVE LAND USE PLANNING COORDINATION 197.015

GENERAL PROVISIONS

197.005 Legislative findings. The Legislative Assembly finds that:

(1) Uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state.

(2) To promote coordinated administration of land uses consistent with comprehensive plans adopted throughout the state, it is necessary to establish a process for the review of state agency, city, county and special district land conservation and development plans for compliance with goals.

(3) Except as otherwise provided in subsection (4) of this section, cities and counties should remain as the agencies to consider, promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions.

(4) The promotion of coordinated state-wide land conservation and development requires the creation of a state-wide planning agency to prescribe planning goals and objectives to be applied by state agencies, cities, counties and special districts throughout the state. [1973 c.80 §1; 1977 c.664 §1; 1981 c.748 §21]

197.010 Policy. The Legislative Assembly declares that, in order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole. These comprehensive plans:

(1) Must be adopted by the appropriate governing body at the local and state levels;

(2) Are expressions of public policy in the form of policy statements, generalized maps and standards and guidelines;

(3) Shall be the basis for more specific rules and land use regulations which implement the policies expressed through the comprehensive plans;

(4) Shall be prepared to assure that all public actions are consistent and coordinated with the policies expressed through the comprehensive plans; and

(5) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the changing needs and desires of the public they are designed to serve. [1973 c.80 §2; 1981 c.748 §21a]

197.013 Implementation and enforcement of state-wide concern. Implementation

and enforcement of acknowledged comprehensive plans and land use regulations are matters of state-wide concern. [1981 c.884 §7]

197.015 Definitions for ORS 197.005 to 197.855. As used in ORS 197.005 to 197.855, unless the context requires otherwise:

(1) "Acknowledgment" means a commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the goals.

(2) "Board" means the Land Use Board of Appeals or any member thereof.

(3) "Commission" means the Land Conservation and Development Commission.

(4) "Committee" means the Joint Legislative Committee on Land Use.

(5) "Comprehensive plan" means a generalized, coordinated land use map and policy statement of the governing 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.

(6) "Department" means the Department of Land Conservation and Development.

(7) "Director" means the Director of the Department of Land Conservation and Development.

(8) "Goals" mean the mandatory state-wide planning standards adopted by the commission pursuant to ORS 197.005 to 197.855.

(9) "Guidelines" mean suggested approaches designed to aid cities and counties in preparation, adoption and implementation of comprehensive plans in compliance with goals and to aid state agencies and special districts in the preparation, adoption and implementation of plans, programs and regulations in compliance with goals. Guide-

197.060

MISCELLANEOUS MATTERS

(2) Cooperate with the interstate planning agency in the performance of its functions. [1973 c.80 §12; 1977 c.664 §8]

197.055 [1973 c.80 §16; repealed by 1977 c.664 §42]

197.060 Biennial report; draft submission to committee; contents. (1) Prior to the end of each even-numbered year, the department shall prepare a written report for submission to the Legislative Assembly of the State of Oregon describing activities and accomplishments of the department, commission, state agencies, local governments and special districts in carrying out ORS 197.005 to 197.855.

(2) A draft of the report required by subsection (1) of this section shall be submitted to the committee for its review and comment at least 60 days prior to submission of the report to the Legislative Assembly. Comments of the committee shall be incorporated into the final report.

(3) Goals and guidelines adopted by the commission shall be included in the report to the Legislative Assembly submitted under subsection (1) of this section. [1973 c.80 §56; 1977 c.664 §9; 1981 c.748 §21b]

Note: Section 13, chapter 826, Oregon Laws 1983, provides:

Sec. 13. (1) The Land Conservation and Development Commission shall submit to the Joint Legislative Committee on Land Use a written report analyzing applications approved and denied for:

(a) New and replacement dwellings under ORS 215.213 (1)(e) and (g), (2)(a) and (b), (3) and (4), 215.283 (1)(e) and (f) and (3);

(b) Divisions of land under ORS 215.263 (2) and (4);

(c) Dwellings and land divisions approved for marginal lands under ORS 215.317 or 215.327; and

(d) Such other matters pertaining to protection of agricultural land as the commission deems appropriate.

(2) The report required by subsection (1) of this section shall also describe how much land has been designated as marginal land under ORS 197.247.

(3) The governing body of each county shall provide the Department of Land Conservation and Development with a report of its actions involving those dwellings, land divisions and land designations upon which the commission must report to the Joint Legislative Committee on Land Use under subsection (1) of this section. The county report shall include actions taken after July 1, 1985, and before July 1, 1986, and shall be submitted to the department by July 30, 1986. The department may establish, after consultation with county governing bodies, a schedule for receiving county reports at intervals within the reporting period. The report shall be on a standard form with a standardized explanation adopted by the commission and shall be eligible for grants by the commission. The report shall include the findings for each action except actions involving:

(a) Dwellings authorized by ORS 215.213 (1)(e) or 215.283 (1)(e);

(b) Dwellings authorized by ORS 215.213 (1)(g) or 215.283 (1)(f) if approved on lots or parcels as large as or larger than a minimum lot size acknowledged by the commission under ORS 197.251; or

(c) Land divisions authorized by ORS 215.263 (2) creating parcels as large as or larger than a minimum lot size acknowledged by the commission under ORS 197.251.

(4) The governing body of each county shall, upon request by the department, provide the department with other information necessary to carry out subsections (1) and (2) of this section. [1983 c.826 §13; 1985 c.811 §9]

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

197.075 Department of Land Conservation and Development. The Department of Land Conservation and Development is established. The department shall consist of the Land Conservation and Development Commission, the director and their subordinate officers and employees. [1973 c.80 §4]

197.080 Department monthly report required. The department shall report monthly to the committee in order to keep the committee informed on progress made by the department, commission, local governments and other agencies in carrying out ORS 197.005 to 197.855. [1973 c.80 §55; 1977 c.664 §10; 1981 c.748 §21c]

197.085 Director; appointment; compensation and expenses. (1) The commission shall appoint a person to serve as the Director of the Department of Land Conservation and Development. The director shall hold the office of the director at the pleasure of the commission and the salary of the director shall be fixed by the commission unless otherwise provided by law.

(2) In addition to salary, the director shall be reimbursed, subject to any applicable law regulating travel and other expenses of state officers and employees, for actual and necessary expenses incurred by the director in the performance of official duties. [1973 c.80 §13]

197.090 Duties and authority of director. (1) Subject to policies adopted by the commission, the director shall:

(a) Be the administrative head of the department.

(b) Coordinate the activities of the department in its land conservation and development functions with such functions of federal agencies, other state agencies, local governments and special districts.

(c) Appoint, reappoint, assign and reassign all subordinate officers and employees of the

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powers necessary for the performance of the functions of such offices as the commission determines. The vice chairman of the commission shall act as the chairman of the commission in the absence of the chairman.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) Members of the commission are entitled to compensation and expenses as provided in ORS 292.495. [1973 c.80 §§7, 8]

197.040 Duties of commission. (1) The commission shall:

(a) Direct the performance by the director and the director's staff of their functions under ORS 197.005 to 197.855.

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS 197.005 to 197.855. In designing its administrative requirements, the commission shall allow for the diverse administrative and planning capabilities of local governments.

(c) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS 197.005 to 197.855 any state-wide land use policies that it considers necessary to carry out ORS 197.005 to 197.855. Any state-wide land use policies adopted by the commission before August 21, 1981, shall be adopted by goal or rule within one year after August 21, 1981.

(d) Cooperate with the appropriate agencies of the United States, this state and its political subdivisions, any other state, any interstate agency, any person or groups of persons with respect to land conservation and development.

(e) Appoint advisory committees to aid it in carrying out ORS 197.005 to 197.855 and provide technical and other assistance, as it considers necessary, to each such committee.

(2) Pursuant to ORS 197.005 to 197.855, the commission shall:

(a) Adopt, amend and revise goals consistent with regional, county and city concerns;

(b) Prepare, collect, provide or cause to be prepared, collected or provided land use inventories;

(c) Prepare state-wide planning guidelines;

(d) Review comprehensive plans for compliance with goals;

(e) Coordinate planning efforts of state agencies to assure compliance with goals and compatibility with city and county comprehensive plans;

(f) Insure widespread citizen involvement and input in all phases of the process;

(g) Review and recommend to the Legislative Assembly the designation of areas of critical state concern;

(h) Report periodically to the Legislative Assembly and to the committee; and

(i) Perform other duties required by law. [1973 c.80 §§9, 11; 1977 c.664 §5; 1981 c.748 §22]

Note: Section 11, chapter 811, Oregon Laws 1985, provides:

Sec. 11. The commission shall consider adoption of rules, amendment of the goals and recommendations for legislation that will provide a practical means of identifying secondary resource lands and allow specified uses of those lands. The commission shall complete and report its actions under this section to the committee before the beginning of the Sixty-fourth Legislative Assembly.

197.045 Powers of commission. The commission may:

(1) Apply for and receive moneys from the Federal Government and from this state or any of its agencies or departments.

(2) Contract with any public agency for the performance of services or the exchange of employes or services by one to the other necessary in carrying out ORS 197.005 to 197.855.

(3) Contract for the services of and consultation with professional persons or organizations, not otherwise available through federal, state and local governmental agencies, in carrying out its duties under ORS 197.005 to 197.855.

(4) Perform other functions required to carry out ORS 197.005 to 197.855.

(5) Assist in development and preparation of model land use regulations to guide state agencies, cities, counties and special districts in implementing goals. [1973 c.80 §10; 1977 c.664 §6; 1981 c.748 §22a]

197.050 Interstate agreements and compacts; commission powers. If an interstate land conservation and development planning agency is created by an interstate agreement or compact entered into by this state, the commission shall perform the functions of this state with respect to the agreement or compact. If the functions of the interstate planning agency duplicate any of the functions of the commission under ORS 197.005 to 197.430, 197.605 to 197.650 and 469.350, the commission may:

(1) Negotiate with the interstate agency in defining the areas of responsibility of the commission and the interstate planning agency; and

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urban and urbanizable areas. [1973 c.80 §24; 1981 c.748 §24]

Note: Sections 3 to 5, chapter 811, Oregon Laws 1985, provide:

Sec. 3. (1) The Legislative Assembly recognizes and finds that:

(a) The exercise of land use planning and zoning powers by local governments and the implementation of requirements of the state land use laws and goals can significantly affect the permissible uses and the economic value of privately owned property within this state. Some local actions may enhance the economic value of property and some such actions may diminish its value.

(b) Certain development standards and conditions may be properly imposed by local government in implementing land use laws and goals to protect public health and safety and provide for orderly development.

(c) Many local land use actions taken in the public interest may be proper notwithstanding the fact that the action may reduce the economic value of privately owned land or negate the landowner's expectations with regard to that land.

(d) In some circumstances, the local restrictions placed on the use of property in the furtherance of the public interest may be so severe as to deprive the landowner of the reasonable economic use of the property. Such severe restrictions, when imposed without just compensation to the landowner, may place an unreasonable burden on the landowner who individually bears the costs of serving the interests of the public as a whole.

(2) The Legislative Assembly further recognizes and finds that state policy is not clear concerning land use actions which affect the economic value of privately owned property within this state.

Sec. 4. (1) To clarify state policy in this area and to achieve a balance between public and private interests, the Joint Legislative Committee on Land Use shall study the effect of local government land use regulations on the value of private property in the State of Oregon. The Joint Legislative Committee on Land Use shall make recommendations to the Sixty-fourth Legislative Assembly on whether to compensate owners when local regulations diminish the value of their private property and to assess owners when local regulations enhance the value of their private property.

(2) The Joint Legislative Committee on Land Use shall consider the creation of judicial remedies for compensation to owners for the effects of local land use regulations on their property and shall consider techniques to balance the effect of local regulations including, but not limited to purchase of scenic easements, purchase of development rights and transfer of development rights.

(3) The Joint Legislative Committee on Land Use may appoint an advisory committee to assist in accomplishing the duties imposed in subsections (1) and (2) of this section. The advisory committee shall include but need not be limited to members representing local governments, environmental groups and industry.

Sec. 5. The Joint Legislative Committee on Land Use shall report its findings with respect to work done pursuant to

subsections (1) and (2) of section 4 of this Act not later than March 1, 1986. It shall report its findings to the presiding officers of the Legislative Assembly. The presiding officers shall consider those findings and prepare legislation for introduction in 1987.

ADVISORY COMMITTEES

197.160 State Citizen Involvement Advisory Committee; city and county citizen advisory committees. (1) To assure widespread citizen involvement in all phases of the planning process:

(a) The commission shall appoint a State Citizen Involvement Advisory Committee, broadly representative of geographic areas of the state and of interests relating to land uses and land use decisions, to develop a program for the commission that promotes and enhances public participation in the adoption and amendment of the goals and guidelines.

(b) Each city and county governing body shall submit to the commission, on a periodic basis established by commission rule, a program for citizen involvement in preparing, adopting and amending comprehensive plans and land use regulations within the respective city and county. Such program shall at least contain provision for a citizen advisory committee or committees broadly representative of geographic areas and of interests relating to land uses and land use decisions.

(c) The State Citizen Involvement Advisory Committee appointed under paragraph (a) of this subsection shall review the proposed programs submitted by each city and county and report to the commission whether or not the proposed program adequately provides for public involvement in the planning process, and, if it does not so provide, in what respects it is inadequate.

(2) The State Citizen Involvement Advisory Committee is limited to an advisory role to the commission. It has no express or implied authority over any local government or state agency. [1973 c.80 §35; 1981 c.748 §25; 1983 c.740 §49]

197.165 Local Officials Advisory Committee. For the purpose of promoting mutual understanding and cooperation between the commission and local government in the implementation of ORS 197.005 to 197.855 and the goals, the commission shall appoint a Local Officials Advisory Committee. The committee shall be comprised of persons serving as city or county elected officials and its membership shall reflect the city, county and geographic diversity of the state. The committee shall advise and assist the commission on its policies and programs affecting local governments. [1977 c.664 §7; 1981 c.748 §25a]

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department, prescribe their duties and fix their compensation, subject to the State Personnel Relations Law.

(d) Represent this state before any agency of this state, any other state or the United States with respect to land conservation and development within this state.

(e) Provide clerical and other necessary support services for the board.

(2) Subject to local government requirements and the provisions of ORS 197.830 to 197.845, the director may participate in and seek review of a land use decision involving the goals, acknowledged comprehensive plan or land use regulation or other matter within the statutory authority of the department or commission under ORS 197.005 to 197.855. The director shall report to the commission on each case in which the department participates and on the positions taken by the director in each case. [1973 c.80 §14; 1979 c.772 §7d; 1981 c.748 §21d; 1983 c.827 §2]

197.095 Land Conservation and Development Account. (1) There is established in the General Fund in the State Treasury the Land Conservation and Development Account. Moneys in the account are continuously appropriated for the purpose of carrying out ORS 197.005 to 197.855.

(2) All fees, moneys and other revenue received by the department or the committee shall be deposited in the Land Conservation and Development Account. [1973 c.80 §15; 1977 c.664 §11; 1981 c.748 §21e]

JOINT LEGISLATIVE COMMITTEE ON LAND USE

197.125 Joint Legislative Committee on Land Use; executive secretary. The Joint Legislative Committee on Land Use is established as a joint committee of the Legislative Assembly. The committee shall select an executive secretary who shall serve at the pleasure of the committee and under its direction. [1973 c.80 §22]

197.130 Members; appointment; term; vacancies; majority vote required in actions. (1) The Joint Legislative Committee on Land Use shall consist of four members of the House of Representatives appointed by the Speaker and three members of the Senate appointed by the President. No more than three House members of the committee shall be of the same political party. No more than two Senate members of the committee shall be of the same political party. If the Speaker of the House of

Representatives or the President of the Senate is a member, either may designate from time to time an alternate from among the members of the appropriate house to exercise powers as a member of the committee except that the alternate shall not preside if the Speaker or President is chairperson.

(2) The committee shall have a continuing existence and may meet, act and conduct its business during sessions of the Legislative Assembly or any recess thereof, and in the interim period between sessions.

(3) The term of a member shall expire upon the convening of the Legislative Assembly in regular session next following the commencement of the member's term. When a vacancy occurs in the membership of the committee in the interim between sessions, until such vacancy is filled, the membership of the committee shall be deemed not to include the vacant position for the purpose of determining whether a quorum is present and a quorum is the majority of the remaining members.

(4) The committee shall select a chairman. The chairman may, in addition to other authorized duties, approve voucher claims.

(5) Action of the committee shall be taken only upon the affirmative vote of the majority of the members of the committee. [1973 c.80 §23; 1975 c.530 §6; 1977 c.891 §8; 1981 c.748 §23]

197.135 Duties of committee. The committee shall:

(1) Advise the department on all matters under the jurisdiction of the department;

(2) Review and make recommendations to the Legislative Assembly on proposals for designation of areas of critical state concern;

(3) Review and make recommendations to the Legislative Assembly on goals and guidelines approved by the commission;

(4) Study and make recommendations to the Legislative Assembly on the political, economic and other effects of the state land use planning program on local government, public and private landowners and the citizens of Oregon;

(5) Study and make recommendations to the Legislative Assembly on improvements to the land use appeals process;

(6) Make recommendations to the Legislative Assembly on any other matter relating to land use planning in Oregon; and

(7) Study the availability and adequacy of industrially designated or zoned lands within

(6) Until state agency rules and programs are certified as being in compliance with the goals and compatible with applicable city and county comprehensive plans and land use regulations, the agency shall make findings when adopting or amending its rules and programs as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate.

(7) The commission shall adopt rules establishing procedures to assure that state agency permits affecting land use are issued in compliance with the goals and compatible with acknowledged comprehensive plans and land use regulations, as required by subsection (1) of this section. The rules shall prescribe the circumstances in which state agencies may rely upon a determination of compliance or compatibility made by the affected city or county. The rules shall allow a state agency to rely upon a determination of compliance by a city or county without an acknowledged comprehensive plan and land use regulations only if the city or county determination is supported by written findings demonstrating compliance with the goals. Nothing in this subsection requires decisions made under ORS 197.835 (7) to be reviewed for or include findings showing compliance with the goals. [1973 c.80 §21; 1977 c.664 §13; 1981 c.748 §16; 1983 c.827 §4]

197.185 Special district planning responsibilities; agreements with local governments. (1) Special districts shall exercise their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use, including a city or special district boundary change as defined in ORS 197.175 (1), in accordance with goals approved pursuant to ORS 197.005 to 197.855.

(2) Each special district operating within the boundaries of a county assigned coordinative functions under ORS 197.190 (1), or within the boundaries of the Metropolitan Service District, which is assigned coordinative functions for Multnomah, Washington and Clackamas counties by ORS 197.190 (1), shall enter into a cooperative agreement with the county or the metropolitan district. Such agreements shall include a listing of the tasks which the special district must complete in order to bring its plans or programs into compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when the plans or programs which comply with the goals are to be adopted. In addition, a program to coordinate the development of the plan

and programs of the district with other affected units of local government shall be included in the agreement. Such agreements shall be subject to review by the commission. The commission may provide by rule for periodic submission and review of special district plans and programs to assure that the plans or programs are in compliance with the goals or, if a city or county comprehensive plan for the area within which the district lies is acknowledged, the plans and programs of the districts are coordinated with the acknowledged comprehensive plan. [1973 c.80 §20; 1977 c.664 §14; 1981 c.748 §26]

197.190 Regional coordination of planning activities; alternatives. (1) In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition to being subject to the provisions of this chapter with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that district.

(2) For the purposes of carrying out ORS 197.005 to 197.855, counties may voluntarily join together with adjacent counties as authorized in ORS 190.003 to 190.620.

(3) Whenever counties and cities representing 51 percent of the population in their area petition the commission for an election in their area to form a regional planning agency to exercise the authority of the counties under subsection (1) of this section in the area, the commission shall review the petition. If it finds that the area described in the petition forms a reasonable planning unit, it shall call an election in the area on a date specified in ORS 203.085, to form a regional planning agency. The election shall be conducted in the manner provided in ORS chapter 255. The county clerk shall be considered the election officer and the commission shall be considered the district election authority. The agency shall be considered established if the majority of votes favor the establishment.

(4) If a voluntary association of local governments adopts a resolution ratified by each participating county and a majority of the participating cities therein which authorizes the

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197.175 Cities and counties planning responsibilities; rules on incorporations; compliance with goals. (1) Cities and counties shall exercise their planning and zoning responsibilities, including, but not limited to, a city or special district boundary change which shall mean the annexation of unincorporated territory by a city, the incorporation of a new city and the formation or change of organization of or annexation to any special district authorized by ORS 198.705 to 198.955, 199.410 to 199.519 or 451.010 to 451.600, in accordance with ORS 197.005 to 197.855 and the goals approved under ORS 197.005 to 197.855. The commission shall adopt rules clarifying how the goals apply to the incorporation of a new city. Notwithstanding the provisions of section 15, chapter 827, Oregon Laws 1983, the rules shall take effect upon adoption by the commission. The applicability of rules promulgated under this section to the incorporation of cities prior to August 9, 1983, shall be determined under the laws of this state.

(2) Pursuant to ORS 197.005 to 197.855, each city and county in this state shall:

(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;

(b) Enact land use regulations to implement their comprehensive plans;

(c) Except as provided in ORS 197.835 (7), if its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions in compliance with the goals; and

(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions in compliance with the acknowledged plan and land use regulations.

(3) Notwithstanding subsection (1) of this section, the commission shall not initiate by its own action any annexation of unincorporated territory pursuant to ORS 222.111 to 222.750 or formation of and annexation of territory to any district authorized by ORS 198.010 to 198.430 and 198.510 to 198.915 or 451.010 to 451.600. [1973 c.80 §§17, 18; 1977 c.664 §12; 1981 c.748 §15; 1983 c.827 §3]

197.180 State agency planning responsibilities; certain information to be submitted to department; determination of compliance with goals and plans; rules. (1)

Except as provided in ORS 527.722, state agencies shall carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use:

(a) In compliance with goals adopted or amended pursuant to ORS 197.005 to 197.855; and

(b) Except when a finding is made under ORS 197.640 (3)(c), in a manner compatible with:

(A) Comprehensive plans and land use regulations initially acknowledged under ORS 197.251; and

(B) Amendments to acknowledged comprehensive plans or land use regulations or new land use regulations acknowledged under ORS 197.625.

(2) Upon request by the commission, each state agency shall submit to the department the following information:

(a) Agency rules and summaries of programs affecting land use;

(b) A program for coordination pursuant to ORS 197.040 (2)(e);

(c) A program for coordination pursuant to ORS 197.090 (1)(b); and

(d) A program for cooperation with and technical assistance to local governments.

(3) Within 90 days of receipt, the director shall review the information submitted pursuant to subsection (2) of this section and shall notify each agency if the director believes the rules and programs submitted are insufficient to assure compliance with goals and compatibility with city and county comprehensive plans and land use regulations.

(4) Within 90 days of receipt of notification specified in subsection (3) of this section, the agency may revise the rules or programs and resubmit them to the director.

(5) The director shall make findings under subsections (3) and (4) of this section as to whether the rules and programs are sufficient to assure compliance with the goals and compatibility with acknowledged city and county comprehensive plans and land use regulations, and shall forward the rules and programs to the commission for its action. The commission shall either certify the rules and programs as being in compliance with the goals and compatible with the comprehensive plans and land use regulations of affected local governments or shall determine the same to be insufficient.

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proposed goals and guidelines as they may be amended by the commission. [1973 c.80 §37; 1981 c.748 §28a]

197.245 Commission amendment of initial goals; adoption of new goals. The commission may periodically amend the initial goals and guidelines adopted under ORS 197.240 and adopt new goals and guidelines. The adoption of amendments to or of new goals shall be done in the manner provided in ORS 197.235 and 197.240 and shall specify with particularity those goal provisions that are applicable to land use decisions before plan revision. Absent a compelling reason, the commission shall not require a comprehensive plan, new or amended land use regulation or land use decision to be consistent with a new or amended goal until the time of the periodic review required under ORS 197.640 or one year after the date of adoption, whichever is later. [1973 c.80 §38; 1981 c.748 §29]

197.247 Amendment of goals; marginal lands designation; effect on applicability of goals. (1) In accordance with ORS 197.240 and 197.245, the commission shall amend the goals to authorize counties to designate land as marginal land if the land meets the following criteria and the criteria set out in subsections (2) to (4) of this section:

(a) The proposed marginal land was not managed, during three of the five calendar years preceding January 1, 1983, as part of a farm operation that produced \$20,000 or more in annual gross income or a forest operation capable of producing an average, over the growth cycle, of \$10,000 in annual gross income; and

(b) The proposed marginal land also meets at least one of the following tests:

(A) At least 50 percent of the proposed marginal land plus the lots or parcels at least partially located within one-quarter mile of the perimeter of the proposed marginal land consists of lots or parcels 20 acres or less in size on July 1, 1983;

(B) The proposed marginal land is located within an area of not less than 240 acres of which at least 60 percent is composed of lots or parcels that are 20 acres or less in size on July 1, 1983; or

(C) The proposed marginal land is composed predominantly of soils in capability classes V through VIII in the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983, and is not capable of producing fifty cubic feet of merchantable timber per acre per year in those counties east of the summit of the Cascade Range and eighty-five

cubic feet of merchantable timber per acre per year in those counties west of the summit of the Cascade Range, as that term is defined in ORS 477.001 (21).

(2) For the purposes of subparagraphs (A) and (B) of paragraph (b) of subsection (1) of this section:

(a) Lots and parcels located within an urban growth boundary adopted by a city shall not be included in the calculation; and

(b) Only one lot or parcel exists if:

(A) A lot or parcel included in the area defined in subparagraph (A) of paragraph (b) of subsection (1) of this section is adjacent to one or more such lots or parcels;

(B) On July 1, 1983, greater than possessory interests are held in those adjacent lots or parcels by the same person, parents, children, sisters, brothers or spouses, separately or in tenancy in common; and

(C) The interests are held by relatives described in subparagraph (B) of this paragraph, one relative held the interest in the adjacent lots or parcels before transfer to another relative.

(3) For the purposes of paragraph (b) of subsection (2) of this section:

(a) Lots or parcels are not "adjacent" if they are separated by a public road; and

(b) "Lot" and "parcel" have the meanings given those terms in ORS 92.010.

(4) For the purposes of subparagraph (B) of paragraph (b) of subsection (1) of this section, lots and parcels located within an area for which an exception has been adopted by the county shall not be included in the calculation.

(5) A county may use statistical information compiled by the Oregon State University Extension Service or other objective criteria to calculate income for the purposes of paragraph (a) of subsection (1) of this section.

(6) Notwithstanding the fact that only a certain amount of land is proposed to be designated as marginal for the purposes of establishing the test area under subparagraph (A) of paragraph (b) of subsection (1) of this section, any lot or parcel that is within the test area and meets the income test set out in paragraph (a) of subsection (1) of this section may be designated as marginal land.

(7) The amended goals shall permit counties to authorize the uses on and divisions of marginal land set out in ORS 215.317 and 215.327.

(8) The provisions of this section shall not affect the applicability of any goal, except the

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association to perform the review, advisory and coordination functions assigned to the counties under subsection (1) of this section, the association may perform such duties. [1973 c.80 §19; 1977 c.664 §15; 1981 c.748 §27; 1983 c.350 §1]

GOALS COMPLIANCE

197.225 Preparation; adoption. The department shall prepare and the commission shall adopt goals and guidelines for use by state agencies, local governments and special districts in preparing, adopting, amending and implementing existing and future comprehensive plans. [1973 c.80 §33; 1981 c.748 §27a]

197.230 Considerations; finding of need required for adoption or amendment of goal. (1) In preparing, adopting and amending goals and guidelines, the department and the commission shall:

(a) Consider the existing comprehensive plans of local governments and the plans and programs affecting land use of state agencies and special districts in order to preserve functional and local aspects of land conservation and development.

(b) Give consideration to the following areas and activities:

- (A) Lands adjacent to freeway interchanges;
- (B) Estuarine areas;
- (C) Tide, marsh and wetland areas;
- (D) Lakes and lakeshore areas;
- (E) Wilderness, recreational and outstanding scenic areas;
- (F) Beaches, dunes, coastal headlands and related areas;
- (G) Wild and scenic rivers and related lands;
- (H) Flood plains and areas of geologic hazard;
- (I) Unique wildlife habitats; and
- (J) Agricultural land.

(c) Make a finding of state-wide need for the adoption of any new goal or the amendment of any existing goal.

(d) Design goals to allow a reasonable degree of flexibility in the application of goals by state agencies, cities, counties and special districts.

(2) Goals shall not be land management regulations for specified geographic areas established through designation of an area of critical state concern under ORS 197.405. [1973 c.80 §34; 1977 c.664 §17; 1981 c.748 §17; 1983 c.740 §50]

197.235 Public hearings; notice; citizen involvement implementation; submis-

sion of proposals. (1) In preparing the goals and guidelines, the department shall:

(a) Hold at least 10 public hearings throughout the state, causing notice of the time, place and purpose of each such hearing to be published in a newspaper of general circulation within the area where the hearing is to be conducted not later than 30 days prior to the date of the hearing. At least two public hearings shall be held in each congressional district.

(b) Implement any other provision for public involvement developed by the State Citizen Involvement Advisory Committee under ORS 197.160 (1) and approved by the commission.

(2) Upon completion of the preparation of the proposed goals and guidelines, or amendments to those goals and guidelines, the department shall submit them to the commission, the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the Joint Legislative Committee on Land Use for review.

(3) The commission shall consider the comments of the Local Officials Advisory Committee, the State Citizen Involvement Advisory Committee and the Joint Legislative Committee on Land Use before the adoption and amendment of goals or guidelines. [1973 c.80 §36; 1981 c.748 §28]

197.240 Commission action; public hearing; notice; amendment; adoption. Upon receipt of the proposed goals and guidelines prepared and submitted to it by the department, the commission shall:

(1) Hold at least one public hearing on the proposed goals and guidelines. The commission shall cause notice of the time, place and purpose of the hearings and the place where copies of the proposed goals and guidelines are available before the hearings with the cost thereof to be published in a newspaper of general circulation in the state not later than 30 days prior to the date of the hearing. The department shall supply a copy of its proposed goals and guidelines to the Governor, the committee, affected state agencies and special districts and to each local government without charge. The department shall provide copies of such proposed goals and guidelines to other public agencies or persons upon request and payment of the cost of preparing the copies of the materials requested.

(2) Consider the recommendations and comments received from the public hearings conducted under subsection (1) of this section, make any amendments to the proposed goals and guidelines that it considers necessary and approve the

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(10) A limited acknowledgment order shall be considered an acknowledgment for all purposes and shall be a final order for purposes of judicial review with respect to the acknowledged geographic area. A limited order may be adopted in conjunction with a continuance or denial order.

(11) The director shall notify the Real Estate Division, the local government and all persons who filed comments or objections with the director of any grant, denial or continuance of acknowledgment.

(12) The commission may grant a planning extension, which shall be a grant of additional time for a local government to comply with the goals in accordance with a compliance schedule. A compliance schedule shall be a listing of the tasks which the local government must complete in order to bring its comprehensive plan, land use regulations and land use decisions into initial compliance with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or land use regulations which comply with the goals are estimated to be adopted. In developing a compliance schedule, the commission shall consider the population, geographic area, resources and capabilities of the city or county.

(13) As used in this section:

(a) "Continuance" means a commission order that:

(A) Certifies that all or part of a comprehensive plan, land use regulations or both a comprehensive plan and land use regulations do not comply with one or more goals;

(B) Specifies amendments or other action that must be completed within a specified time period for acknowledgment to occur; and

(C) Is a final order for purposes of judicial review of the comprehensive plan, land use regulations or both the comprehensive plan and land use regulations as to the part of the plan, regulations or both the plan and regulations that are in compliance with the goals.

(b) "Denial" means a commission order that:

(A) Certifies that a comprehensive plan, land use regulations or both a comprehensive plan and land use regulations do not comply with one or more goals;

(B) Specifies amendments or other action that must be completed for acknowledgment to occur; and

(C) Is used when the amendments or other changes required in the comprehensive plan, land use regulations or both the comprehensive plan

and land use regulations affect many goals and are likely to take a substantial period of time to complete. [1977 c.766 §18; 1979 c.242 §3; 1981 c.748 §7; 1983 c.827 §5; 1985 c.811 §13]

197.252 [1977 c.664 § 20a; 1979 c.772 §7a; repealed by 1981 c.748 §56]

197.253 Participation in local proceedings required for submission of comments and objections. Notwithstanding the provisions of ORS 197.251 (2)(a), a person may not submit written comments and objections to the acknowledgment request of any city or county that submits its plan or regulations to the commission for acknowledgment for the first time after August 9, 1983, unless the person participated either orally or in writing in the local government proceedings leading to the adoption of the plan and regulations. [1983 c.827 §5a]

Note: Section 12, chapter 827, Oregon Laws 1983, provides:

Sec. 12. (1) Except as provided in section 13 of this Act, comprehensive plans and land use regulations required under ORS 197.175 shall be submitted to the commission for acknowledgment no later than January 1, 1984. Except as provided in section 13 of this Act or ORS 197.251 (8), all comprehensive plans and land use regulations shall be acknowledged in their entirety no later than July 1, 1984.

(2) If a local government does not submit its comprehensive plan and land use regulations for acknowledgment by January 1, 1984, or the comprehensive plan and land use regulations are not acknowledged in their entirety by July 1, 1984:

(a) The commission may enter an order under ORS 197.320; and

(b) If the local government is not making progress towards acknowledgment and a good faith effort to meet deadlines, the commission shall notify the officer responsible for disbursing state-shared revenues to withhold that portion of the state-shared revenues to which the local government is entitled under ORS 221.770, 323.455, 366.525, 366.800 or 471.810 which represents the proportion of total state planning grant moneys previously provided the local government by the commission to the amount of the local government comprehensive plan which is not submitted or acknowledged. If state-shared revenues are withheld, the local government may certify to the commission costs incurred after that withholding for completion of its comprehensive plan in accordance with the commission order. The commission shall review those costs and certify those costs it deems reasonable to the officer responsible for disbursing state-shared revenues. The officer shall withhold the amount of state-shared revenues identified by the commission and release all of that amount when the officer receives notice from the commission that the plan and regulations have been submitted or acknowledged, whichever is applicable, or release those costs incurred by the local government which the commission certifies to the local government.

(3) If a local government's plan and regulations are not acknowledged in their entirety by July 1, 1984, at the request

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goals on agricultural and forest lands, to a land use decision.

(9) Any amendments to local government plans and regulations resulting from amendments to goals required by subsection (1) of this section shall become effective only after approval by the commission under ORS 197.251 or 197.610 to 197.855. [1983 c.826 §2]

197.250 Compliance with goals required. Except as otherwise provided in ORS 197.245, all comprehensive plans and land use regulations adopted by a local government to carry out those comprehensive plans and all plans, programs, rules or regulations affecting land use adopted by a state agency or special district shall be in compliance with the goals within one year after the date those goals are approved by the commission. [1973 c.80 §32; 1977 c.664 §19; 1981 c.748 §29a; 1983 c.827 §56a]

197.251 Compliance acknowledgment; commission review; rules; limited acknowledgment; compliance schedule. (1) Upon the request of a local government, the commission shall by order grant, deny or continue acknowledgment of compliance with the goals. A commission order granting, denying or continuing acknowledgment shall be entered within 90 days of the date of the request by the local government unless the commission finds that due to extenuating circumstances a period of time greater than 90 days is required.

(2) In accordance with rules of the commission, the director shall prepare a report for the commission stating whether the comprehensive plan and land use regulations for which acknowledgment is sought are in compliance with the goals. The rules of the commission shall:

(a) Provide a reasonable opportunity for persons to prepare and to submit to the director written comments and objections to the acknowledgment request; and

(b) Authorize the director to investigate and in the report to resolve issues raised in the comments and objections or by the director's own review of the comprehensive plan and land use regulations.

(3) Upon completion of the report and before the commission meeting at which the director's report is to be considered, the director shall afford the local government and persons who submitted written comments or objections a reasonable opportunity to file written exceptions to the report.

(4) The commission's review of the acknowledgment request shall be confined to the record of

proceedings before the local government, any comments, objections and exceptions filed under subsections (2) and (3) of this section and the report of the director. Upon its consideration of an acknowledgment request, the commission may entertain oral argument from the director and from persons who filed written comments, objections or exceptions. However, the commission shall not allow additional evidence or testimony that could have been presented to the local government or to the director but was not.

(5) A commission order granting, denying or continuing acknowledgment shall include a clear statement of findings which sets forth the basis for the approval, denial or continuance of acknowledgment. The findings shall:

(a) Identify the goals with which the comprehensive plan and land use regulations comply and those with which they do not comply; and

(b) Include a clear statement of findings in support of the determinations of compliance and noncompliance.

(6) A commission order granting acknowledgment shall be limited to an identifiable geographic area described in the order if:

(a) Only the identified geographic area is the subject of the acknowledgment request; or

(b) Specific geographic areas do not comply with the goals, and the goal requirements are not technical or minor in nature.

(7) The commission may issue a limited acknowledgment order only in the circumstances identified in subsection (6) of this section and all plans and regulations shall be acknowledged in their entirety no later than July 1, 1984, as required by ORS 197.757 (1).

(8) Notwithstanding the provisions of subsection (7) of this section and of subsection (1) of section 12, chapter 827, Oregon Laws 1983, the commission may issue or continue a limited acknowledgment order for a coastal area or for the area within an urban growth boundary and outside the city limits after July 1, 1984.

(9) Notwithstanding the provisions of subsection (7) of this section, the commission may issue a limited acknowledgment order when a previously issued acknowledgment order is reversed or remanded by the Court of Appeals or the Oregon Supreme Court. Such a limited acknowledgment order may deny or continue acknowledgment of the part of the comprehensive plan or land use regulations that the court found not in compliance with the goals and grant acknowledgment of all other parts of the comprehensive plan and land use regulations.

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(1) "Buildable lands" means lands in urban and urbanizable areas that are suitable, available and necessary for residential uses.

(2) "Government assisted housing" means housing that is financed in whole or part by either a federal or state housing agency or a local housing authority as defined in ORS 456.005 to 456.720, or housing that is occupied by a tenant or tenants who benefit from rent supplements or housing vouchers provided by either a federal or state housing agency or a local housing authority.

(3) "Manufactured homes" means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. §§ 5401 et seq.), as amended on August 22, 1981.

(4) "Periodic review" means the review of an acknowledged comprehensive plan and land use regulations by a local government in accordance with the schedule for plan review and revision adopted as part of the acknowledged comprehensive plan.

(5) "Urban growth boundary" means an urban growth boundary included or referenced in a comprehensive plan. [1981 c.884 §4; 1983 c.795 §1]

197.300 [1973 c.80 §51; 1977 c.664 §22; repealed by 1979 c.772 §26]

197.303 "Needed housing" defined. (1) As used in ORS 197.307, until the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

(a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy and manufactured homes; and

(b) Government assisted housing.

(2) Paragraph (a) of subsection (1) of this section shall not apply to:

(a) A city with a population of less than 2,500.

(b) A county with a population of less than 15,000.

(3) A local government may take an exception to subsection (1) of this section in the same manner that an exception may be taken under the goals. [1981 c.884 §6; 1983 c.795 §2]

197.305 [1973 c.80 §52; 1977 c.664 §23; repealed by 1979 c.772 §26]

197.307 Effect of need for certain housing in urban growth areas. (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income is a matter of state-wide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in a zone or zones with sufficient buildable land to satisfy that need.

(4) Subsection (3) of this section shall not be construed as an infringement on a local government's prerogative to:

(a) Set approval standards under which a particular housing type is permitted outright;

(b) Impose special conditions upon approval of a specific development proposal; or

(c) Establish approval procedures.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay. [1981 c.884 §5; 1983 c.795 §3]

197.310 [1973 c.80 §53; 1977 c.664 §24; repealed by 1979 c.772 §26]

197.312 Limitation on city and county authority to prohibit certain kinds of housing. No city or county may by charter prohibit from all residential zones attached or detached single-family housing, multiple-family housing for both owner and renter occupancy or manufactured homes. No city or county may by charter prohibit government assisted housing or impose additional approval standards on government assisted housing that are not applied to similar but unassisted housing. [1983 c.795 §5]

197.313 Interpretation of ORS 197.312. Nothing in ORS 197.312 or in the amendments to ORS 197.295, 197.303, 197.307 by sections 1, 2 and 3, chapter 795, Oregon Laws 1983 shall be construed to require a city or county to contribute to the financing, administration or sponsorship of government assisted housing. [1983 c.795 §6]

197.315 [1973 c.80 §54; 1977 c.664 §25; repealed by 1979 c.772 §26]

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of the local government, the department may complete the plan and regulations.

197.254 Bar to contesting acknowledgment, appealing or seeking amendment.

(1) A state agency shall be barred after the date set for submission of programs by the commission as provided in ORS 197.180 (2), from contesting a request for acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the commission finds that:

(a) The state agency has not complied with ORS 197.180; or

(b) The state agency has not coordinated its plans, programs or rules affecting land use with the comprehensive plan or land use regulations of the city or county pursuant to a coordination program approved by the commission under ORS 197.180.

(2) A state agency shall be barred from seeking a commission order under ORS 197.640 (3)(c) and (7) requiring amendment of a local government comprehensive plan or land use regulation in order to comply with the agency's plan or program unless the agency has first requested the amendment from the local government and has had its request denied.

(3) A special district shall be barred from contesting a request for initial compliance acknowledgment submitted by a local government under ORS 197.251 or from filing an appeal under ORS 197.620 (1) or (2), if the county or Metropolitan Service District assigned coordinative functions under ORS 197.190 (1) finds that:

(a) The special district has not entered into a cooperative agreement under ORS 197.185; or

(b) The special district has not coordinated its plans, programs or regulations affecting land use with the comprehensive plan or land use regulations of the local government pursuant to its cooperative agreement made under ORS 197.185.

(4) A special district shall be barred from seeking a commission order under ORS 197.640 (3)(c) and 197.647 (4)(b) requiring amendment of a local government comprehensive plan or land use regulation in order to comply with the special district's plan or program unless the special district has first requested the amendment from the local government and has had its request denied. [1977 c.664 §16; 1981 c.748 §11; 1983 c.827 §57]

197.255 County review of comprehensive plans required; compliance advice.

Following the approval by the commission of

goals and guidelines, each county governing body shall review all comprehensive plans for land conservation and development within the county, both those adopted and those being prepared. The county governing body shall advise the local government preparing the comprehensive plans whether or not the comprehensive plans are in compliance with the goals. [1973 c.80 §39; 1981 c.748 §29b; 1983 c.827 §57a]

197.260 Annual county reports on comprehensive planning compliance. Upon the expiration of one year after the date of the approval of the goals and guidelines and annually thereafter, each county governing body, upon request of the commission, shall report to the commission on the status of comprehensive plans within each county. Each report shall include:

(1) Copies of comprehensive plans reviewed by the county governing body and copies of land use regulations applied to areas of critical state concern within the county.

(2) For those areas or jurisdictions within the county without comprehensive plans, a statement and review of the progress made toward compliance with the goals. [1973 c.80 §44; 1981 c.748 §29c]

197.265 State compensation for costs of defending compliance actions. (1) As used in this section, "action" includes but is not limited to a proceeding under ORS 197.830 to 197.845.

(2) If any action is brought against a local government challenging any comprehensive plan, land use regulation or other action of the local government which was adopted or taken for the primary purpose of complying with the goals approved under ORS 197.240 and which does in fact comply with the goals, then the commission shall pay reasonable attorney fees and court costs incurred by such local government in the action or suit including any appeal, to the extent funds have been specifically appropriated to the commission therefor. [1977 c.898 §2; 1979 c.772 §7b; 1981 c.748 §39; 1983 c.827 §6]

197.275 [1973 c.80 §40; 1977 c.664 §21; repealed by 1981 c.748 §56]

197.280 [1973 c.80 §41; repealed by 1977 c.664 §42 and 1977 c.766 §16]

197.285 [1973 c.80 §42; repealed by 1981 c.748 §56]

NEEDED HOUSING IN URBAN GROWTH AREAS

197.295 Definitions for ORS 197.303 to 197.313. As used in ORS 197.303 to 197.313:

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(4) If the commission finds that in the interim period during which a local government, state agency or special district would be bringing itself into compliance with the commission's order under subsection (1) or (3) of this section it would be contrary to the public interest in the conservation or sound development of land to allow the continuation of some or all categories of land use decisions in one or more specified geographic areas, it may, as part of its order, limit, prohibit or require the approval by the local government of applications for subdivisions, partitions or building permits until the plan or land use regulation is brought into compliance. Any restriction under this subsection may be imposed only if the commission finds that the activity, if continued, aggravates the goal, comprehensive plan or land use regulation violation and that the restriction is necessary to correct the violation. A restriction imposed under this subsection shall apply only to the geographic area that is the subject of the violation.

(5) As part of its order under subsection (1) or (3) of this section, the commission may withhold grant funds from the local government to which the order is directed.

(6) The commission may institute actions or proceedings for legal or equitable remedies in the Circuit Court for Marion County or in the circuit court for the county to which the commission's order is directed or within which all or a portion of the applicable city is located to enforce compliance with the provisions of any order issued under this section or to restrain violations thereof. Such actions or proceedings may be instituted without the necessity of prior agency notice, hearing and order on an alleged violation. [1977 c.664 §34; 1979 c.284 §123; 1981 c.748 §32; 1983 c.827 §58]

197.325 [1973 c.80 §45; repealed by 1977 c.664 §42]

197.330 [1973 c.80 §50; repealed by 1977 c.664 §42]

197.340 Weight given to goals in planning practice. The commission, the department and local governments shall give the goals equal weight in the planning process. [1981 c.748 §20]

197.350 Burden of persuasion or proof in appeal to board or commission. (1) A party appealing a land use decision made by a local government to the board or commission has the burden of persuasion.

(2) A local government that claims an exception to a goal adopted by the commission has the burden of persuasion.

(3) There shall be no burden of proof in administrative proceedings under ORS 197.005 to 197.855. [1981 c.748 §10a; 1983 c.827 §43]

ACTIVITIES ON FEDERAL LAND

197.390 Activities on federal land; list; permit required; enjoining violations. (1) The commission shall study and compile a list of all activities affecting land use planning which occur on federal land and which the state may regulate or control in any degree.

(2) No activity listed by the commission pursuant to subsection (1) of this section which the state may regulate or control which occurs upon federal land shall be undertaken without a permit issued under ORS 197.395.

(3) Any person or agency acting in violation of subsection (2) of this section may be enjoined in civil proceedings brought in the name of the State of Oregon. [1975 c.486 §2; 1981 c.748 §33]

197.395 Application for permit; review and issuance; conditions; restrictions; review. (1) Any person or public agency desiring to initiate an activity which the state may regulate or control and which occurs upon federal land shall apply to the local government in which the activity will take place for a permit. The application shall contain an explanation of the activity to be initiated, the plans for the activity and any other information required by the local government as prescribed by rule of the commission.

(2) If the local government finds after review of the application that the proposed activity complies with goals and the comprehensive plans of the local government affected by the activity, it shall approve the application and issue a permit for the activity to the person or public agency applying for the permit. If the governing body does not approve or disapprove the permit within 60 days of receipt of the application, the application shall be considered approved.

(3) The local government may prescribe and include in the permit any conditions or restrictions that it considers necessary to assure that the activity complies with the goals and the comprehensive plans of the local governments affected by the activity.

(4) Actions pursuant to this section are subject to review under ORS 197.830 to 197.845. [1975 c.486 §3; 1977 c.664 §26; 1979 c.772 §7c; 1981 c.748 §40; 1983 c.827 §44]

AREAS OF CRITICAL CONCERN

197.400 [1973 c.80 §25; 1977 c.664 §27; repealed by 1981 c.748 §56]

197.405 Designation of areas of critical state concern; commission recommenda-

COMPREHENSIVE LAND USE PLANNING COORDINATION 197.320**ENFORCEMENT OF PLANNING GOALS****197.320 Power of commission to order compliance with goals; contents of order; hearing; procedure; appeals; injunctions.**

(1) The commission shall issue an order requiring a local government, state agency or special district to take action necessary to bring its comprehensive plan, land use regulation or other land use decisions into compliance with the goals if the commission has good cause to believe:

(a) A comprehensive plan or land use regulation adopted by a local government not on a compliance schedule is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

(b) A plan, program, rule or regulation affecting land use adopted by a state agency or special district is not in compliance with the goals by the date set in ORS 197.245 or 197.250 for such compliance;

(c) A local government is not making satisfactory progress toward performance of its compliance schedule;

(d) A state agency is not making satisfactory progress in carrying out its coordination agreement or the requirements of ORS 197.180;

(e) A local government has no comprehensive plan or land use regulation and is not on a compliance schedule directed to developing the plan or regulation;

(f) A local government has engaged in a pattern or practice of decision making that violates an acknowledged comprehensive plan or land use regulation; or

(g) A local government has failed to comply with a commission order entered under ORS 197.647 (4)(b).

(2) An order issued under subsection (1) of this section and the copy of the order mailed to the local government, state agency or special district shall set forth:

(a) The nature of the noncompliance, including, but not limited to, the contents of the comprehensive plan or land use regulation, if any, of a local government that do not comply with the goals or the contents of a plan, program or regulation affecting land use adopted by a state agency or special district that do not comply with the goals;

(b) The specific lands, if any, within a local government for which the existing plan or land use regulation, if any, does not comply with the goals; and

(c) The corrective action decided upon by the commission, including the specific requirements, with which the local government, state agency or special district must comply.

(3) An order issued under subsection (1) of this section shall state that a hearing may be requested to contest the order. The local government, state agency or special district affected by the order or any person or group of persons substantially affected or aggrieved by the order may request a hearing to contest the order. The order shall become final 20 days after the mailing unless within such 20-day period the local government, state agency or special district to which it is directed or person or group of persons substantially affected or aggrieved, files with the commission a request for hearing. Where a hearing is requested, the commission shall set a date for the hearing to be held within 60 days after the receipt of the request, and shall give the local government, state agency or special district and person or group of persons substantially affected or aggrieved, if any, notice of the hearing at least 30 days prior thereto. Where a hearing has been requested, the order shall become final when there is no right to further hearing before the commission. The hearing and judicial review of a final order shall be governed by the provisions of ORS 183.310 to 183.550 applicable to contested cases except as otherwise stated in this section. The commission's final order shall include a clear statement of findings which set forth the basis for the order. Where a petition to review the order has been filed in the Court of Appeals, the commission shall transmit to the court the entire administrative record of the proceeding under review. Notwithstanding ORS 183.482 (3) relating to a stay of enforcement of an agency order, an appellate court, before it may stay an order of the commission, shall give due consideration to the public interest in the continued enforcement of the commission's order and may consider testimony or affidavits thereon. Upon review, an appellate court may affirm, reverse, modify or remand the order. The court shall reverse, modify or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal, modification or remand unless the court shall find that substantial rights of any party were prejudiced thereby; or

(b) The order to be unconstitutional; or

(c) The order is invalid because it exceeds the statutory authority of the agency; or

(d) The order is not supported by substantial evidence in the whole record.

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197.510 Legislative findings. The Legislative Assembly finds and declares that:

(1) The declaration of moratoria on construction and land development by cities, counties and special districts may have a negative effect on the housing policies and goals of other local governments within the state, and therefore, is a matter of state-wide concern.

(2) Such moratoria, particularly when limited in duration and scope, and adopted pursuant to growth management systems that further the state-wide planning goals and local comprehensive plans, may be both necessary and desirable.

(3) Clear state standards should be established to assure that the need for moratoria is considered and documented, the impact on housing is minimized, and necessary and properly enacted moratoria are not subjected to undue litigation. [1980 c.2 §1]

197.520 Manner of declaring moratorium. (1) No city, county or special district may adopt a moratorium on construction or land development unless it first makes written findings justifying the need for the moratorium in the manner provided for in this section.

(2) A moratorium may be justified by demonstration of a need to prevent a shortage of key facilities as defined in the state-wide planning goals which would otherwise occur during the effective period of the moratorium. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:

(a) Showing the extent of need beyond the estimated capacity of existing key facilities expected to result from new land development, including identification of any key facilities currently operating beyond capacity, and the portion of such capacity already committed to development;

(b) That the moratorium is reasonably limited to those areas of the city, county or special district where a shortage of key public facilities would otherwise occur; and

(c) That the housing needs of the area affected have been accommodated as much as possible in any program for allocating any remaining key facility capacity.

(3) A moratorium not based on a shortage of key facilities under subsection (2) of this section may be justified only by a demonstration of compelling need. Such a demonstration shall be based upon reasonably available information, and shall include, but need not be limited to, findings:

(a) That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from residential development in affected geographical areas;

(b) That the moratorium is sufficiently limited to insure that a needed supply of affected housing types within or in proximity to the city, county or special district is not unreasonably restricted by the adoption of the moratorium;

(c) Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;

(d) That the city, county or special district has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and

(e) That the city, county or special district proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

(4) No moratorium adopted under subsection (3) of this section shall be effective for a period longer than 120 days, but such a moratorium may be extended provided the city, county or special district adopting the moratorium:

(a) Finds that the problem giving rise to the need for a moratorium still exists;

(b) Demonstrates that reasonable progress is being made to alleviate the problem giving rise to the moratorium; and

(c) Sets a specific duration for the renewal of the moratorium. A moratorium may be extended more than once but no single extension may be for a period longer than six months. [1980 c.2 §3]

197.530 Correction program; procedures. A city, county or special district that adopts a moratorium on construction or land development in conformity with ORS 197.520 (1) and (2) shall within 60 days after the effective date of the moratorium adopt a program which seeks to correct the problem creating the moratorium. The program shall be presented at a public hearing. The city, county or special district shall give advance notice of the time and date of the public hearing. [1980 c.2 §4]

197.540 Review by Land Use Board of Appeals. (1) In the manner provided in ORS

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tion; committee review; approval by Legislative Assembly. (1) The commission may recommend to the committee the designation of areas of critical state concern. Each such recommendation:

(a) Shall specify the reasons for the implementation of additional state regulations for the described geographic area;

(b) Shall include a brief summary of the existing programs and regulations of state and local agencies applicable to the area;

(c) May include a management plan for the area indicating the programs and regulations of state and local agencies, if any, unaffected by the proposed state regulations for the area;

(d) May establish permissible use limitations for all or part of the area;

(e) Shall locate a boundary describing the area; and

(f) May designate permissible use standards for all or part of the lands within the area or establish standards for issuance or denial of designated state or local permits regulating specified uses of lands in the area, or both.

(2) The commission may act under subsection (1) of this section on its own motion or upon the recommendation of a state agency or a local government. If the commission receives a recommendation from a state agency or a local government and finds the proposed area to be unsuitable for designation, it shall notify the state agency or the local government of its decision and its reasons for that decision.

(3) Immediately following its decision to favorably recommend to the Legislative Assembly the designation of an area of critical state concern, the commission shall submit the proposed designation accompanied by the supporting materials described in subsection (1) of this section to the committee for its review.

(4) No proposed designation under subsection (1) of this section shall take effect unless it has first been submitted to the committee under subsection (3) of this section and has been approved by the Legislative Assembly. The Legislative Assembly may adopt, amend or reject the proposed designation. [1973 c.80 §26; 1977 c.664 §28; 1981 c.748 §12]

197.410 Use and activities regulated; enjoining violations. (1) No use or activity subjected to state regulations required or allowed for a designated area of critical state concern shall be undertaken except in accordance with the applicable state regulations.

(2) Any person or agency acting in violation of subsection (1) of this section may be enjoined in civil proceedings brought in the name of the county or the State of Oregon. [1973 c.80 §30; 1977 c.664 §29; 1981 c.748 §13]

197.415 [1973 c.80 §27; 1977 c.664 §30; repealed by 1981 c.748 §56]

197.420 [1973 c.80 §28; 1977 c.664 §31; repealed by 1981 c.748 §56]

197.425 [1973 c.80 §29; 1977 c.664 §32; repealed by 1981 c.748 §56]

197.430 Enforcement powers. If the county governing body or the commission determines the existence of an alleged violation under ORS 197.410, it may:

(1) Investigate, hold hearings, enter orders and take action that it deems appropriate under ORS 197.005 to 197.855, as soon as possible.

(2) For the purpose of investigating conditions relating to the violation, through its members or its duly authorized representatives, enter at reasonable times upon any private or public property.

(3) Conduct public hearings.

(4) Publish its findings and recommendations as they are formulated relative to the violation.

(5) Give notice of any order relating to a particular violation of the state regulations for the area involved or a particular violation of ORS 197.005 to 197.855 by mailing notice to the person or public body conducting or proposing to conduct the project affected in the manner provided by ORS 183.310 to 183.550. [1973 c.80 §31; 1977 c.664 §33; 1981 c.748 §14]

MORATORIUM ON CONSTRUCTION OR LAND DEVELOPMENT

197.505 Definitions for ORS 197.505 to 197.540. As used in ORS 197.505 to 197.540, "moratorium on construction or land development" means engaging in a pattern or practice of delaying or stopping issuance of permits, authorizations or approvals necessary for the subdivision and partitioning of, or residential construction on, urban or urbanizable land. It does not include actions engaged in, or practices in accordance with a comprehensive plan or implementing ordinances acknowledged by the Land Conservation and Development Commission under ORS 197.251, nor does it include denial or delay of permits or authorizations because they are inconsistent with applicable zoning or other laws or ordinances. [1980 c.2 §2]

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hensive plan or land use regulation or the new land use regulation; and

(B) Requested of the local government in writing that they be given such notice.

(b) The notice required by this subsection shall:

(A) Describe briefly the action taken by the local government;

(B) State the date of the decision;

(C) List the place where and the time when the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation, and findings, may be reviewed; and

(D) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845.

(3) Not later than five working days after receipt of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation submitted under subsection (1) of this section, the director shall notify by mail or other submission any persons who have requested notification. The notice shall:

(a) Explain the requirements for appealing the action of the local government under ORS 197.830 to 197.845; and

(b) List the locations where the comprehensive plan or land use regulation amendment or new land use regulation may be reviewed. [1981 c.748 §5; 1983 c.827 §9]

197.620 Who may appeal. (1) Notwithstanding the requirements of ORS 197.830 (2) and (3), persons who participated either orally or in writing in the local government proceedings leading to the adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845. A decision to not adopt a legislative amendment or a new land use regulation is not appealable.

(2) Notwithstanding the requirements of ORS 197.830 (2) and (3), the director or any other person may file an appeal of the local government's decision under ORS 197.830 to 197.845, if an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action. [1981 c.748 §5a; 1983 c.827 §8]

197.625 When amendment or new regulation considered acknowledged. (1) If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830 (7), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period.

(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the amendment or new regulation shall be considered acknowledged upon the date the appellate decision becomes final.

(3) The director shall issue certification of the acknowledgment upon receipt of an affidavit from the board stating either:

(a) That no appeal was filed within the 21 days allowed under ORS 197.830 (7); or

(b) The date the appellate decision affirming the adoption of the amendment or new regulation became final.

(4) The board shall issue an affidavit for the purposes of subsection (3) of this section within five days of receiving a valid request from the local government. [1981 c.748 §5b; 1983 c.827 §10]

197.630 [1981 c.748 §5c; repealed by 1983 c.827 §59]

197.635 [1981 c.748 §6; repealed by 1983 c.827 §59]

197.640 Periodic commission review; schedule; limitations; scope of review; notice to local government; local government duties; notice of review; substitute order. (1) After its decision to initially acknowledge a local government's comprehensive plan and land use regulations under ORS 197.251, the commission shall periodically review each local government's comprehensive plan and land use regulations to insure that they are in compliance with the goals and are coordinated with the plans and programs of state agencies. Periodic review shall be conducted in accordance with a schedule to be established by the commission, but unless requested at an earlier date by the local government:

(a) No review shall be conducted before July 1, 1984;

(b) No comprehensive plan and land use regulations shall be reviewed sooner than two years after the plan and regulations are acknowledged under ORS 197.251;

(c) The first periodic review shall be two to five years after acknowledgment under ORS 197.251; and

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197.830 to 197.845, the Land Use Board of Appeals shall review upon petition by a county, city or special district governing body or state agency or a person or group of persons whose interests are substantially affected, any moratorium on construction or land development or a corrective program alleged to have been adopted in violation of the provisions of ORS 197.505 to 197.530.

(2) If the board determines that a moratorium or corrective program was not adopted in compliance with the provisions of ORS 197.505 to 197.530, the board shall issue an order invalidating the moratorium.

(3) All review proceedings conducted by the Land Use Board of Appeals under subsection (1) of this section shall be based on the administrative record, if any, that is the subject of the review proceeding. The board shall not substitute its judgment for a finding solely of fact for which there is substantial evidence in the whole record.

(4) Notwithstanding any provision of ORS 197.005 to 197.855 to the contrary, the sole standard of review of a moratorium on construction or land development or a corrective program is under the provisions of this section, and such a moratorium shall not be reviewed for compliance with the state-wide planning goals adopted under ORS 197.005 to 197.855.

(5) The review of a moratorium on construction or land development under subsection (1) of this section shall be the sole authority for review of such a moratorium, and there shall be no authority for review in the circuit courts of this state. [1980 c.2 §5; 1983 c.827 §45]

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PROCEDURES**

197.605 [1981 c.748 §3; repealed by 1983 c.827 §59]

197.610 Local government notice of proposed amendment or new regulation; exemptions; report to commission. (1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the director at least 45 days before the final hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The director shall notify persons who have requested notice that the proposal is pending.

(2) When a local government determines that the goals do not apply to a particular proposed

amendment or new regulation, notice under subsection (1) of this section is not required. In addition, a local government may submit an amendment or new regulation with less than 45 days' notice if the local government determines that there are emergency circumstances requiring expedited review. In both cases:

(a) The amendment or new regulation shall be submitted after adoption as provided in ORS 197.615 (1) and (2); and

(b) Notwithstanding the requirements of ORS 197.830 (2) and (3), the director or any other person may appeal the decision to the board under ORS 197.830 to 197.845.

(3) When the department participates in a local government proceeding, at least 15 days before the final hearing on the proposed amendment to the comprehensive plan or land use regulation or the new land use regulation, it shall notify the local government of:

(a) Any concerns it has concerning the proposal; and

(b) Advisory recommendations on actions it considers necessary to address the concerns, including, but not limited to, suggested corrections to achieve compliance with the goals.

(4) The director shall report to the commission on whether the director:

(a) Believes the local government's proposal violates the goals; and

(b) Is participating in the local government proceeding. [1981 c.748 §4; 1983 c.827 §7; 1985 c.565 §27]

197.615 Local government notice of adopted amendment or new regulation; content; notice by director. (1) A local government that amends an acknowledged comprehensive plan or land use regulation or adopts a new land use regulation shall mail or otherwise submit to the director a copy of the adopted text of the comprehensive plan provision or land use regulation together with the findings adopted by the local government. The text and findings must be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed amendment or new regulation that the director received under ORS 197.610 has been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director.

(2)(a) Not later than five working days after the final decision, the local government also shall mail or otherwise submit notice to persons who:

(A) Participated in the proceedings leading to the adoption of the amendment to the compre-

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order, the department shall notify the local government of:

(a) Any concerns it has about the proposal's compliance with requirements identified by the department under paragraph (b) of subsection (4) of this section; and

(b) Advisory recommendations on actions it considers necessary to address the concerns, including, but not limited to, suggested corrections to meet these requirements.

(8) At any time before the local government adopts a final review order, the local government may submit another proposed review order to the department under subsection (5) of this section. The new proposal shall supersede the previous proposed review order and shall be subject to all the requirements of this section and ORS 197.641 to 197.649. [1981 c.748 §9; 1983 c.827 §11]

197.641 Local government notice of final review order; submission to director.

(1) A local government shall mail or otherwise submit to the director a copy of the final review order, including the adopted text of any comprehensive plan provision or land use regulation, the findings adopted by the local government and any supplemental information the local government believes necessary to inform the director of the effect of the order. The order, text and findings shall be mailed or otherwise submitted not later than five working days after the final decision by the governing body. If the proposed final review order, text or findings that the director received under ORS 197.640 (5) have been substantially amended, the local government shall specify the changes that have been made in the notice provided to the director.

(2)(a) Not later than five working days after the final action, the local government shall also mail or otherwise submit notice to persons who:

(A) Participated in the proceedings leading to the adoption of the final review order; and

(B) Requested of the local government in writing that they be given such notice.

(b) The notice required by this subsection shall:

(A) Describe briefly the action taken by the local government;

(B) State the date of the decision;

(C) List the place where and the time when the final review order, findings and text may be reviewed; and

(D) Explain the requirements for the submission of written objections to the director under ORS 197.643.

(3) Not later than five working days after receipt of a final review order submitted under subsection (1) of this section, the director shall mail or otherwise submit notice to any persons who have requested notice. The notice shall:

(a) Explain the requirements for the submission of written objections;

(b) State the deadline by which objections must be received by the director and the local government; and

(c) List the locations where the final review order, findings and text may be reviewed. [1983 c.827 §11b]

197.643 Who may file objections to final review order; form and content of objections. (1) Except as provided in subsection (2) of this section, only persons who participated either orally or in writing in the local government proceedings leading to the adoption of the final review order may file an objection to the final review order with the director and the local government.

(2) Any person may file an objection to the final review order with the director and the local government if the final review order differs from the proposed order submitted under ORS 197.640 (5) to such a degree that the notice did not reasonably describe the nature of the local government's final action.

(3) An objection filed under this section shall:

(a) Be in writing;

(b) Be mailed or otherwise submitted not later than 30 days after the date of the final action by the local government;

(c) Be limited to those issues raised by the objector in the proceedings before the local government, unless the final review order differs from the proposed order to such a degree that the notice did not reasonably describe the nature of the local government's final action; and

(d) Specify the alleged grounds upon which the final review order does adequately respond to the applicable standards of ORS 197.640 (3). [1983 c.827 §11c]

197.645 Review by director; notice of action taken; appeal to commission. (1) The director shall review the local government's final review order and any objections filed with the director, and not later than 60 days after receipt of the final review order, take one of the following actions:

(a) Issue an order terminating periodic review, based on findings that the requirements of ORS 197.640 (3) are met or do not apply; or

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(d) All subsequent reviews shall be three to five years after the previous review.

(2) When feasible, the schedule for periodic review shall be based upon the dates contained in acknowledged comprehensive plans. In addition, the commission shall attempt to schedule the review on a regional basis in order that the county and city plans in a geographic area of common interest will be reviewed together.

(3) The review required by this section shall be conducted in the manner provided in subsections (4) to (8) of this section and ORS 197.641 to 197.649. Through the review, the city or county shall determine if any of the following factors apply and take any action necessary to bring the plan and regulations into compliance with the goals or to make them consistent with state agency plans and programs:

(a) There has been a substantial change in circumstances, including, but not limited to, the conditions, findings or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the goals;

(b) Previously acknowledged provisions of the comprehensive plan or land use regulations do not comply with the goals because of goals subsequently adopted or state-wide land use policies adopted as rules interpreting goals under ORS 197.040;

(c) The comprehensive plan or land use regulations are inconsistent with a state agency plan or program relating to land use that was not in effect at the time the local government's comprehensive plan was acknowledged, and the agency has demonstrated that the plan or program:

(A) Is mandated by state statute or federal law;

(B) Is consistent with the goals; and

(C) Has objectives that cannot be achieved in a manner consistent with the comprehensive plan or land use regulations; or

(d) The city or county has not performed additional planning that:

(A) Was required in the comprehensive plan or land use regulations at the time of initial acknowledgment or that was agreed to by the city or county in the receipt of state grant funds for review and update; and

(B) Is necessary to make the comprehensive plan or land use regulations comply with the goals.

(4) The department shall notify each local government in writing at least 180 days before the

date established by the commission for periodic review of the local government plan and land use regulations. The notice shall:

(a) Notify the local government of its responsibility to conduct a review of its plan and regulations to determine whether the factors listed in subsection (3) of this section apply, and to submit a proposed review order to the department not later than the date established by the commission for periodic review; and

(b) Advise the local government of:

(A) Any goals adopted, or state-wide land use policies adopted as rules interpreting goals, subsequent to acknowledgment of the local government's plan and regulations;

(B) Any applicable state agency plan or program described in paragraph (c) of subsection (3) of this section; and

(C) Any additional planning responsibilities as described in paragraph (d) of subsection (3) of this section.

(5) The local government shall conduct a review of its plan and regulations and, on or before the date set by the commission, shall submit its proposed review order to the department. The local government shall notify the department of the date set for final hearing on the proposed order, which shall be at least 90 days after the date the proposed order is submitted to the department. The proposed review order shall be accompanied by:

(a) Findings that none of the factors in paragraphs (a) to (d) of subsection (3) of this section apply and the comprehensive plan and land use regulations continue to be in compliance with the goals and coordinated with state agency plans and programs; or

(b) Proposed amendments to the comprehensive plan or land use regulations or proposed new land use regulations that the local government finds necessary to bring the plan or regulations into compliance with the goals or with state agency plans or programs because of the applicability of one or more of the factors in paragraphs (a) to (d) of subsection (3) of this section.

(6) The director shall mail or otherwise submit notice to persons who have requested notice that the proposal is pending, of their opportunity to participate in the local government's proceedings, and of the times and places where the local government's proposal and accompanying documents may be reviewed.

(7) At least 30 days before the local government's final hearing on the proposed review

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(b) A person who is adversely affected or aggrieved by a commission order issued under ORS 197.251 or 197.647 (4).

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner:

(a) Submitted comments or objections as provided in ORS 197.251 (2); or

(b) Is seeking judicial review as a person adversely affected or aggrieved by the order.

(3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the department, the local government and all persons who filed comments or objections. [1981 c.748 §10; 1983 c.827 §52]

197.705 [1973 c.482 §1; repealed by 1977 c.665 §24]

ECONOMIC DEVELOPMENT

197.707 Legislative intent. It was the intent of the Legislative Assembly in enacting ORS chapters 197, 215 and 227 not to prohibit, deter, delay or increase the cost of appropriate development, but to enhance economic development and opportunity for the benefit of all citizens. [1983 c.827 §16]

197.710 [1973 c.482 §3; repealed by 1977 c.665 §24]

197.712 Commission duties; comprehensive plan provisions; public facility plans; state agency coordination plans; compliance deadline. (1) In addition to the findings and policies set forth in ORS 197.005, 197.010 and 215.243, the Legislative Assembly finds and declares that, in carrying out statewide comprehensive land use planning, the provision of adequate opportunities for a variety of economic activities throughout the state is vital to the health, welfare and prosperity of all the people of the state.

(2) By the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules, the commission shall implement all of the following:

(a) Comprehensive plans shall include an analysis of the community's economic patterns, potentialities, strengths and deficiencies as they relate to state and national trends.

(b) Comprehensive plans shall contain policies concerning the economic development opportunities in the community.

(c) Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and

service levels for industrial and commercial uses consistent with plan policies.

(d) Comprehensive plans and land use regulations shall provide for compatible uses on or near sites zoned for specific industrial and commercial uses.

(e) A city or county shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. The public facility plan shall include rough cost estimates for public projects needed to provide sewer, water and transportation for the land uses contemplated in the comprehensive plan and land use regulations. Project timing and financing provisions of public facility plans shall not be considered land use decisions.

(f) In accordance with ORS 197.180, state agencies that provide funding for transportation, water supply, sewage and solid waste facilities shall identify in their coordination programs how they will coordinate that funding with other state agencies and with the public facility plans of cities and counties. In addition, state agencies that issue permits affecting land use shall identify in their coordination programs how they will coordinate permit issuance with other state agencies and cities and counties.

(g) Local governments shall provide:

(A) Reasonable opportunities to satisfy local and rural needs for residential and industrial development and other economic activities on appropriate lands outside urban growth boundaries, in a manner consistent with conservation of the state's agricultural and forest land base; and

(B) Reasonable opportunities for urban residential, commercial and industrial needs over time through changes to urban growth boundaries.

(3) A comprehensive plan and land use regulations shall be in compliance with this section by the first periodic review of that plan and regulations under ORS 197.640. [1983 c.827 §17]

197.715 [1973 c.482 §2; repealed by 1977 c.665 §24]

197.717 Technical assistance by state agencies; information from Economic Development Department; model ordinances. (1) State agencies shall provide technical assistance to local governments in:

(a) Planning and zoning adequate in amount, size, topography, transportation access and surrounding land use and public facilities for the special needs of various industrial and commercial uses;

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(b) Prepare and submit to the commission a report addressing the standards of ORS 197.640 (3), the local government's final review order and any objections filed with the director, together with a recommendation for approval or for an order requiring amendments to the plan or regulations or adoption of new regulations.

(2) The director shall notify the local government and any objectors of the action taken under this section. Any objector may appeal to the commission the director's order terminating periodic review within 30 days following the mailing of notice by the director under this subsection. In any appeal under this subsection, the director shall prepare and submit a report in the manner provided in paragraph (b) of subsection (1) of this section. [1983 c.827 §11d]

197.647 Commission review; notice; procedures; rules; scope of review; simplified periodic review. (1) Within 60 days following the submittal of a report under ORS 197.645 (1)(b), or within such other time as may be stipulated by all the parties, the commission shall issue a final order in accordance with subsection (4) of this section.

(2) Commission review of a final review order shall be conducted as follows:

(a) Upon completion of the director's report and at least 20 days before the commission meeting at which the review of the final review order is to be considered, the director shall afford the local government and persons who submitted objections a reasonable opportunity to review the director's report and the objections and to submit written exceptions to the report and the objections.

(b) The local government and persons who submitted objections shall be afforded reasonable written notice of the time and place of the commission's review.

(c) In its review of the final review order, the commission shall provide for oral argument from the director, the local government and persons who filed objections.

(d) The commission's review of the final review order shall be confined to the record, which shall consist of:

(A) Any objections to the final review order filed with the director under ORS 197.643;

(B) The final review order, including findings, the text of any amendments or new regulations and other materials submitted by the local government;

(C) The acknowledged comprehensive plan and land use regulations of the local government; and

(D) The director's report, the written exceptions filed to the director's report and the oral arguments.

(3) The commission may adopt rules for the conduct of the review described in subsection (2) of this section.

(4) At the conclusion of the review under subsection (2) of this section, the commission shall enter an order:

(a) Affirming the final review order of the local government and terminating periodic review if the commission finds the final review order adequately responds to the applicable standards of ORS 197.640 (3); or

(b) Requiring the local government to amend its acknowledged comprehensive plan and land use regulations to adequately respond to the standards of ORS 197.640 (3).

(5) An order under paragraph (b) of subsection (4) of this section shall specify a reasonable time for the local government to bring its comprehensive plan and land use regulations into compliance with the commission's order.

(6) The director shall notify the Real Estate Division, the local government and all persons who filed comments or objections of the commission's order.

(7) Notwithstanding the requirements of ORS 197.640 (4) to (8) and 197.643 to 197.647, the commission shall adopt rules establishing a simplified and expedited periodic review procedure for:

(a) Cities with a population under 2,500 within the urban growth boundary;

(b) Counties with a population under 5,000; and

(c) Counties within which there are no cities with a population over 2,500 within the urban growth boundary. [1983 c.827 §11e]

197.649 Fees for notice; establishment by rules. The commission may establish by rule fees to cover the cost of notice given to persons by the director under ORS 197.610 (1), 197.615 (3), 197.640 (6) and 197.641 (3). [1983 c.827 §11f; 1985 c.565 §28]

197.650 Appeal to Court of Appeals; standing; petition content and service. (1) A commission order may be appealed to the Court of Appeals in the manner provided in ORS 183.482 by the following persons:

(a) A person who submitted comments or objections pursuant to ORS 197.251 (2) and is appealing a commission order issued under ORS 197.251; or

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to 197.647, "compliance with the goals" means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. [1983 c.827 §14]

197.750 [1973 c.482 §5; repealed by 1977 c.665 §24]

197.752 Lands available for urban development. (1) Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards.

(2) Notwithstanding subsection (1) of this section, lands not needed for urban uses during the planning period may be designated for agricultural, forest or other nonurban uses. [1983 c.827 §19]

197.755 [1973 c.482 §9; repealed by 1977 c.665 §24]

197.757 Acknowledgment deadline for newly incorporated cities. Cities incorporated after January 1, 1982, shall have their comprehensive plans and land use regulations acknowledged under ORS 197.251 no later than four years after the date of incorporation. [1983 c.827 §13]

197.760 [1973 c.482 §9a; repealed by 1977 c.665 §24]

197.765 [1973 c.482 §2a; repealed by 1977 c.665 §24]

197.775 [1973 c.482 §11; repealed by 1977 c.665 §24]

197.780 [1973 c.482 §12; repealed by 1977 c.665 §24]

197.785 [1973 c.482 §13; repealed by 1977 c.665 §24]

197.790 [1973 c.482 §14; repealed by 1977 c.665 §24]

197.795 [1973 c.482 §10; repealed by 1977 c.665 §24]

LAND USE BOARD OF APPEALS

197.805 Policy on review of land use decisions. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting ORS 197.805 to 197.855 to accomplish these objectives. [1979 c.772 §1a; 1983 c.827 §28]

197.810 Land Use Board of Appeals; appointment and removal of members; qualifications. (1) There is hereby created a Land Use Board of Appeals consisting of not more than three members appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The board shall consist of a chief hearings referee chosen by the referees and such other referees as the Governor considers necessary. The members

of the board first appointed by the Governor shall be appointed by the Governor to serve for a term beginning November 1, 1979, and ending July 1, 1983. The salaries of the members shall be fixed by the Governor unless otherwise provided for by law. The salary of a member of the board shall not be reduced during the period of service of the member.

(2) The Governor may at any time remove any member of the board for inefficiency, incompetence, neglect of duty, malfeasance in office or unfitness to render effective service. Before such removal the Governor shall give the member a copy of the charges against the member and shall fix the time when the member can be heard in defense against the charges, which shall not be less than 10 days thereafter. The hearing shall be open to the public and shall be conducted in the same manner as a contested case under ORS 183.310 to 183.550. The decision of the Governor to remove a member of the board shall be subject to judicial review in the same manner as provided for review of contested cases under ORS 183.480 to 183.550.

(3) Referees appointed under subsection (1) of this section shall be members in good standing of the Oregon State Bar. [1979 c.772 §2; 1983 c.827 §28a]

197.815 Office location. The principal office of the board shall be in the state capital, but the board may hold hearings in any county or city in order to provide reasonable opportunities to parties to appear before the board with as little inconvenience and expense as is practicable. Upon request of the board, the county or city governing body shall provide the board with suitable rooms for hearings held in that city or county. [1983 c.827 §29]

197.820 Duty to conduct review proceedings; authority to issue orders. (1) The board shall conduct review proceedings upon petitions filed in the manner prescribed in ORS 197.830.

(2) In conducting review proceedings the members of the board may sit together or separately as the chief hearings referee shall decide.

(3) The chief hearings referee shall apportion the business of the board among the members of the board. Each member shall have the power to hear and issue orders on petitions filed with the board and on all issues arising under those petitions.

(4) The board shall adopt rules governing the conduct of review proceedings brought before it under ORS 197.830 to 197.845. [1979 c.772 §2a; 1983 c.827 §28b]

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- (b) Developing public facility plans; and
- (c) Streamlining local permit procedures.

(2) The Economic Development Department shall provide a local government with "state and national trend" information to assist in compliance with ORS 197.712 (2)(a).

(3) The commission shall develop model ordinances to assist local governments in streamlining local permit procedures. [1983 c.827 §18]

197.725 [1973 c.482 §4; repealed by 1977 c.665 §24]

197.730 [1973 c.482 §6; repealed by 1977 c.665 §24]

GOAL EXCEPTIONS

197.732 Goal exceptions; criteria; rules; review. (1) A local government may adopt an exception to a goal when:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas which do not require a new exception cannot reasonably accommodate the use;

(C) 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

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

(2) Compatible, as used in subparagraph (D) of paragraph (c) of subsection (1) of this section, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(3) The commission shall adopt rules establishing under what circumstances particular reasons may or may not be used to justify an exception under subparagraph (A) of paragraph (c) of subsection (1) of this section.

(4) A local government approving or denying a proposed exception shall set forth findings of

fact and a statement of reasons which demonstrate that the standards of subsection (1) of this section have or have not been met.

(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(6) Upon review of a decision approving or denying an exception:

(a) The board or the commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;

(b) The board upon petition, or the commission, shall determine whether the local government's findings and reasons demonstrate that the standards of subsection (1) of this section have or have not been met; and

(c) The board or commission shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards of subsection (1) of this section have or have not been met.

(7) The commission shall by rule establish the standards required to justify an exception to the definition of "needed housing" authorized by ORS 197.303 (3).

(8) As used in this section, "exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with standards under subsection (1) of this section.

(9) An exception acknowledged under ORS 197.251, 197.625 or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, shall continue to be valid and shall not be subject to this section. [1983 c.827 §19a]

197.735 [1973 c.482 §7; repealed by 1977 c.665 §24]

197.740 [1973 c.482 §8; repealed by 1977 c.665 §24]

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197.747 Meaning of "compliance with the goals" for certain purposes. For the purposes of acknowledgment under ORS 197.251 and periodic review under ORS 197.640 and 197.641

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(5) Notwithstanding the provisions of subsection (3) of this section, the board shall reverse or remand a decision adopting a small tract zoning map amendment to an acknowledged land use regulation if the decision does not comply with the goals and:

(a) The amendment applies to land outside an acknowledged urban growth boundary;

(b) The local government has a comprehensive plan that was acknowledged before July 1, 1981; and

(c) The commission has not reviewed the acknowledged comprehensive plan under ORS 197.640.

(6) If the board determines that an amendment described in subsection (5) of this section is consistent with specific related land use policies contained in the acknowledged comprehensive plan or land use regulations or it complies with the goals, the board shall find the amendment in compliance with the goals.

(7) Notwithstanding any other provision of ORS 197.005 to 197.855, the board shall not review a mobile home siting permit, septic tank permit or building permit issued under the state building code as defined in ORS 456.750 for compliance with the goals if the permit is issued:

(a) For land subject to an acknowledged comprehensive plan and land use regulation;

(b) For land included within an urban growth boundary acknowledged under ORS 197.251;

(c) For land within the corporate limits of a city on August 21, 1981;

(d) For land subject to an acknowledged estuarine plan element; or

(e) After June 30, 1983, unless the commission has issued an order under ORS 197.320 requiring a local government to continue to apply the goals to building permits after that date.

(8) In addition to the review under subsections (1) to (7) of this section, the board shall reverse or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

(b) The state agency made a decision that violated the goals.

(9) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds, based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances. If the board does reverse the decision and order the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(10) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 (12), the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (8) of this section.

(11) In reviewing a provision of a comprehensive plan or land use regulation that has also been submitted to the director under ORS 197.641, the board shall not review the plan provision or regulation for compliance with the requirements of ORS 197.640 (3).

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

(13) Subsection (12) of this section does not apply to reverse or remand a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer. [1983 c.827 §§32, 32a; 1985 c.811 §15]

197.840 Exceptions to deadline for final decision. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 (12):

(a) Any period of delay resulting from the board deferring all or part of its consideration of a petition for review of a land use decision that allegedly violates the goals if the decision involves:

(A) A comprehensive plan or land use regulation submitted for acknowledgment under ORS 197.251; or

(B) A comprehensive plan or land use regulations that have been submitted for review under ORS 197.640.

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197.825 Jurisdiction of board; limitations; effect on circuit court jurisdiction.

(1) Except as provided in subsections (2) and (3) of this section, the board shall have exclusive jurisdiction to review any land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

(2) The jurisdiction of the board:

(a) Is limited to those cases in which the petitioner has exhausted all remedies available by right before petitioning the board for review;

(b) Is subject to the provisions of ORS 197.850 relating to judicial review by the Court of Appeals;

(c) Does not include those matters over which the Land Conservation and Development Commission has review authority under ORS 197.005 to 197.455; and

(d) Does not include those land use decisions of a state agency over which the Court of Appeals has jurisdiction for initial judicial review under ORS 183.400, 183.482 or other statutory provisions.

(3) The provisions of paragraph (a) of subsection (2) of this section do not affect the authority of the board to decide issues not raised in the local government proceedings.

(4) Notwithstanding subsection (1) of this section, the circuit courts of this state retain jurisdiction:

(a) To grant declaratory, injunctive or mandatory relief in proceedings arising from decisions described in ORS 197.015 (10)(b) or proceedings brought to enforce the provisions of an adopted comprehensive plan or land use regulations; and

(b) To enforce orders of the board in appropriate proceedings brought by the board or a party to the board proceeding resulting in the order. [1983 c.827 §30]

197.830 Review procedures; standing; deadlines; attorney fees and costs; publication of orders. (1) Review of land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620 (1), a person may petition the board for review of a legislative land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Is aggrieved or has interests adversely affected by the decision.

(3) Except as provided in ORS 197.620 (1), a person may petition the board for review of a quasi-judicial land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section;

(b) Appeared before the local government, special district or state agency orally or in writing; and

(c) Meets one of the following criteria:

(A) Was entitled as of right to notice and hearing prior to the decision to be reviewed; or

(B) Is aggrieved or has interests adversely affected by the decision.

(4) For purposes of subsections (2), (3) and (5) of this section, the word "person" shall include the Land Conservation and Development Commission or its designate.

(5) Within a reasonable time after a petition for review has been filed with the board, any person may intervene in and be made a party to the review proceeding upon a showing of compliance with subsection (2) or (3) of this section.

(6) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due.

(7) A notice of intent to appeal a land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. Copies of the notice shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$50 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (8) and (9) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(8) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record.

(9) A petition for review of the land use decision and supporting brief shall be filed with

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(b) Any period of delay resulting from a motion, including but not limited to, a motion disputing the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record.

(c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member's own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

(2) No period of delay resulting from a continuance granted by the board under paragraph (d) of subsection (1) of this section shall be excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 77 days. The factors the board shall consider in determining whether to grant a continuance under paragraph (d) of subsection (1) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 77-day time limit.

(3) No continuance under paragraph (d) of subsection (1) of this section shall be granted because of general congestion of the board calendar or lack of diligent preparation or attention to the case by any member of the board or any party.

(4) The board may defer all or part of its consideration of a land use decision described in paragraph (a) of subsection (1) of this section until the commission has disposed of the acknowledgment or periodic review proceeding described in subparagraph (A) or (B) of paragraph (a) of subsection (1) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation or land use decision under ORS 197.845. [1983 c.827 §33]

197.845 Stay of land use decision being reviewed; criteria; undertaking; conditions; limitations. (1) Upon application of the petitioner, the board may grant a stay of a land use decision under review if the petitioner demonstrates:

(a) A colorable claim of error in the land use decision under review; and

(b) That the petitioner will suffer irreparable injury if the stay is not granted.

(2) If the board grants a stay of a quasi-judicial land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 (7). The board may impose other reasonable conditions such as requiring the petitioner to file all documents necessary to bring the matter to issue within specified reasonable periods of time.

(3) If the board affirms a quasi-judicial land use decision for which a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable attorney fees and actual damages resulting from the stay to the person who requested the land use decision from the local government, special district or state agency, against the person requesting the stay in an amount not to exceed the amount of the undertaking.

(4) The board shall limit the effect of a stay of a legislative land use decision to the geographic area or to particular provisions of the legislative decision for which the petitioner has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this section. The board may impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or other undertaking or a requirement that the petitioner file all documents necessary to bring the matter to issue within a specified reasonable time period. [1983 c.827 §34]

197.850 Judicial review of board order; procedures; scope of review; undertaking. (1) Any party to a proceeding before the Land Use Board of Appeals under ORS 197.830 to 197.845 may seek judicial review of a final order issued in those proceedings.

(2) Notwithstanding the provisions of ORS 183.480 to 183.550, judicial review of orders issued under ORS 197.830 to 197.845 shall be solely as provided in this section.

(3) Jurisdiction for judicial review of proceedings under ORS 197.830 to 197.845 is confer-

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the board as required by the board under subsection (10) of this section. The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(10) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(11) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record. In the case of disputed allegations of unconstitutionality of the decision, standing, *ex parte* contacts or other procedural irregularities not shown in the record which, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the local government, special district or state agency for which there is substantial evidence in the whole record.

(12) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(13)(a) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The deposit required by subsection (7) of this section shall be applied to any costs charged against the petitioner.

(b) The board may also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded, and primarily for a purpose other than to secure appropriate action by the board.

(14) Orders issued under this section may be enforced in appropriate judicial proceedings.

(15) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board. The board shall provide the publisher with a list of those public officers who shall receive the publications with-

out charge. The board shall determine the sale prices, and all moneys collected or received from sales shall be paid into the Board Publications Account established by ORS 197.832.

(16) Except for those sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund. [1983 c.827 §31; 1985 c.119 §3]

197.832 Board Publications Account.

The Board Publications Account is established in the General Fund. All moneys in the account are appropriated continuously to the Land Use Board of Appeals to be used for paying expenses incurred by the board under ORS 197.830 (15). Disbursements of moneys from the account shall be approved by the chief referee of the board. [1985 c.119 §5]

197.835 Scope of review. (1) The board shall review the land use decision and prepare a final order affirming, reversing or remanding the land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision that is not affirmed.

(2) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals.

(3) The board shall reverse or remand a land use decision subject to an acknowledged comprehensive plan and land use regulations if the decision is not consistent with the acknowledged comprehensive plan and land use regulations.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, the board shall reverse or remand a decision to adopt an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation if the amendment or new regulation does not comply with the goals. The board shall find an amendment or new land use regulation in compliance with the goals, if:

(a) The board determines that the amendment to an acknowledged land use regulation or the new land use regulation is consistent with specific related land use policies contained in the acknowledged comprehensive plan; or

(b) The amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, on the whole, comply with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.

197.855**MISCELLANEOUS MATTERS**

existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 91-day time limit.

(4) No continuance under paragraph (b) of subsection (2) of this section shall be granted

because of general congestion of the court calendar or lack of diligent preparation or attention to the case by any member of the court or any party.

[1983 c.827 §35a]

COMPREHENSIVE LAND USE PLANNING COORDINATION 197.855

red upon the Court of Appeals. Proceedings for review shall be instituted by filing a notice of intent to appeal in the Court of Appeals. The notice shall be filed within 21 days following the date the board delivered or mailed the order upon which the notice is based.

(4) The notice shall state the nature of the order the petitioner desires reviewed. Copies of the notice shall be served by registered or certified mail upon the board, and all other parties of record in the board proceeding.

(5) Within seven days after service of the notice, the board shall transmit to the court the original or a certified copy of the entire record of the proceeding under review, but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable. Except as specifically provided in this subsection, the cost of the record shall not be taxed to the petitioner or any intervening party. However, the court may tax such costs and the cost of transcription of record to a party filing a frivolous petition for review.

(6) Petitions and briefs shall be filed within time periods and in a manner established by the Court of Appeals by rule.

(7) Within 42 days of the date of transmittal of the record, the court shall hear oral argument on the petition.

(8) Review of an order issued under ORS 197.830 to 197.845 shall be confined to the record. The court shall not substitute its judgment for that of the board as to any issue of fact.

(9) The court may affirm, reverse or remand the order. The court shall reverse or remand the order only if it finds:

(a) The order to be unlawful in substance or procedure, but error in procedure shall not be cause for reversal or remand unless the court shall find that substantial rights of the petitioner were prejudiced thereby;

(b) The order to be unconstitutional; or

(c) The order is not supported by substantial evidence in the whole record as to facts found by the board under ORS 197.830 (11).

(10) The Court of Appeals shall issue a final order on the petition for review with the greatest possible expediency.

(11) If the order of the board is remanded by the Court of Appeals or the Supreme Court, the

board shall respond to the court's mandate within 30 days.

(12) A party shall file with the board an undertaking with one or more sureties insuring that the party will pay all costs, disbursements and attorney fees awarded against the party by the Court of Appeals if:

(a) The party appealed a decision of the board to the Court of Appeals; and

(b) In making the decision being appealed to the Court of Appeals, the board awarded attorney fees and expenses against that party under ORS 197.830 (13)(b).

(13) The undertaking required in subsection (12) of this section shall be filed with the board and served on the opposing parties within 10 days after the date the notice of intent to appeal was filed with the Court of Appeals. [1983 c.827 §35]

197.855 Deadline for final court order; exceptions. (1) The Court of Appeals shall issue a final order on a petition for review filed under ORS 197.850 within 91 days after oral argument on the petition.

(2) The following periods of delay shall be excluded from the 91-day period within which the court must issue a final order on a petition:

(a) Any period of delay resulting from a motion properly before the court; or

(b) Any reasonable period of delay resulting from a continuance granted by the court on the court's own motion or at the request of one of the parties, if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 91 days.

(3) No period of delay resulting from a continuance granted by the court under paragraph (b) of subsection (2) of this section shall be excludable under this section unless the court sets forth, in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 91 days. The factors the court shall consider in determining whether to grant a continuance under paragraph (b) of subsection (2) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the

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215.615 Application and contents of housing ordinances

CROSS REFERENCES

- Advertising signs, regulation, Ch. 377
- Airport zoning, Ch. 492
- Airport Zoning Act, 492.510 to 492.710
- Assessment of open space lands for ad valorem taxation, 308.740 to 308.790
- Assistance in planning, 184.160, 351.260
- Buildings, public and government, requirements for use by handicapped, 447.210 to 447.280
- City planning and zoning, Ch. 227
- City zoning ordinances, application, 227.286
- Construction and land development moratorium; standards and procedures, 197.505 to 197.540
- Cooperation of state agencies with county housing authority, 456.315
- County assessor to notify planning director of change in tax lot lines, 308.210
- County forests and parks, 275.320 to 275.370
- County plumbing work standards, 447.080
- County road rights of way, permission to build on, 374.305
- Economic development plan, 280.500
- Farmland, zoned and unzoned, special assessment rules, 308.345 to 308.406
- Fire laws and regulations, exemption granted by State Fire Marshal, 476.030
- Forest land, conversion to nonforest use not prevented by Oregon Forest Practices Act, 527.730
- Forest practices as nuisance; exceptions; remedies, 527.800 to 527.810
- Housing conditions, power of county housing authority to investigate and make recommendations, 456.125
- Housing projects as subject to local laws and regulations, 456.150
- Land Conservation and Development Commission, compliance acknowledgment for county comprehensive plan and zoning, effect, 197.251
- Land Use Board of Appeals, 197.805 to 197.855
- Local government forest operation not to interfere with county planning duties, 527.726
- Pedestrian malls, 376.705 to 376.825
- Planning coordination and planning districts, Ch. 197
- Plans to bear stamp of registered architect, 671.025
- Procedure for submitting question whether city or county public official required to file statement of economic interest, 244.201
- Property held under lease or lease-purchase by institution, organization or public body other than state, 307.112
- Reclamation of mining lands, effect upon local zoning laws or ordinances, 517.780
- Recreation facilities, cooperation with State Recreation Director, 390.140
- Residential home for handicapped persons, zoning status, 443.600
- Review of subdivisions authorized, 92.215
- Service facilities, master plans and districts, Ch. 451
- Structures of public assembly, approving certain plans for, 456.975
- Subdivisions and partitions, appeals, jurisdiction, duties, procedure, authority, review, 92.010 to 92.170, 92.205 to 92.285
- Urban renewal and redevelopment of blighted areas, Ch. 457
- Willamette River Greenway, 390.310 to 390.368
- Wreckers, motor vehicle, regulation, limit on location and size, 822.140

215.050

Land use regulations in soil conservation districts, 568.630

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Ordinances, certain retroactive prohibited, 92.285

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Approval of subdivision plats in unincorporated area, 227.110

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Agricultural land, assessment and taxation, 308.345 to 308.406

Condemnation by Fish and Wildlife Commission of land used for farm use prohibited, 496.154

Qualifications for farmland not in area zoned for farm use, 308.372

215.213

Residential home for handicapped persons as permitted use, 443.600

Chapter 215

1985 REPLACEMENT PART

County Planning; Zoning; Housing Codes

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face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The county governing body shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:

(a) The orientation of new streets, lots and parcels;

(b) The placement, height, bulk and orientation of new buildings;

(c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

(2) The Department of Energy shall actively encourage and assist county governing bodies' efforts to protect and provide for solar access.

(3) As used in this section, "solar heating hours" means those hours between three hours before and three hours after the sun is at its highest point above the horizon on December 21. [1981 c.722 §2]

215.046 [1973 c.552 §11; repealed by 1977 c.766 §16]

215.047 Effect of comprehensive plan and land use regulations on solar access ordinances. Solar access ordinances shall not be in conflict with acknowledged comprehensive plans and land use regulations. [1981 c.722 §3]

215.050 Comprehensive planning, zoning and subdivision ordinances. (1) The county governing body shall adopt and may from time to time revise a comprehensive plan and zoning, subdivision and other ordinances applicable to all of the land in the county. The plan and related ordinances may be adopted and revised part by part or by geographic area.

(2) Zoning, subdivision or other ordinances or regulations and any revisions or amendments thereof shall be designed to implement the adopted county comprehensive plan. [Amended by 1955 c.439 §2; 1963 c.619 §3; 1973 c.552 §4; 1977 c.766 §2; 1981 c.748 §41]

215.055 [1955 c.439 §3; 1963 c.619 §4; 1971 c.13 §2; 1971 c.739 §1; 1973 c.80 §43; 1975 c.153 §1; repealed by 1977 c.766 §16]

215.060 Procedure for action on plan; notice; hearing. Action by the governing body of a county regarding the plan shall have no legal effect unless the governing body first conducts one or more public hearings on the plan and unless 10 days' advance public notice of each of the hearings is published in a newspaper of gen-

eral circulation in the county or, in case the plan as it is to be heard concerns only part of the county, is so published in the territory so concerned and unless a majority of the members of the governing body approves the action. The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television. [Amended by 1963 c.619 §5; 1967 c.589 §1; 1973 c.552 §6]

215.070 [Repealed by 1963 c.619 §16]

215.080 Power to enter upon land. The commission, and any of its members, officers and employes, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain the necessary monuments and markers thereon.

215.090 Information made available to commission. Public officials, departments and agencies, having information, maps or other data deemed by the planning commission pertinent to county planning shall make such information available for the use of the commission. [Amended by 1977 c.766 §3]

215.100 Cooperation with other agencies. The county planning commission shall advise and cooperate with other planning commissions within the state, and shall upon request, or on its own initiative, furnish advice or reports to any city, county, officer or department on any problem comprehended in county planning.

215.104 [1955 c.439 §4; 1963 c.619 §6; 1967 c.589 §2; 1973 c.552 §7; repealed by 1977 c.766 §16]

215.108 [1955 c.439 §5; 1961 c.607 §1; repealed by 1963 c.619 §16]

215.110 Recommendation of ordinances to implement plan; content; enactment; referral; retroactivity prohibited.

(1) A planning commission may recommend to the governing body ordinances intended to implement part or all of the comprehensive plan. The ordinances may provide, among other things, for:

(a) Zoning;

(b) Official maps showing the location and dimensions of, and the degree of permitted access to, existing and proposed thoroughfares, easements and property needed for public purposes;

(c) Preservation of the integrity of the maps by controls over construction, by making official maps parts of county deed records, and by other action not violative of private property rights;

(d) Conservation of the natural resources of the county;

(e) Controlling subdivision and partitioning of la.

COUNTY PLANNING; ZONING; HOUSING CODES**215.044****COUNTY PLANNING**

215.010 Definitions for ORS chapter 215. As used in ORS chapter 215, the terms defined in ORS 92.010 shall have the meanings given therein, except that "parcel":

(1) Includes a unit of land created:

(a) By partitioning land as defined in ORS 92.010;

(b) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(c) By deed or land sales contract, if there were no applicable planning, zoning or partitioning ordinances or regulations.

(2) Does not include a unit of land created solely to establish a separate tax account. [Amended by 1955 c.756 §25; 1963 c.619 §1 (1); 1985 c.717 §4]

215.020 Authority to establish county planning commissions. (1) The governing body of any county may create and provide for the organization and operations of one or more county planning commissions.

(2) This section shall be liberally construed and shall include the authority to create more than one planning commission, or subcommittee of a commission, for a county or the use of a joint planning commission or other intergovernmental agency for planning as authorized by ORS 190.003 to 190.110. [Amended by 1973 c.552 §1; 1975 c.767 §15]

215.030 Membership of planning commission. (1) The county planning commission shall consist of five, seven or nine members appointed by the governing body for four-year terms, or until their respective successors are appointed and qualified; provided that in the first instance the terms of the initial members shall be staggered for one, two, three and four years.

(2) A commission member may be removed by the governing body, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy on the commission shall be filled by the governing body for the unexpired term.

(4) Members of the commission shall serve without compensation other than reimbursement for duly authorized expenses.

(5) Members of a commission shall be residents of the various geographic areas of the county. No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals,

or be members of any partnership or officers or employes of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of occupation, business, trade or profession.

(6) The governing body may designate one or more officers of the county to be nonvoting members of the commission.

(7) Except for subsection (5) of this section, the governing body may provide by ordinance for alternative rules to those specified in this section. [Amended by 1963 c.619 §2; 1973 c.552 §2; 1977 c.766 §1]

215.035 Planning commission member conflict of interest activities. A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: The member or the member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. [1973 c.552 §10]

215.040 [Amended by 1973 c.552 §3; repealed by 1977 c.766 §16]

215.042 County to appoint planning director; term and duties of director. (1) The governing body of each county shall designate an individual to serve as planning director for the county responsible for administration of planning. The governing body shall provide employes as necessary to assist the director in carrying out responsibilities. The director shall be the chief administrative officer in charge of the planning department of the county, if one is created.

(2) The director shall provide assistance, as requested, to the planning commission and shall coordinate the functions of the commission with other departments, agencies and officers of the county that are engaged in functions related to planning for the use of lands within the county.

(3) The director shall serve at the pleasure of the governing body of the county. [1973 c.552 §9]

215.044 Solar access ordinances; purpose; standards. (1) County governing bodies may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south

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(b) A change in the structure or physical improvements of no greater adverse impact to the neighborhood. [Amended by 1961 c.607 §2; 1963 c.577 §4; 1963 c.619 §9; 1969 c.460 §1; 1973 c.503 §2; 1977 c.766 §5; 1979 c.190 §406; 1979 c.610 §1]

215.140 [Repealed by 1963 c.619 §16]

215.150 [Amended by 1955 c.439 §8; repealed by 1963 c.619 §16]

215.160 [Repealed by 1963 c.619 §16]

215.170 Authority of cities in unincorporated area. The powers of an incorporated city to control subdivision and other partitioning of land and to rename thoroughfares in adjacent unincorporated areas shall continue unimpaired by ORS 215.010 to 215.190 and 215.402 to 215.438 until the county governing body that has jurisdiction over the area adopts regulations for controlling subdivision there. Any part of the area subject to the county regulations shall cease to be subject to the two powers of the city, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251. [Amended by 1963 c.619 §10; 1983 c.570 §4]

215.180 [1955 c.439 §6; 1963 c.619 §11; repealed by 1977 c.766 §16]

215.185 Remedies for unlawful structures or land use. (1) In case a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement a comprehensive plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration, or use. When a temporary restraining order is granted in a suit instituted by a person who is not exempt from furnishing bonds or undertakings under ORS 22.010, the person shall furnish undertaking as provided in ORCP 82 A.(1).

(2) The court may allow the prevailing party reasonable attorney fees and expenses in a judicial proceeding authorized by this section that involves a dwelling approved to relieve a temporary hardship. However, if the court allows the plaintiff reasonable attorney fees or expenses, such fees or expenses shall not be charged to the

county if the county did not actively defend itself or the landowner in the proceeding. [1955 c.439 §7; 1963 c.619 §12; 1977 c.766 §6; 1981 c.898 §48; 1983 c.826 §5]

215.190 Violation of ordinances or regulations. No person shall locate, construct, maintain, repair, alter, or use a building or other structure or use or transfer land in violation of an ordinance or regulation authorized by ORS 215.010 to 215.190 and 215.402 to 215.438. [1955 c.439 §9; 1963 c.619 §13]

215.200 [1957 s.s. c.11 §1; renumbered 215.285]

AGRICULTURAL LAND USE**(Exclusive Farm Use Zones)**

215.203 Zoning ordinances establishing exclusive farm use zones; definitions.

(1) Zoning ordinances may be adopted to zone designated areas of land within the county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213 or 215.283. Farm use zones shall be established only when such zoning is consistent with the comprehensive plan.

(2)(a) As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for human use and animal use and disposal by marketing or otherwise. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species. It does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section.

(b) "Current employment" of land for farm use includes:

(A) Land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P. L. 84-540, 70 Stat. 188);

(B) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

(C) Land planted in orchards or other perennials prior to maturity;

(D) Any land constituting a woodlot of less than 20 acres contiguous to and owned by the

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- (f) Renaming public thoroughfares;
- (g) Protecting and assuring access to incident solar energy;
- (h) Protecting and assuring access to wind for potential electrical generation or mechanical application; and
- (i) Numbering property.

(2) The governing body may enact, amend or repeal ordinances to assist in carrying out a comprehensive plan. If an ordinance is recommended by a planning commission, the governing body may make any amendments to the recommendation required in the public interest. If an ordinance is initiated by the governing body, it shall, prior to enactment, request a report and recommendation regarding the ordinance from the planning commission, if one exists, and allow a reasonable time for submission of the report and recommendation.

(3) The governing body may refer to the electors of the county for their approval or rejection an ordinance or amendments thereto for which this section provides. If only a part of the county is affected, the ordinance or amendment may be referred to that part only.

(4) An ordinance enacted by authority of this section may prescribe fees and appeal procedures necessary or convenient for carrying out the purposes of the ordinance.

(5) An ordinance enacted by authority of this section may prescribe limitations designed to encourage and protect the installation and use of solar and wind energy systems.

(6) No retroactive ordinance shall be enacted under the provisions of this section. [Amended by 1963 c.619 §7; 1973 c.696 §22; 1975 c.153 §2; 1977 c.766 §4; 1979 c.671 §2; 1981 c.590 §7]

215.120 [Amended by 1957 c.568 §2; repealed by 1963 c.619 §16]

215.124 [1955 c.683 §§2, 4; 1957 c.568 §3; repealed by 1959 c.387 §1]

215.126 [1955 c.683 §3; 1957 c.568 §1; 1959 c.387 §2; repealed by 1963 c.619 §16]

215.130 Application of ordinances; alteration of nonconforming use. (1) Any legislative ordinance relating to land use planning or zoning shall be a local law within the meaning of, and subject to, ORS 250.155 to 250.235.

(2) An ordinance designed to carry out a county comprehensive plan and a county comprehensive plan shall apply to:

- (a) The area within the county also within the boundaries of a city as a result of extending the boundaries of the city or creating a new city

unless, or until the city has by ordinance or other provision provided otherwise; and

(b) The area within the county also within the boundaries of a city if the governing body of such city adopts an ordinance declaring the area within its boundaries subject to the county's land use planning and regulatory ordinances, officers and procedures and the county governing body consents to the conferral of jurisdiction.

(3) An area within the jurisdiction of city land use planning and regulatory provisions that is withdrawn from the city or an area within a city that disincorporates shall remain subject to such plans and regulations which shall be administered by the county until the county provides otherwise.

(4) County ordinances designed to implement a county comprehensive plan shall apply to publicly owned property.

(5) The lawful use of any building, structure or land at the time of the enactment or amendment of any zoning ordinance or regulation may be continued. Alteration of any such use may be permitted to reasonably continue the use. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. A change of ownership or occupancy shall be permitted.

(6) Restoration or replacement of any use described in subsection (5) of this section may be permitted when the restoration is made necessary by fire, other casualty or natural disaster. Restoration or replacement shall be commenced within one year from the occurrence of the fire, casualty or natural disaster.

(7) Any use described in subsection (5) of this section may not be resumed after a period of interruption or abandonment unless the resumed use conforms with the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.

(8) Any proposal for the alteration of a use under subsection (5) of this section, except an alteration necessary to comply with a lawful requirement, for the restoration or replacement of a use under subsection (6) of this section or for the resumption of a use under subsection (7) of this section shall be considered a contested case under ORS 215.402 (1) subject to such procedures as the governing body may prescribe under ORS 215.412.

(9) As used in this section, "alteration" of a nonconforming use includes:

- (a) A change in the use of no greater adverse impact to the neighborhood; and

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(b) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than required under paragraph (a) of this subsection, if the lot or parcel:

(A) Has produced at least \$10,000 in annual gross farm income in two consecutive calendar years out of the three calendar years before the year in which the application for the dwelling was made or is planted in perennials capable of producing upon harvest an average of at least \$10,000 in annual gross farm income; or

(B) Is a woodlot capable of producing an average over the growth cycle of \$10,000 in gross annual income.

(c) Commercial activities that are in conjunction with farm use.

(d) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(e) Community centers owned and operated by a governmental agency or a nonprofit community organization, hunting and fishing preserves, parks, playgrounds and campgrounds.

(f) Golf courses.

(g) Commercial utility facilities for the purpose of generating power for public use by sale.

(h) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Aeronautics Division.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only

portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) The boarding of horses for profit.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) Dog kennels not described in paragraph (k) of subsection (1) of this section.

(m) Residential homes for handicapped persons, as those terms are defined in ORS 443.580, in existing dwellings.

(n) The propagation, cultivation, maintenance and harvesting of aquatic species.

(o) Home occupations as provided in ORS 215.448.

(p) Transmission towers over 200 feet in height.

(3) A single-family residential dwelling not provided in conjunction with farm use may be established on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by the Agricultural Capability Classification System in use by the United States Department of Agriculture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon written findings showing all of the following:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

(b) The dwelling is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size or location if it can reasonably be put to farm use in conjunction with other land.

(c) Complies with such other conditions as the governing body or its designate considers necessary.

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owner of land specially valued at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use;

(E) Wasteland, in an exclusive farm use zone, dry or covered with water, lying in or adjacent to and in common ownership with a farm use land and which is not currently being used for any economic farm use;

(F) Land under dwellings customarily provided in conjunction with the farm use in an exclusive farm use zone; and

(G) Land under buildings supporting accepted farm practices.

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

(3) "Cultured Christmas trees" means trees:

(a) Grown on lands used exclusively for that purpose, capable of preparation by intensive cultivation methods such as plowing or turning over the soil;

(b) Of a species for which the Department of Revenue requires a "Report of Christmas Trees Harvested" for purposes of ad valorem taxation;

(c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

(d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and disease control, stump culture, soil cultivation, irrigation. [1963 c.577 §2; 1963 c.619 §1(2), (3); 1967 c.386 §1; 1973 c.503 §3; 1975 c.210 §1; 1977 c.766 §7; 1977 c.893 §17a; 1979 c.480 §1; 1981 c.804 §73; 1983 c.826 §18; 1985 c.604 §2]

215.205 [1957 s.s. c.11 §2; renumbered 215.295]

215.210 [Amended by 1955 c.652 §6; renumbered 215.305]

215.213 Permitted uses in exclusive farm use zones. (1) The following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.

(e) A dwelling on real property used for farm use if the dwelling is:

(A) Located on the same lot or parcel as the dwelling of the farm operator; and

(B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(f) Nonresidential buildings customarily provided in conjunction with farm use.

(g) A dwelling customarily provided in conjunction with farm use if the dwelling is on a lot or parcel that is managed as part of a farm operation not smaller than the minimum lot size in a farm zone with a minimum lot size acknowledged under ORS 197.251.

(h) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(i) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(j) One mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(k) The breeding, kenneling and training of greyhounds for racing in any county over 200,000 in population in which there is located a greyhound racing track or in a county of over 200,000 in population contiguous to such a county.

(2) The following uses may be established in any area zoned for exclusive farm use if the use meets reasonable standards adopted by the governing body:

(A) A dwelling in conjunction with farm use or the propagation or harvesting of a forest product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm operation or woodlot:

(A) Consists of 20 or more acres; and

(B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in annual gross income from the crops, livestock or forest products to be raised on the farm operation or woodlot.

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governing body or the planning commission conducts one or more public hearings on the ordinance and unless 10 days' advance public notice of each hearing is published in a newspaper of general circulation in the county or, in case the ordinance applies to only a part of the county, is so published in that part of the county.

(2) The notice provisions of this section shall not restrict the giving of notice by other means, including mail, radio and television.

(3) In effecting a zone change the proceedings for which are commenced at the request of a property owner, the governing body shall in addition to other notice give individual notice of the request by mail to the record owners of property within 250 feet of the property for which a zone change has been requested. The failure of the property owner to receive the notice described shall not invalidate any zone change.

(4) Before enacting at the request of a property owner an ordinance which would change the zone of property which includes all or part of a mobile home park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home park at least 20 days but not more than 40 days before the date of the first hearing on the ordinance. The governing body may require an applicant for such a zone change to pay the costs of such notice. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change. [1963 c.619 §8; 1967 c.589, §3; 1985 c.473 §14]

215.230 [Repealed by 1963 c.619 §16]

215.233 Validity of ordinances and development patterns adopted before September 2, 1963. Nothing in ORS 215.010, 215.030, 215.050, 215.060 and 215.110 to 215.213, 215.223 and this section shall impair the validity of ordinances enacted prior to September 2, 1963. All development patterns made and adopted prior to that time shall be deemed to meet the requirements of ORS 215.010, 215.030, 215.050, 215.060 and 215.110 to 215.213, 215.223 and this section concerning comprehensive plans. [1963 c.619 §14; 1971 c.13 §3; 1985 c.565 §30]

215.236 Establishing nonfarm dwelling in exclusive farm use zone; procedures; disqualification for farm use valuation; additional tax or penalty; requalification.

(1) As used in this section, "dwelling" means a single-family residential dwelling not provided in conjunction with farm use.

(2) The governing body or its designate shall not grant final approval of an application made

under ORS 215.213 (3) or 215.283 (3) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is valued at true cash value for farm use under ORS 308.370 without evidence that the lot or parcel upon which the dwelling is proposed has been disqualified for valuation at true cash value for farm use under ORS 308.370.

(3) The governing body or its designate may grant tentative approval of an application made under ORS 215.213 (3) or 215.283 (3) for the establishment of a dwelling on a lot or parcel in an exclusive farm use zone that is valued at true cash value for farm use under ORS 308.370 upon making the findings required by ORS 215.213 (3) or 215.283 (3). An application for the establishment of a dwelling that has been tentatively approved shall be given final approval by the governing body or its designate upon receipt of evidence that the lot or parcel upon which establishment of the dwelling is proposed has been disqualified for valuation at true cash value for farm use under ORS 308.370.

(4) The owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved as provided by subsection (3) of this section shall, before final approval, simultaneously:

(a) Notify the county assessor that the lot or parcel is no longer being used as farmland; and

(b) Request that the county assessor disqualify the lot or parcel for valuation at true cash value for farm use under ORS 308.370.

(5) When the owner of a lot or parcel upon which the establishment of a dwelling has been tentatively approved notifies the county assessor that the lot or parcel is no longer being used as farmland and requests disqualification of the lot or parcel for valuation at true cash value for farm use, the county assessor shall:

(a) Disqualify the lot or parcel for valuation at true cash value for farm use under ORS 308.370 by removing the special assessment for farm use as provided by ORS 308.397 (1);

(b) Provide the owner of the lot or parcel with written notice of the disqualification for valuation at true cash value for farm use under ORS 308.370; and

(c) Impose the additional tax or penalty, if any, provided by ORS 308.399 or 321.960, whichever is applicable.

(6) The Department of Commerce, a building official, as defined in ORS 456.805 (1), or any other agency or official responsible for the administration and enforcement of the state building

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(4) One single-family dwelling, not provided in conjunction with farm use, may be established in any area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that is not larger than three acres upon written findings showing:

(a) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

(b) If the lot or parcel is located within the Willamette Greenway, a floodplain or a geological hazard area, the dwelling complies with conditions imposed by local ordinances relating specifically to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable; and

(c) The dwelling complies with other conditions considered necessary by the governing body or its designate.

(5) Upon receipt of an application for a permit under subsection (4) of this section, the governing body shall notify:

(a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be established; and

(b) Persons who have requested notice of such applications and who have paid a reasonable fee imposed by the county to cover the cost of such notice.

(6) The notice required in subsection (5) of this section shall specify that persons have 15 days following the date of postmark of the notice to file a written objection on the grounds only that the dwelling or activities associated with it would force a significant change in or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is received, the governing body or its designate shall approve or disapprove the application. If an objection is received, the governing body shall set the matter for hearing in the manner prescribed in ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required by paragraph (a) of subsection (5) of this section to the applicant for the permit requested under subsection (4) of this section.

(7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1, 1948, and July 1, 1983. For the purposes of this section:

(a) Only one lot or parcel exists if:

(A) A lot or parcel described in this section is contiguous to one or more lots or parcels described in this section; and

(B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels or lots and parcels by the same person, spouses or a single partnership or business entity, separately or in tenancy in common.

(b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including but not limited to, lots, parcels or lots and parcels separated only by a public road.

(8) A person who sells or otherwise transfers real property in an exclusive farm use zone may retain a life estate in a dwelling on that property and in a tract of land under and around the dwelling. [1963 c.577 §3; 1963 c.619 §1a; 1969 c.258 §1; 1973 c.503 §4; 1975 c.551 §1; 1975 c.552 §32; 1977 c.766 §8; 1977 c.788 §2; 1979 c.480 §6; 1979 c.773 §10; 1981 c.748 §44; 1983 c.743 §3; 1983 c.826 §6; 1983 c.827 §27b; 1985 c.544 §2; 1985 c.583 §1; 1985 c.604 §3; 1985 c.717 §5; 1985 c.811 §12]

215.214 Effect of solid waste disposal site classification on compliance with agricultural land goals. The Land Conservation and Development Commission and the Land Use Board of Appeals shall not consider the provisions of ORS 215.213 (2)(k) or 215.283 (2)(j) as being consistent with any state-wide planning goal relating to the preservation of agricultural lands for the purpose of exempting a unit of local government from applying that goal to agricultural lands. [1979 c.773 §11; 1983 c.743 §4; 1983 c.826 §10; 1985 c.565 §29]

215.215 Reestablishment of nonfarm use. (1) Notwithstanding ORS 215.130 (4), if a nonfarm use exists in an exclusive farm use zone and is unintentionally destroyed by fire, other casualty or natural disaster, the county may allow by its zoning regulations such use to be reestablished to its previous nature and extent, but the reestablishment shall meet all other building, plumbing, sanitation and other codes, ordinances and permit requirements.

(2) Consistent with ORS 215.243, the county governing body may zone for the appropriate nonfarm use one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the nonfarm use prior to the establishment of the exclusive farm use zone. [1977 c.664 §41]

215.220 [Repealed by 1963 c.619 §16]

215.223 Procedure for adopting zoning ordinances; notice. (1) No zoning ordinance enacted by the county governing body may have legal effect unless prior to its enactment the

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land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283 (2), whichever is applicable, if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

(4) The governing body of a county may approve a division of land in an exclusive farm use zone for a dwelling not provided in conjunction with farm use only if the dwelling has been approved under ORS 215.213 (3) or 215.283 (3), whichever is applicable.

(5) This section shall not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

(6) This section shall not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

(7) The governing body of a county shall not approve any proposed division of a lot or parcel described in ORS 215.213 (1)(e) or 215.283 (1)(e), whichever is applicable.

(8) The governing body of a county may approve a proposed division of land in an exclusive farm use zone to create a parcel with an existing dwelling to be used as a residential home for handicapped persons as defined in ORS 443.580 only if the dwelling has been approved under ORS 215.213 (3) or 215.283 (3), whichever is applicable. [1973 c.503 §9; 1977 c.766 §9; 1979 c.46 §2; 1981 c.748 §48; 1983 c.826 §7; 1985 c.544 §4]

215.270 [Repealed by 1963 c.619 §16]

215.273 Applicability to thermal energy power plant siting determinations.

Nothing in ORS 118.155, 215.130, 215.203, 215.213, 215.243 to 215.273, 215.283, 308.395 to 308.401 and 316.844 is intended to affect the authority of the Energy Facility Siting Council in determining suitable sites for the issuance of site certificates for thermal power plants, as authorized under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930. [1973 c.503 §16; 1983 c.740 §56; 1983 c.826 §19]

215.280 [Repealed by 1963 c.619 §16]

215.283 Alternative uses in exclusive farm use zones. (1) Subject to ORS 215.288, the following uses may be established in any area zoned for exclusive farm use:

(a) Public or private schools, including all buildings essential to the operation of a school.

(b) Churches.

(c) The propagation or harvesting of a forest product.

(d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height.

(e) A dwelling on real property used for farm use if the dwelling is:

(A) Located on the same lot or parcel as the dwelling of the farm operator; and

(B) Occupied by a relative, which means grandparent, grandchild, parent, child, brother or sister of the farm operator or the farm operator's spouse, whose assistance in the management of the farm use is or will be required by the farm operator.

(f) The dwellings and other buildings customarily provided in conjunction with farm use.

(g) Operations for the exploration of geothermal resources as defined by ORS 522.005.

(h) A site for the disposal of solid waste that has been ordered to be established by the Environmental Quality Commission under ORS 459.049, together with equipment, facilities or buildings necessary for its operation.

(i) The breeding, kenneling and training of greyhounds for racing in any county over 200,000 in population in which there is located a greyhound racing track or in a county of over 200,000 in population contiguous to such a county.

(2) Subject to ORS 215.288, the following nonfarm uses may be established, subject to the approval of the governing body or its designate in any area zoned for exclusive farm use:

(a) Commercial activities that are in conjunction with farm use.

(b) Operations conducted for the mining and processing of geothermal resources as defined by ORS 522.005 or exploration, mining and processing of aggregate and other mineral resources or other subsurface resources.

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds.

(d) Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.

(e) Golf courses.

(f) Commercial utility facilities for the purpose of generating power for public use by sale.

(g) Personal-use airports for airplanes and helicopter pads, including associated hangar, maintenance and service facilities. A personal-

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code, as defined in ORS 456.750, shall not issue a building permit for the construction of a dwelling on a lot or parcel in an exclusive farm use zone without evidence that the owner of the lot or parcel upon which the dwelling is proposed to be constructed has paid the additional tax or penalty, if any, imposed by the county assessor under paragraph (c) of subsection (5) of this section.

(7)(a) A lot or parcel described in subsection (2) of this section that has been disqualified for valuation at true cash value for farm use under ORS 308.370 is not eligible on or after the date of disqualification for valuation at true cash value for farm use under ORS 308.370 (1) or (2) except as provided in paragraph (b) of this subsection.

(b) Land described in paragraph (a) of this subsection may become eligible for valuation at true cash value for farm use under ORS 308.370 if the lot or parcel becomes part of a larger unit of land, in single ownership, the remainder of which is valued at true cash value for farm use. [1981 c.748 §46; 1983 c.462 §14; 1983 c.570 §6; 1983 c.826 §23; 1985 c.717 §6; 1985 c.811 §6]

215.240 [Repealed by 1963 c.619 §16]

215.243 Agricultural land use policy.
The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones. [1973 c.503 §1]

215.250 [Repealed by 1973 c.619 §16]

215.253 Restrictive local ordinances affecting farm use zones prohibited; exception. (1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 in a manner that would unreasonably restrict or regulate farm structures or that would unreasonably restrict or regulate accepted farming practices because of noise, dust, odor or other materials carried in the air or other conditions arising therefrom if such conditions do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. "Accepted farming practice" as used in this subsection shall have the meaning set out in ORS 215.203.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state. [1973 c.503 §8; 1983 c.826 §12; 1985 c.565 §31]

215.260 [Amended by 1955 c.652 §3; repealed by 1957 s.s. c.11 §4 (215.261 enacted in lieu of 215.260)]

215.261 [1957 s.s. c.11 §5 (enacted in lieu of 215.260); repealed by 1963 c.619 §16]

215.263 Review of land divisions in exclusive farm use zones; criteria for approval; exemptions. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designate of the county in which the land is situated. The governing body of a county by ordinance shall require such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) The governing body of a county or its designate may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds:

(a) That the proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area; or

(b) The parcels created by the proposed division are not smaller than the minimum lot size acknowledged under ORS 197.251.

(3) The governing body of a county or its designate may approve a proposed division of

215.317**COUNTIES AND COUNTY OFFICERS****215.295** [Formerly 215.205; repealed by 1971 c.13 §1]**215.300** [Repealed by 1963 c.619 §16]**215.305** [Formerly 215.210; repealed by 1971 c.13 §1]**215.310** [Repealed by 1971 c.13 §1]**(Marginal Lands)**

215.317 Permitted uses on marginal land. (1) A county may allow the following uses to be established on land designated as marginal land under ORS 197.247:

(a) Intensive farm or forest operations, including but not limited to "farm use" as defined in ORS 215.203.

(b) Part-time farms.

(c) Woodlots.

(d) One single-family dwelling on a lot or parcel created under ORS 215.327 (1) or (2).

(e) One single-family dwelling on a lot or parcel of any size if the lot or parcel was created before July 1, 1983, subject to subsection (2) of this section.

(f) The nonresidential uses authorized in exclusive farm use zones under ORS 215.213 (1) and (2).

(g) One mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(2) If a lot or parcel described in paragraph (e) of subsection (1) of this section is located within the Willamette Greenway, a floodplain or a geological hazard area, approval of a single-family dwelling shall be subject to local ordinances relating to the Willamette Greenway, floodplains or geological hazard areas, whichever is applicable. [1983 c.826 §3]

215.320 [Repealed by 1971 c.13 §1]**215.325** [1953 c.662 §6; 1963 c.9 §4; repealed by 1971 c.13 §1]

215.327 Divisions of marginal land. A county may allow the following divisions of marginal land:

(1) Divisions of land to create a parcel or lot containing 10 or more acres if the lot or parcel is not adjacent to land zoned for exclusive farm use or forest use or, if it is adjacent to such land, the land qualifies for designation as marginal land under ORS 197.247.

(2) Divisions of land to create a lot or parcel containing 20 or more acres if the lot or parcel is adjacent to land zoned for exclusive farm use and that land does not qualify for designation as marginal land under ORS 197.247.

(3) Divisions of land to create a parcel or lot necessary for those uses authorized by ORS 215.317 (1)(f). [1983 c.826 §4]

215.330 [Repealed by 1971 c.13 §1]

215.337 Review of marginal lands designation; findings of fact. In reviewing a decision of a county approving or denying a marginal land designation under ORS 197.247, the reviewing body shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings. [1983 c.826 §4a]

215.340 [Repealed by 1971 c.13 §1]**215.350** [Amended by 1953 c.662 §7; repealed by 1971 c.13 §1]**215.360** [Amended by 1953 c.662 §7; subsection (2) enacted as 1953 c.662 §1; repealed by 1971 c.13 §1]**215.370** [Repealed by 1971 c.13 §1]**215.380** [Amended by 1955 c.652 §4; repealed by 1971 c.13 §1]**215.390** [Repealed by 1971 c.13 §1]**215.395** [1953 c.662 §3; 1955 c.652 §5; repealed by 1971 c.13 §1]**215.398** [1955 c.652 §2; repealed by 1971 c.13 §1]**215.400** [Repealed by 1971 c.13 §1]**PLANNING AND ZONING HEARINGS AND REVIEW**

215.402 Definitions for ORS 215.402 to 215.438. As used in ORS 215.402 to 215.438 unless the context requires otherwise:

(1) "Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties under general rules or policies provided under ORS 215.010 to 215.213, 215.215 to 215.263, 215.283 to 215.337 and 215.402 to 215.438, or any ordinance, rule or regulation adopted pursuant thereto, are required to be determined only after a hearing at which specific parties are entitled to appear and be heard.

(2) "Hearing" means a quasi-judicial hearing, authorized or required by the ordinances and regulations of a county adopted pursuant to ORS 215.010 to 215.213, 215.215 to 215.263, 215.283 to 215.337 and 215.402 to 215.438:

(a) To determine in accordance with such ordinances and regulations if a permit shall be granted or denied; or

(b) To determine a contested case.

(3) "Hearings officer" means a planning and zoning hearings officer appointed or designated by the governing body of a county under ORS 215.406.

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use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Aeronautics Division in specific instances. A personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Aeronautics Division.

(h) Home occupations as provided in ORS 215.448.

(i) A facility for the primary processing of forest products, provided that such facility is found to not seriously interfere with accepted farming practices and is compatible with farm uses described in ORS 215.203 (2). Such a facility may be approved for a one-year period which is renewable. These facilities are intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products, as used in this section, means timber grown upon a parcel of land or contiguous land where the primary processing facility is located.

(j) The boarding of horses for profit.

(k) A site for the disposal of solid waste approved by the governing body of a city or county or both and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation.

(L) One mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship suffered by the existing resident or a relative of the resident.

(m) Transmission towers over 200 feet in height.

(n) Dog kennels not described in paragraph (i) of subsection (1) of this section.

(o) Residential homes for handicapped persons, as those terms are defined in ORS 443.580, in existing dwellings.

(p) The propagation, cultivation, maintenance and harvesting of aquatic species.

(3) Subject to ORS 215.288, single-family residential dwellings, not provided in conjunction

with farm use, may be established, subject to approval of the governing body or its designate in any area zoned for exclusive farm use upon a finding that each such proposed dwelling:

(a) Is compatible with farm uses described in ORS 215.203 (2) and is consistent with the intent and purposes set forth in ORS 215.243;

(b) Does not interfere seriously with accepted farming practices, as defined in ORS 215.203 (2)(c), on adjacent lands devoted to farm use;

(c) Does not materially alter the stability of the overall land use pattern of the area;

(d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract; and

(e) Complies with such other conditions as the governing body or its designate considers necessary. [1983 c.826 §17; 1985 c.544 §3; 1985 c.583 §2; 1985 c.604 §4; 1985 c.717 §7; 1985 c.811 §7]

215.285 [Formerly 215.200; repealed by 1971 c.13 §1]

215.288 Impact of using marginal lands designation or lot-of-record provisions in exclusive farm use zones. (1) If a county does not amend its comprehensive plan or land use regulations to allow for the designation of marginal land under ORS 197.247 or to allow the establishment of dwellings under ORS 215.213 (4) to (8), the county may apply ORS 215.213 (1) to (3) or 215.283 to land zoned for exclusive farm use under ORS 215.203.

(2) If a county amends its comprehensive plan or land use regulations to allow for the designation of marginal land under ORS 197.247 or to allow the establishment of dwellings under ORS 215.213 (4) to (8), the county shall apply ORS 215.213 (1) to (3) to land zoned for exclusive farm use under ORS 215.203. [1983 c.826 §16; 1985 c.565 §33; 1985 c.811 §8]

215.290 [Repealed by 1963 c.619 §16]

215.293 Dwelling in exclusive farm use zone; condition; declaration. A county governing body or its designate may require as a condition of approval of a single-family dwelling under ORS 215.213 or 215.283 that the landowner for the dwelling sign a statement declaring that the landowner will not in the future complain about accepted farming or forest practices on nearby lands devoted to farm or forest use. [1983 c.826 §11]

Note: 215.293 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 215 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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appellate authority on its own motion may review the action. The procedure and type of hearing for such an appeal or review shall be prescribed by the governing body, but shall not require the notice of appeal to be filed within less than seven days after the date the governing body mails or delivers the decision to the parties.

(b) Notwithstanding paragraph (a) of this subsection, the governing body may provide that the decision of a hearings officer is the final determination of the county.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer or planning commission. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to \$500 plus one-half the actual costs over \$500.

(2) A party aggrieved by the final determination may have the determination reviewed in the manner provided in ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or county governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between county staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer approved under ORS 215.406 (1). [1973 c.522 §§17, 18; 1977 c.766 §13; 1979 c.772 §11; 1981 c.748 §42; 1983 c.656 §1; 1983 c.827 §21]

215.428 Final action on permit or zone change application required within 120 days; exceptions; mandamus authorized.

(1) Except as provided in subsections (3) and (4) of this section, the governing body of a county or its designate shall take final action on an application for a permit or zone change, including resolution of all appeals under ORS 215.422, within 120 days after the application is deemed complete.

(2) If an application for a permit or zone change is incomplete, the governing body or its designate shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designate of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of subsection (1) of this section on the 31st day after the governing body first received the application.

(3) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(4) The 120-day period set in subsection (1) of this section may be extended for a reasonable period of time at the request of the applicant.

(5) The 120-day period set in subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the county.

(6) Notwithstanding subsection (5) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the director under ORS 197.610 (1).

(7) If the governing body of the county or its designate does not take final action on an application for a permit or zone change within 120 days after the application is deemed complete, the applicant may apply in the circuit court of the county where the application was filed for a writ of mandamus to compel the governing body or its designate to issue the approval. The writ shall be issued unless the governing body shows that the approval would violate a substantive provision of the county comprehensive plan or land use regulations as defined in ORS 197.015. [1983 c.827 §23]

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(4) "Permit" means discretionary approval of a proposed development of land under ORS 215.010 to 215.438 or county legislation or regulation adopted pursuant thereto. [1973 c.552 §12; 1977 c.654 §1; 1981 c.748 §49]

215.406 Planning and zoning hearings officers; duties and powers; authority of governing body or planning commission to conduct hearings. (1) A county governing body may authorize appointment of one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. The hearings officer shall conduct hearings on applications for such classes of permits and contested cases as the county governing body designates.

(2) In the absence of a hearings officer a planning commission or the governing body may serve as hearings officer with all the powers and duties of a hearings officer. [1973 c.552 §13; 1977 c.766 §10]

215.410 [Repealed by 1971 c.13 §1]

215.412 Adoption of hearing procedure. The governing body of a county, by ordinance or order shall adopt one or more procedures for the conduct of hearings. [1973 c.552 §14; 1977 c.766 §11]

215.415 [1953 c.662 §5; repealed by 1971 c.13 §1]

215.416 Application for permits; consolidated procedures; hearings; notice; approval criteria; decision without hearing. (1) When required or authorized by the ordinances, rules and regulations of a county, an owner of land may apply in writing to such persons as the governing body designates, for a permit, in the manner prescribed by the governing body. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 215.428. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations under ORS 197.640.

(3) Except as provided in subsection (9) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved if the proposed use of land is found to be in conflict

with the comprehensive plan of the county and other applicable ordinance provisions. The approval may include such conditions as are authorized by statute or county legislation.

(5) Hearings under this section shall be held only after notice to the applicant and also notice to other persons as otherwise provided by law.

(6) Approval or denial of a permit application shall be based on standards and criteria which shall be set forth in the zoning ordinance or other appropriate ordinance or regulation of the county and which shall relate approval or denial of a permit application to the zoning ordinance and comprehensive plan for the area in which the proposed use of land would occur and to the zoning ordinance and comprehensive plan for the county as a whole.

(7) Approval or denial of a permit 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.

(8) Written notice of the approval or denial shall be given to all parties to the proceeding.

(9) The hearings officer, or such other person as the governing body designates, may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision. Notice of the decision shall be given in the same manner as notice of the hearing would have been given if a hearing had been held. An appeal from a hearings officer's decision shall be to the planning commission or governing body of the county. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be a de novo hearing. [1973 c.552 §§15, 16; 1977 c.654 §2; 1977 c.766 §12; 1979 c.772 §10a; 1983 c.827 §20]

215.420 [Amended by 1955 c.439 §10; repealed by 1971 c.13 §1]

215.422 Review of decision of hearings officer or other authority; notice of appeal; establishment of fees; appeal of final decision. (1)(a) A party aggrieved by the action of a hearings officer or other decision making authority may appeal the action to the planning commission or county governing body, or both, however the governing body prescribes. The

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215.510 [1969 c.324 §2; 1973 c.80 §47; repealed by 1977 c.664 §42]

215.513 Notice form; forwarding of notice to property purchaser. (1) A mortgagee, lienholder, vendor or seller of real property who receives a mailed notice required by this chapter shall promptly forward the notice to the purchaser of the property. Each mailed notice required by this chapter shall contain the following statement: "NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER."

(2) Mailed notices to owners of real property required by this chapter shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of a person named in the affidavit to receive the notice shall not invalidate an ordinance. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance. [1977 c.664 §39]

215.515 [1969 c.324 §3; 1973 c.80 §48; repealed by 1977 c.766 §16]

215.520 [1969 c.324 §4; repealed by 1977 c.664 §42]

215.525 [1969 c.324 §6; repealed by 1977 c.664 §42]

215.530 [1969 c.324 §7; repealed by 1977 c.664 §42]

215.535 [1969 c.324 §5; 1973 c.80 §49; repealed by 1977 c.664 §42]

COUNTY HOUSING CODES

215.605 Counties authorized to adopt housing codes. For the protection of the public health, welfare and safety, the governing body of a county may adopt ordinances establishing housing codes for the county, or any portion thereof, except where housing code ordinances are in effect on August 22, 1969, or where such ordinances are enacted by an incorporated city subsequent to August 22, 1969. Such housing code ordinances may adopt by reference published codes, or any portion thereof, and a cer-

tified copy of such code or codes shall be filed with the county clerk of said county. [1969 c.418 §1]

215.610 [1969 c.418 §2; 1979 c.190 §407; repealed by 1983 c.327 §16]

215.615 Application and contents of housing ordinances. The provisions of housing code ordinances authorized by ORS 215.605 and 215.615 shall apply to all buildings or portions thereof used, or designed or intended to be used for human habitation, and shall include, but not be limited to:

(1) Standards for space, occupancy, light, ventilation, sanitation, heating, exits and fire protection.

(2) Inspection of such buildings.

(3) Procedures whereby buildings or portions thereof which are determined to be substandard are declared to be public nuisances and are required to be abated by repair, rehabilitation, demolition or removal.

(4) An advisory and appeals board. [1969 c.418 §3]

215.990 [Subsections (1) and (2) enacted as 1955 c.439 §11; subsection (5) enacted as 1969 c.324 §8; 1971 c.13 §4; repealed by 1977 c.766 §16]

LOTS OF RECORD

Note: Section 10 and subsection (2) of section 13, chapter 884, Oregon Laws 1981, as amended by section 15, chapter 826, Oregon Laws 1983, provide:

Sec. 10. (1) Notwithstanding ORS 197.005 to 197.430, 215.213 and any other provision of law, if at the time a person acquired a lot of record, establishment of a single-family dwelling was a permitted use on that lot of record, a county may not deny that person a permit for a single-family dwelling as a result of zoning, rezoning, adopting or amending a comprehensive plan or changing the text of a zoning code.

(2) This section does not apply to exclusive farm use zones created under ORS 215.203 or land designated as marginal land under section 2 of this 1983 Act. [1981 c.884 §10; 1985 c.826 §15]

Sec. 13. (2) Any building permit issued under section 10 of this Act before July 1, 1985, shall not expire until July 1, 1987. [1981 c.884 §13]

CHAPTERS 216 TO 220
[Reserved for expansion]

COUNTY PLANNING; ZONING; HOUSING CODES**215.508****215.430** [1955 c.682 §2; repealed by 1971 c.13 §1]**PERMITTED USES IN ZONES**

215.438 Transmission towers; location; conditions. The governing body of a county or its designate may allow a transmission tower over 200 feet in height to be established in any zone subject to reasonable conditions imposed by the governing body or its designate. [1983 c.827 §23a]

215.440 [1955 c.682 §3; repealed by 1971 c.13 §1]

215.448 Home occupations; where allowed; conditions; annual review of permits. (1) The governing body of a county or its designate may allow, subject to the approval of the governing body or its designate, the establishment of a home occupation in any zone, including an exclusive farm use or forest zone, that allows residential uses, if the home occupation:

(a) Will be operated by a resident of the property on which the business is located;

(b) Will employ no more than five full or part-time persons;

(c) Will be operated in:

(A) The dwelling; or

(B) Other buildings normally associated with uses permitted in the zone in which the property is located; and

(d) Will not interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located.

(2) The governing body of the county or its designate may establish additional reasonable conditions of approval for the establishment of a home occupation under subsection (1) of this section.

(3) Nothing in this section authorizes the governing body or its designate to permit construction of any structure that would not otherwise be allowed in the zone in which the home occupation is to be established.

(4) The existence of home occupations shall not be used as justification for a zone change.

(5) A governing body of a county or its designate shall review a permit allowing a home occupation under subsection (1) of this section every 12 months following the date the permit was issued and may continue the permit if the home occupation continues to comply with the requirements of this section. [1983 c.743 §2]

215.450 [1955 c.682 §4; repealed by 1971 c.13 §1]**215.460** [1963 c.619 §15; repealed by 1971 c.13 §1]**NOTICE TO PROPERTY OWNERS**

215.503 Legislative act by ordinance; mailed notice to individual property owners required by county for land use actions. (1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) Except as otherwise provided by county charter:

(a) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by the governing body of a county shall be by ordinance.

(b) In addition to the notice required by ORS 215.060, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof or to adopt a new comprehensive plan, the governing body of a county shall cause a written individual notice of land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(c) In addition to the notice required by ORS 215.223 (1), at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, the governing body of a county shall cause a written individual notice of land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(3) An additional individual notice of land use change required by paragraph (b) or (c) of subsection (2) of this section shall be approved by the governing body of the county and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall be mailed by first class mail to the affected owner at the address shown on the last available complete tax assessment roll. [1977 c.664 §37]

215.505 [1969 c.324 §1; repealed by 1977 c.664 §42]

215.508 Individual notice not required if funds not available. Except as otherwise provided by county charter, if funds are not available from the Department of Land Conservation and Development to reimburse a county for expenses incurred in giving additional individual notices of land use change as provided in ORS 215.503, the governing body of the county is not required to give those additional notices. [1977 c.664 §38]

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Chapter 227**1985 REPLACEMENT PART****City Planning and Zoning**

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(h) Do and perform all other acts and things necessary or proper to carry out the provisions of ORS 227.010 to 227.170, 227.175 and 227.180.

(i) Study and propose such measures as are advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and of the area within six miles thereof.

(2) For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters of at least eight miles per hour. [Amended by 1975 c.153 §3; 1975 c.767 §4; 1979 c.671 §3; 1981 c.590 §8]

227.095 Definitions for ORS 227.100 and 227.110. As used in ORS 227.100 and 227.110, "subdivision" and "plat" have the meanings given those terms in ORS 92.010. [1955 c.756 §28]

227.100 Submission of plats for subdivisions and plans for street alterations and public buildings to commission; report.

All subdivision plats located within the city limits, and all plans or plats for vacating or laying out, widening, extending, parking and locating streets or plans for public buildings shall first be submitted to the commission by the city engineer or other proper municipal officer, and a report thereon from the commission secured in writing before approval is given by the proper municipal official. [Amended by 1955 c.756 §26]

227.110 City approval required prior to recording of subdivision plats and plats or deeds dedicating land to public use within six miles of city; exception. (1) All subdivision plats and all plats or deeds dedicating land to public use in that portion of a county within six miles outside the limits of any city shall first be submitted to the city planning commission or, if no such commission exists, to the city engineer of the city and approved by the commission or engineer before they shall be recorded. However, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251, if the county governing body has adopted ordinances or regulations for subdivision and major partition control under ORS 92.044, land within the six-mile limit shall be under the jurisdiction of the county for those purposes.

(2) It shall be unlawful to receive or record such plan, plat or replat or deed in any public office unless the same bears thereon the approval, by indorsement, of such commission or city engineer. However, the indorsement of the commission or city engineer of the city with boundaries nearest the land such document affects shall satisfy the requirements of this section in case the boundaries of more than one city are within six miles of the property so mapped or described. If the governing bodies of such cities mutually agree upon a boundary line establishing the limits of the jurisdiction of the cities other than the line equidistant between the cities and file the agreement with the recording officer of the county containing such boundary line, the boundary line mutually agreed upon shall become the limit of the jurisdiction of each city until superseded by a new agreement between the cities or until one of the cities files with such recording officer a written notification stating that the agreement shall no longer apply. [Amended by 1955 c.756 §27; 1983 c.570 §5]

227.120 Procedure and approval for renaming streets. Within six miles of the limits of any city, the commission, if there is one, or if no such commission legally exists, then the city engineer, shall recommend to the city council the renaming of any existing street, highway or road, other than a county road or state highway, if in the judgment of the commission, or if no such commission legally exists, then in the judgment of the city engineer, such renaming is in the best interest of the city and the six mile area. Upon receiving such recommendation the council shall afford persons particularly interested, and the general public, an opportunity to be heard, at a time and place to be specified in a notice of hearing published in a newspaper of general circulation within the municipality and the six mile area not less than once within the week prior to the week within which the hearing is to be held. After such opportunity for hearing has been afforded, the city council by ordinance shall rename the street or highway in accordance with the recommendation or by resolution shall reject the recommendation. A certified copy of each such ordinance shall be filed for record with the county clerk or recorder, and a like copy shall be filed with the county assessor and county surveyor. The county surveyor shall enter the new names of such streets and roads in red ink on any filed plat and tracing thereof which may be affected, together with appropriate notations concerning the same.

227.130 [Repealed by 1975 c.767 §16]

227.140 [Repealed by 1975 c.767 §16]

CITY PLANNING COMMISSION

227.010 Definition for ORS 227.030 to 227.300. As used in ORS 227.030 to 227.300, "council" means a representative legislative body. [Amended by 1975 c.767 §1]

227.020 Authority to create planning commission. (1) A city may create a planning commission for the city and provide for its organization and operations.

(2) This section shall be liberally construed and shall include the authority to create a joint planning commission and to utilize an inter-governmental agency for planning as authorized by ORS 190.003 to 190.110. [Amended by 1973 c.739 §1, 1975 c.767 §2]

227.030 Membership. (1) Not more than two members of a city planning commission may be city officers, who shall serve as *ex officio* nonvoting members.

(2) A member of such a commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.

(3) Any vacancy in such a commission shall be filled by the appointing authority for the unexpired term of the predecessor in the office.

(4) No more than two voting members of the commission may engage principally in the buying, selling or developing of real estate for profit as individuals, or be members of any partnership, or officers or employes of any corporation, that engages principally in the buying, selling or developing of real estate for profit. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. [Amended by 1969 c.430 §1; 1973 c.739 §2; 1975 c.767 §3]

227.035 Planning commission member conflict of interest activities. A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: The member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member, any business in which the member is then serving or has served within the previous two years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. [1973 c.739 §5]

227.040 [Repealed by 1973 c.739 §13]

227.050 [Amended by 1969 c.430 §2, repealed by 1975 c.767 §16]

227.060 [Repealed by 1975 c.767 §16]

227.070 [Amended by 1969 c.430 §3, 1973 c.739 §3, repealed by 1975 c.767 §16]

227.080 [Repealed by 1973 c.739 §13]

227.090 Powers and duties of commission. (1) Except as otherwise provided by the city council, a city planning commission may:

(a) Recommend and make suggestions to the council and to other public authorities concerning:

(A) The laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion;

(B) Betterment of housing and sanitation conditions;

(C) Establishment of districts for limiting the use, height, area, bulk and other characteristics of buildings and structures related to land development;

(D) Protection and assurance of access to incident solar radiation; and

(E) Protection and assurance of access to wind for potential future electrical generation or mechanical application.

(b) Recommend to the council and other public authorities plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants sanitation, proper service of public utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities.

(c) Recommend to the council and other public authorities plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits.

(d) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for industrial settlement.

(e) Encourage industrial settlement within the city.

(f) Make economic surveys of present and potential industrial needs of the city.

(g) Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions.

planning commission or the governing body. In either case, the appeal shall be a de novo hearing. [1973 c.739 §9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15]

227.178 Final action on application for permit or zone change required within 120 days; exceptions; mandamus authorized. (1) Except as provided in subsections (3) and (4) of this section, the governing body or a city or its designate shall take final action on an application for a permit or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(2) If an application for a permit or zone change is incomplete, the governing body or its designate shall notify the applicant of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection (1) of this section upon receipt by the governing body or its designate of the missing information. If the applicant refuses to submit the missing information, the application shall be deemed complete for the purpose of subsection (1) of this section on the 31st day after the governing body first received the application.

(3) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(4) The 120-day period set in subsection (1) of this section may be extended for a reasonable period of time at the request of the applicant.

(5) The 120-day period set in subsection (1) of this section applies only to decisions wholly within the authority and control of the governing body of the city.

(6) Notwithstanding subsection (5) of this section, the 120-day period set in subsection (1) of this section does not apply to an amendment to an acknowledged comprehensive plan or land use regulation or adoption of a new land use regulation that was forwarded to the director under ORS 197.610 (1).

(7) If the governing body of the city or its designate does not take final action on an application for a permit or zone change within 120 days after the application is deemed com-

plete, the applicant may apply in the circuit court of the county where the application was filed for a writ of mandamus to compel the governing body or its designate to issue the approval. The writ shall be issued unless the governing body shows that the approval would violate a substantive provision of the city comprehensive plan or land use regulations as defined in ORS 197.015. [1983 c.827 §27]

227.180 Review of action on permit application. (1)(a) A party aggrieved by the action of a hearings officer may appeal the action to the planning commission or council of the city, or both, however the council prescribes. The appellate authority on its own motion may review the action. The procedure for such an appeal or review shall be prescribed by the council, but shall:

(A) Not require that the appeal be filed within less than seven days after the date the governing body mails or delivers the decision of the hearings officer to the parties;

(B) Require a hearing at least for argument; and:

(C) Require that upon appeal or review the appellate authority consider the record of the hearings officer's action. That record need not set forth evidence verbatim.

(b) Notwithstanding paragraph (a) of this subsection, the council may provide that the decision of a hearings officer in a proceeding for a discretionary permit or zone change is the final determination of the city.

(c) The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer or planning commission. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to \$500 plus one-half the actual costs over \$500.

(2) A party aggrieved by the final determination in a proceeding for a discretionary permit or zone change may have the determination reviewed under ORS 197.830 to 197.845.

(3) No decision or action of a planning commission or city governing body shall be invalid due to ex parte contact or bias resulting from ex parte contact with a member of the decision-making body, if the member of the decision-making body receiving the contact:

227.150 [Repealed by 1975 c.767 §16]

PLANNING AND ZONING HEARINGS AND REVIEW

227.160 Definitions for ORS 227.160 to 227.185. As used in ORS 227.160 to 227.185:

(1) "Hearings officer" means a planning and zoning hearings officer appointed or designated by a city council under ORS 227.165.

(2) "Permit" means discretionary approval of a proposed development of land, under ORS 227.215 or city legislation or regulation. [1973 c.739 §6; 1975 c.767 §5]

227.165 Planning and zoning hearings officers; duties and powers. A city may appoint one or more planning and zoning hearings officers, to serve at the pleasure of the appointing authority. Such an officer shall conduct hearings on applications for such classes of permits and zone changes as the council designates. [1973 c.739 §7; 1975 c.767 §6]

227.170 Hearing procedure. The city council shall prescribe one or more procedures for the conduct of hearings on permits and zone changes. [1973 c.739 §8; 1975 c.767 §7]

227.173 Basis for decision on permit application; statement of reasons for grant or denial. (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.

(2) Approval or denial of a permit application 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.

(3) Written notice of the approval or denial shall be given to all parties to the proceeding. [1977 c.654 §5; 1979 c.772 §10b]

227.175 Application for permit or zone change; fees; consolidated procedure; hearing; approval criteria; decision without hearing. (1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change,

upon such forms and in such a manner as the city council prescribes. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.

(2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178. The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations under ORS 197.640.

(3) Except as provided in subsection (7) of this section, the hearings officer shall hold at least one public hearing on the application.

(4) The application shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city. The approval may include such conditions as are authorized by ORS 227.215 or any city legislation.

(5) Hearings under this section may be held only after notice to the applicant and other interested persons.

(6) If an application would change the zone of property which includes all or part of a mobile home park as defined in ORS 446.003, the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice. The failure of a tenant to receive a notice which was mailed shall not invalidate any zone change.

(7) The hearings officer, or such other person as the governing body designates, may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for appeal of the decision to those persons who would have had a right to notice if a hearing had been scheduled or who are adversely affected or aggrieved by the decision. Notice of the decision shall be given in the same manner as notice of the hearing would have been given if a hearing had been held. An appeal from a hearings officer's decision shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the

227.280 Enforcement of development legislation. The council may provide for enforcement of any legislation established under ORS 227.215. [Amended by 1975 c.767 §14]

227.285 [1959 c.601 §1; repealed by 1969 c.460 §2 (227.286 enacted in lieu of 227.285)]

227.286 City ordinances applicable to public property. City ordinances regulating the location, construction, maintenance, repair, alteration, use and occupancy of land and buildings and other structures shall apply to publicly owned property, except as the ordinances prescribe to the contrary. [1969 c.460 §3 (enacted in lieu of 227.285); 1975 c.767 §12]

227.290 Building setback lines established by city council; criteria. (1) The council or other governing body of any incorporated city, under an exercise of its police powers, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway or other public way in such city. It may make it unlawful and provide a penalty for erecting after said establishment any building or structure closer to the street line than such setback line, except as may be expressly provided by ordinance. The council or body shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons owning property affected before establishing any such setback line. Such setback lines may be established without requiring a cutting off or removal of buildings existing at the time.

(2) The council may consider, in enacting ordinances governing building setback lines, the site slope and tree cover of the land with regard to solar exposure. The council shall not restrict construction where site slope and tree cover make incident solar energy collection unfeasible, except an existing solar structure's sun plane shall not be substantially impaired.

(3) The council may consider, in enacting ordinances governing building setback lines and maximum building height, the impact on available wind resources. The ordinances shall protect an existing wind energy system's wind source to the extent feasible.

(4) The powers given in this section shall be so exercised as to preserve constitutional rights. [Amended by 1979 c.671 §4; 1981 c.590 §9]

227.300 Use of eminent domain power to establish setback lines. The council or other governing body of any incorporated city, under an exercise of the power of eminent

domain, may establish or alter building setback lines on private property adjacent to any alley, street, avenue, boulevard, highway, or other public way in such city in cases where the establishment of such setback lines is for street widening purposes, and in cases where the establishment of such setback lines affects buildings or structures existing at the time. The council or other governing body of the city shall pass and put into effect such ordinances as may be needed for the purpose of providing for a notice to and hearing of persons whose property is affected by such establishment. In case of the exercise of the power of eminent domain, provision shall be made for ascertaining and paying just compensation for any damages caused as the result of establishing such setback lines.

227.310 [1957 c.67 §1; 1975 c.767 §13; repealed by 1977 c.766 §16]

TRUCK ROUTES

227.400 Truck routes; procedures for establishment or revision; notice; hearing.

(1) A city council shall not establish a new truck route or revise an existing truck route within the city unless the council first provides public notice of the proposed truck route and holds a public hearing concerning its proposed action.

(2) The city council shall provide notice of a public hearing held under this section by publishing notice of the hearing once a week for two consecutive weeks in some newspaper of general circulation in the city. The second publication of the notice must occur not later than the fifth day before the date of the public hearing.

(3) The notice required under this section shall state the time and place of the public hearing and contain a brief and concise statement of the proposed formation of the truck route, including a description of the roads and streets in the city that will form the truck route.

(4) As used in this section:

(a) "Truck" includes motor truck, as defined in ORS 801.355, and truck tractor, as defined in ORS 801.575.

(b) "Truck route" means the roads or streets in a city which have been formally designated by the city council as the roads or streets on which trucks must travel when proceeding through the city. [1985 c.564 §1]

CHAPTERS 228 TO 235

[Reserved for expansion]

(a) Places on the record the substance of any written or oral ex parte communications concerning the decision or action; and

(b) Has a public announcement of the content of the communication and of the parties' right to rebut the substance of the communication made at the first hearing following the communication where action will be considered or taken on the subject to which the communication related.

(4) A communication between city staff and the planning commission or governing body shall not be considered an ex parte contact for the purposes of subsection (3) of this section.

(5) Subsection (3) of this section does not apply to ex parte contact with a hearings officer. [1973 c.739 §§11,12; 1975 c.767 §9; 1979 c.772 §12; 1981 c.748 §43; 1983 c.656 §2; 1983 c.827 §25]

227.185 Transmission tower; location; conditions. The governing body of a city or its designate may allow the establishment of a transmission tower over 200 feet in height in any zone subject to reasonable conditions imposed by the governing body or its designate. [1983 c.827 §27a]

SOLAR ACCESS ORDINANCES

227.190 Solar access ordinances; purpose; standards. (1) City councils may adopt and implement solar access ordinances. The ordinances shall provide and protect to the extent feasible solar access to the south face of buildings during solar heating hours, taking into account latitude, topography, microclimate, existing development, existing vegetation and planned uses and densities. The city council shall consider for inclusion in any solar access ordinance, but not be limited to, standards for:

(a) The orientation of new streets, lots and parcels;

(b) The placement, height, bulk and orientation of new buildings;

(c) The type and placement of new trees on public street rights of way and other public property; and

(d) Planned uses and densities to conserve energy, facilitate the use of solar energy, or both.

(2) The Department of Energy shall actively encourage and assist city councils' efforts to protect and provide for solar access.

(3) As used in this section, "solar heating hours" means those hours between three hours before and three hours after the sun is at its highest point above the horizon on December 21. [1981 c.722 §5]

227.195 Effect of land use regulations and comprehensive plans. Solar access ordinances shall not be in conflict with acknowledged comprehensive plans and land use regulations. [1981 c.722 §6]

DEVELOPMENT ORDINANCES

227.210 [Repealed by 1975 c.767 §16]

227.215 "Development" defined; regulation of development. (1) As used in this section, "development" means a building or mining operation, making a material change in the use or appearance of a structure or land, dividing land into two or more parcels, including partitions and subdivisions as provided in ORS 92.010 to 92.285, and creating or terminating a right of access.

(2) A city may plan and otherwise encourage and regulate the development of land. A city may adopt an ordinance requiring that whatever land development is undertaken in the city comply with the requirements of the ordinance and be undertaken only in compliance with the terms of a development permit.

(3) A development ordinance may provide for:

(a) Development for which a permit is granted as of right on compliance with the terms of the ordinance;

(b) Development for which a permit is granted discretionarily in accordance and consistent with the requirements of ORS 227.173;

(c) Development which need not be under a development permit but shall comply with the ordinance; and

(d) Development which is exempt from the ordinance.

(4) The ordinance may divide the city into districts and apply to all or part of the city. [1975 c.767 §11 (enacted in lieu of 227.220 to 227.270); 1977 c.654 §3]

227.220 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.220)]

227.230 [Amended by 1971 c.739 §2; 1975 c.153 §4; repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.230)]

227.240 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.240)]

227.250 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.250)]

227.260 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.260)]

227.270 [Repealed by 1975 c.767 §10 (227.215 enacted in lieu of 227.270)]

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Chapter 92

1985 REPLACEMENT PART

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92.018**PROPERTY RIGHTS AND TRANSACTIONS**

92.018 Buyer's remedies for purchase of improperly created lot or parcel. A person who buys a lot or parcel that was created without approval of the appropriate city or county authority may bring an individual action against the seller in an appropriate court to recover damages or to obtain equitable relief. The court may award, in addition to the remedies provided in this section, both reasonable attorney fees and costs incurred on trial and on appeal. [1983 c.718 §4]

92.020 [Repealed by 1955 c.756 §5 (92.025 enacted in lieu of 92.020 and 92.030)]

92.025 Prohibition of sales of lots prior to recordation of plat. (1) No person shall sell any lot in any subdivision until the plat of the subdivision has been acknowledged and recorded with the recording officer of the county in which the lot is situated.

(2) No person shall sell any lot in any subdivision by reference to or exhibition or other use of a plat of such subdivision before the plat for such subdivision has been so recorded. In negotiating to sell a lot in a subdivision under ORS 92.016 (1), a person may use the approved tentative plan for such subdivision. [1955 c.756 §6 (enacted in lieu of 92.020 and 92.030); 1973 c.696 §6; 1977 c.809 §6]

92.030 [Repealed by 1955 c.756 §5 (92.025 enacted in lieu of 92.020 and 92.030)]

92.040 Application for approval of subdivision or partition; tentative plan. Before a plat of any subdivision or the map of any partition subject to review under ORS 92.044 may be made and recorded, the person proposing the subdivision or partition or authorized agent or representative of the person shall make an application in writing to the county or city having jurisdiction under ORS 92.042 for approval of the proposed subdivision or partition in accordance with procedures established by the applicable ordinance or regulation adopted under ORS 92.044. Each such application shall be accompanied by a tentative plan showing the general design of the proposed subdivision or partition. No plat for any proposed subdivision and no map for any partition may be considered for approval by a city or county until the tentative plan for the proposed subdivision or partition has been approved by the city or county. Approval of the tentative plan shall not constitute final acceptance of the plat of the proposed subdivision or the map of the partition for recording; however, approval by a city or county of such tentative plan shall be binding upon the city or county for the purposes of the preparation of the plat or map and the city or county may require only such

changes in the plat or the map as are necessary for compliance with the terms of its approval of the tentative plan for the proposed subdivision or partition. [Amended by 1955 c.756 §7; 1973 c.696 §7; 1983 c.826 §8]

92.042 Governing body having jurisdiction to approve plans, maps or plats. (1) Land within six miles outside of the corporate limits of a city is under the jurisdiction of the city for the purpose of giving approval of plans, maps and plats of subdivisions and major partitions under ORS 92.040 and 227.110. However, unless otherwise provided in an urban growth area management agreement jointly adopted by a city and county to establish procedures for regulating land use outside the city limits and within an urban growth boundary acknowledged under ORS 197.251, when the governing body of a county has adopted ordinances or regulations for subdivision and major partition control as required by ORS 92.044, land in the county within the six-mile limit shall be under the jurisdiction of the county for those purposes.

(2) Land over six miles from the corporate limits of a city is under the jurisdiction of the county for the purpose of giving approval of plans, maps and plats for subdivisions and major partitions under ORS 92.040. [1955 c.756 §4; 1973 c.261 §1; 1973 c.696 §8; 1983 c.570 §3]

92.044 Adoption of standards and procedures governing approval of plats and partition maps. (1) The governing body of a county or a city shall, by regulation or ordinance, adopt standards and procedures, in addition to those otherwise provided by law, governing, in the area over which the county or the city has jurisdiction under ORS 92.042, the submission and approval of tentative plans and plats of subdivisions, tentative plans and maps of major partitions and tentative plans and maps of minor partitions in exclusive farm use zones established under ORS 215.203 to 215.263.

(a) Such standards may include, taking into consideration the location and surrounding area of the proposed subdivisions or the partitions, requirements for:

(A) Placement of utilities, for the width and location of streets or for minimum lot sizes and such other requirements as the governing body considers necessary for lessening congestion in the streets;

(B) Securing safety from fire, flood, slides, pollution or other dangers;

(C) Providing adequate light and air including protection and assurance of access to incident solar radiation for potential future use;

SUBDIVISIONS AND PARTITIONS

92.017

APPROVAL OF PLAN; PLATS

92.010 Definitions for ORS 92.010 to 92.190. As used in ORS 92.010 to 92.190, unless the context requires otherwise:

(1) "Lot" means a unit of land that is created by a subdivision of land.

(2) "Major partition" means a partition which includes the creation of a road or street.

(3) "Map" means a final diagram, drawing or other writing concerning a major partition.

(4) "Minor partition" means a partition that does not include the creation of a road or street.

(5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale of land in a subdivision or partition, including but not limited to advertising, solicitation and promotion of the sale of such land.

(6) "Parcel" means a unit of land that is created by a partitioning of land.

(7) "Partition" means either an act of partitioning land or an area or tract of land partitioned.

(8) "Partition land" means to divide land into two or three parcels of land within a calendar year, but does not include:

(a) A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots; or

(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance.

(9) "Plat" includes a final map, diagram, drawing, replat or other writing containing all the descriptions, locations, specifications, dedications, provisions and information concerning a subdivision.

(10) "Replat" includes a final map, diagram, drawing of the reconfiguration of lots and easements of a recorded plat and other writings containing all the descriptions, location, specifications, dedications and provisions and information concerning a recorded subdivision.

(11) "Road" or "street" means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or egress to such

land in conjunction with the use of such land for forestry, mining or agricultural purposes.

(12) "Sale" or "sell" includes every disposition or transfer of land in a subdivision or partition or an interest or estate therein.

(13) "Subdivide land" means to divide land into four or more lots within a calendar year.

(14) "Subdivision" means either an act of subdividing land or an area or a tract of land subdivided. [Amended by 1955 c.756 §1; 1973 c.696 §3; 1977 c.809 §4; 1979 c.46 §1; 1985 c.369 §5; 1985 c.717 §1]

92.012 Compliance with ORS 92.010 to 92.190 required. No land may be subdivided or partitioned except in accordance with ORS 92.010 to 92.190. [1973 c.696 §2; 1975 c.643 §24]

92.014 Approval of city or county required before creating street or road to partition land. (1) No person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the city or county having jurisdiction over the area or tract of land to be partitioned.

(2) No instrument dedicating land to public use shall be accepted for recording in this state unless such instrument bears the approval of the city or county authorized by law to accept such dedication. [1955 c.756 §3; 1973 c.696 §4]

92.016 When sales of lots prohibited until approval obtained; exception. (1) No person shall sell any lot in any subdivision with respect to which approval is required by any ordinance or regulation adopted under ORS 92.044 and 92.048 until such approval is obtained. No person shall negotiate to sell any lot in a subdivision until a tentative plan has been approved.

(2) A person may negotiate to sell any parcel in a major partition or in a minor partition with respect to which approval of a tentative plan is required by any ordinance or regulation adopted under ORS 92.044 or 92.046, respectively, prior to the approval of the tentative plan for the major or minor partition; but no person may sell any parcel in a major partition or in a minor partition for which approval of a tentative plan is required by any ordinance or regulation adopted under ORS 92.044 or 92.046, respectively, prior to such approval. [1955 c.756 §24; 1973 c.696 §5; 1974 s.s. c.74 §1; 1977 c.809 §5]

92.017 When lawfully created lots and parcels remain discrete lots and parcels. A lot or parcel lawfully created shall remain a discrete lot or parcel, unless the lot or parcel lines are changed or vacated or the lot or parcel is further divided, as provided by law. [1985 c.717 §3]

92.048

PROPERTY RIGHTS AND TRANSACTIONS

officer, and for the maintenance of tentative plans for minor partitions following approval.

(3)(a) The governing body of a city or county may provide for the delegation of any of its lawful functions with respect to minor partitions to the planning commission of the city or county or to an official of the city or county appointed by the governing body for such purpose.

(b) If an ordinance or regulation adopted under this section includes the delegation to a planning commission or appointed official of the power to take final action approving or disapproving a tentative plan for a minor partition, such ordinance or regulation shall also provide for appeal to the governing body from such approval or disapproval and require initiation of any such appeal within 10 days after the date of the approval or disapproval from which the appeal is taken.

(c) The governing body may establish, by ordinance or regulation, a fee to be charged for an appeal under this subsection. The fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. That fee shall be reasonable and shall be no more than the actual cost of the transcript up to \$500 plus one-half the actual costs over \$500.

(4) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon applications for approval of proposed minor partitions.

(5) No tentative plan of a proposed minor partition may be approved unless the tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under this section that are then in effect for the city or county within which the land described in the tentative plan is situated.

(6) Any ordinance or regulation adopted under this section shall comply with the comprehensive plan for the city or county adopting the ordinance or regulation. [1955 c.756 §22; 1973 c.696 §10; 1983 c.827 §19f]

92.048 Procedure for adoption of regulations under ORS 92.044 and 92.046.

The procedure for adoption of any ordinance or regulation under ORS 92.044 and 92.046 is as follows:

(1) The planning commission of the county or the city shall hold a public hearing on the

proposed ordinance or regulation after publishing notice of the hearing 10 days prior to the hearing in a newspaper of general circulation published in the area in which land to be subject to such ordinance or regulation is situated or, if there is no such newspaper, a newspaper of general circulation published in the county. The notice shall contain the time, place and purpose of the hearing and a description of the land to be subject to the ordinance or regulation.

(2) Prior to the expiration of 60 days after the date of such hearing, the planning commission may transmit its recommendation regarding the proposed ordinance or regulation to the governing body of the county or city, as the case may be. If the planning commission recommendation has not been received by the governing body of the county or the city prior to the expiration of such 60-day period, the governing body may consider the ordinance or regulation without recommendation of the planning commission thereon.

(3) Prior to the adoption of such ordinance or regulation, the governing body of the county or the city shall hold a hearing thereon after giving notice of the hearing in the same manner provided in subsection (1) of this section.

(4) A copy of any regulation or ordinance adopted by the governing body of a county or a city under this section, together with a map of the area subject to the regulation or ordinance and a brief statement of the different classifications, if any, of land partitioning under the ordinance or regulation, shall be filed with the recording officer of the county in which the land subject to the ordinance or regulation is situated. Such ordinance or regulation shall not be effective until so filed. If the ordinance or regulation is applicable throughout all of the area over which the county or city has jurisdiction under ORS 92.042, only an outline map of such area shall be filed with the recording officer of the county.

(5) The ordinance or regulation may be amended from time to time by following the procedure prescribed in this section. [1955 c.756 §23; 1973 c.314 §1; 1973 c.696 §11; 1983 c.570 §2]

92.050 Requirements of survey and plat of subdivision. (1) No subdivider shall submit a plat of a subdivision for record, until all the requirements of ORS 209.250 and the plat of the subdivision have been met.

(2) The survey for the plat of the subdivision shall be of such accuracy that the error of closure shall not exceed _____ foot in 4,000 feet.

(3) The survey and plat of the subdivision shall be made by a registered professional land surveyor.

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(D) Preventing overcrowding of land;

(E) Facilitating adequate provision of transportation, water supply, sewerage, drainage, education, recreation or other needs; or

(F) Protection and assurance of access to wind for potential electrical generation or mechanical application.

(b) Such ordinances or regulations shall establish the form and contents of tentative plans of partitions and subdivisions submitted for approval and shall establish the form and contents of maps of partitions for filing upon approval with the county recording officer.

(c) The procedures established by each such ordinance or regulation shall provide for the coordination in the review of the tentative plan of any subdivision or partition with all affected city, county, state and federal agencies and all affected special districts.

(2)(a) The governing body of a city or county may provide for the delegation of any of its lawful functions with respect to subdivisions and partitions to the planning commission of the city or county or to an official of the city or county appointed by the governing body for such purpose.

(b) If an ordinance or regulation adopted under this section includes the delegation to a planning commission or appointed official of the power to take final action approving or disapproving a tentative plan for a subdivision or partition, such ordinance or regulation shall also provide for appeal to the governing body from such approval or disapproval.

(c) The governing body may establish, by ordinance or regulation, a fee to be charged for an appeal under this subsection. The fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. That fee shall be reasonable and shall be no more than the actual cost of the transcript up to \$500 plus one-half the actual costs over \$500.

(3) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon proposed subdivisions that are submitted for approval pursuant to this section. As used in this subsection, "costs" does not include costs for which fees are prescribed under ORS 92.100 and 205.350.

(4) The governing body may, by ordinance or regulation, prescribe fees sufficient to defray the

costs incurred in the review and investigation of and action upon proposed partitions that are submitted for approval pursuant to this section.

(5) Ordinances and regulations adopted under this section shall be adopted in accordance with ORS 92.048.

(6) Any ordinance or regulation adopted under this section shall comply with the comprehensive plan for the city or county adopting the ordinance or regulation.

(7) For the purposes of this section:

(a) "Incident solar radiation" means solar energy falling upon a given surface area.

(b) "Wind" means the natural movement of air at an annual average speed measured at a height of 10 meters of at least eight miles per hour. [1955 c.756 §9; 1973 c.696 §9; 1974 s.s. c.74 §2; 1979 c.671 §1; 1981 c.590 §5; 1983 c.570 §1; 1983 c.826 §9; 1983 c.827 §19e]

92.046 Adoption of regulations requiring approval of partitioning of land not otherwise subject to approval; establishment of fees. (1) The governing body of a county or a city may, as provided in ORS 92.048, when reasonably necessary to accomplish the orderly development of the land within the jurisdiction of such county or city under ORS 92.042 and to promote the public health, safety and general welfare of the county or city, adopt regulations or ordinances requiring approval, by the county or city of proposed partitions not otherwise subject to approval under a regulation or ordinance adopted pursuant to ORS 92.044. Such regulations or ordinances may be applicable throughout the area over which the county or city has jurisdiction under ORS 92.042, or over any portion thereof. Such ordinances or regulations may specify the classifications of such partitions which require approval under this section and may establish standards and procedures governing the approval of tentative plans for such partitions. The standards may include all, or less than all, of the same requirements as are provided or authorized for subdivisions under ORS 92.010 to 92.190 and may provide for different standards and procedures for different classifications of such partitions so long as the standards are no more stringent than are imposed by the city or county in connection with subdivisions.

(2) Such ordinances or regulations may establish the form and contents of the tentative plans of minor partitions submitted for approval and may establish adequate measures for the central filing, including but not limited to recording with the city recorder or the county recording

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uments the lands as represented, and has placed a proper monument as provided in ORS 92.060 indicating the initial point of the survey, and giving the dimensions and kind of monument, and its location in accordance with ORS 92.060 (1) and accurately describing the tract of land upon which the lots and blocks are laid out.

(2) If the person subdividing any land has complied with ORS 92.065 (1), the surveyor may prepare the plat of the subdivision for recording with only the exterior monuments referenced on the plat as submitted for recording. There shall be attached to any plat the affidavit of the surveyor that the interior corners for the subdivision will be monumented on or before a specified date in accordance with ORS 92.060 and referenced on the plat for the subdivision as approved by the city or county.

(3) After the interior corners for a subdivision have been monumented as provided in an affidavit submitted under subsection (2) of this section, the surveyor performing the work shall:

(a) Within five days after completion of the work, notify the person subdividing the land involved and the surveyor of the city or county by which the subdivision was approved;

(b) Upon approval of the work under ORS 92.100 by the city or county surveyor, reference the monuments on the subdivision plat and tracings as previously recorded under the supervision of the county surveyor; and

(c) Note upon the subdivision plat and tracings as previously recorded an affidavit to the effect that the surveyor has correctly surveyed and marked with proper monuments the interior corners of the subdivision.

(4) The county surveyor approving the work pursuant to subsection (3) of this section shall reference the approval upon the subdivision plat and tracings previously recorded. The city surveyor approving the work shall cause an affidavit of approval to be recorded with the county recorder who shall cause the county surveyor to indorse the recording reference of approval upon the subdivision plat and tracings previously recorded. [Amended by 1973 c.696 §13; 1983 c.309 §6]

92.080 Preparation of plat. All plats subdividing any tracts of land in any county in this state, and dedications of streets or roads or public parks and squares and other writings made a part of such plats offered for record in any county in this state shall be made in permanent black india type ink or silver halide permanent photocopy, upon material that is 18 inches by 24 inches in size, that is suitable for binding and

copying purposes, and that has such characteristics of strength and permanency as may be required by the city or county under ORS 92.044. The plat shall be of such a scale, and the lettering of the approvals thereof, and of the dedication and affidavit of the surveyor, shall be of such a size or type as will be clearly legible, but no part shall come nearer any edge of the sheet than one inch. The plat may be placed on as many sheets as necessary, but a face sheet and an index page shall be included for plats placed upon two or more sheets. [Amended by 1955 c.756 §12; 1973 c.696 §15; 1985 c.582 §1]

92.090 Requisites for approval of tentative plan or plat. (1) No tentative plan or plat of a subdivision shall be approved which bears a name which is the same as, similar to or pronounced the same as the name of any other subdivision in the same county, unless the land platted is contiguous to and platted by the same party that platted the subdivision bearing that name or unless the party files and records the consent of the party that platted the contiguous subdivision bearing that name. All plats must continue the lot numbers and, if used, the block numbers of the plat of the same name last filed.

(2) No tentative plan for a proposed subdivision and no tentative plan for a proposed major partition shall be approved unless:

(a) The streets and roads are laid out so as to conform to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects unless the city or county determines it is in the public interest to modify the street or road pattern.

(b) Streets and roads held for private use are clearly indicated on the tentative plan and all reservations or restrictions relating to such private roads and streets are set forth thereon.

(c) The tentative plan complies with the applicable zoning ordinances and regulations and the ordinances or regulations adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plan is situated.

(3) No plat of a proposed subdivision and no map of a proposed major partition shall be approved unless:

(a) Streets and roads for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.

(b) Streets and roads held for private use and indicated on the tentative plan of such subdivi-

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(4) The plat of a subdivision shall be of such scale that all survey and mathematical information, and all other details may be clearly and legibly shown thereon. Each lot shall be numbered consecutively. If used, blocks shall be lettered or numbered. The lengths of all boundaries of each lot shall be shown. Each street shall be named.

(5) The locations and descriptions of all monuments shall be carefully recorded upon all plats and the proper courses and distances of all boundary lines shall be shown. [Amended by 1955 c.756 §10; 1983 c.309 §3]

92.060 Marking certain points of plats with monuments; specifications of monuments.

(1) The initial point of all subdivision plats shall be marked with a monument, either of stone, concrete or galvanized iron pipe. If stone or concrete is used it shall not be less than 6 inches by 6 inches by 24 inches. If galvanized iron pipe is used it shall not be less than two inches in inside diameter and three feet long. The monument shall be set or driven six inches below the surface of the ground. The location of the monument shall be with reference by survey to a section corner, one-quarter corner, one-sixteenth corner, Donation Land Claim corner or to a lot corner of a recorded subdivision.

(2) The intersections of all streets and roads and all points on the exterior boundary where the boundary line changes direction, shall be marked with monuments either of stone, concrete, galvanized iron pipe, or iron or steel rods. If stone or concrete is used it shall not be less than 6 inches by 6 inches by 24 inches. If galvanized iron pipe is used it shall not be less than three-quarter inch inside diameter and 30 inches long, and if iron or steel rods are used they shall not be less than five-eighths of an inch in least dimension and 30 inches long.

(3) All lot corners except lot corners of cemetery lots shall be marked with monuments of either galvanized iron pipe not less than one-half inch inside diameter or iron or steel rods not less than five-eighths inch in least dimension and not less than 24 inches long.

(4) Points shall be plainly and permanently marked upon monuments so that measurements may be taken to them to within one-tenth of a foot.

(5) All monuments on the exterior boundaries of a subdivision shall be placed and the monuments shall be referenced on the plat of the subdivision before the plat of the subdivision is offered for recording. However, interior monuments for the subdivision need not be set prior to

the recording of the plat of the subdivision if the land surveyor performing the survey work certifies that the interior monuments will be set on or before a specified date as provided in ORS 92.070 (2) and if the person subdividing the land furnishes to the governing body of the county or city by which the subdivision was approved a bond, cash deposit or other security as required by the county or city guaranteeing the payment of the cost of setting the interior monuments for the subdivision as provided in ORS 92.065. [Amended by 1955 c.756 §11; 1973 c.696 §12; 1983 c.309 §4]

92.065 Monumenting interior corners after recording plat; bond or cash deposit.

(1) If the interior corners of a subdivision are to be monumented on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish to the city or county surveyor, prior to approval of the plat by the city or county surveyor, a bond, cash deposit or other security, as required at the option of the governing body, in an amount equal to 120 percent of the estimated cost of performing the work for the interior monumentation.

(2) If the person subdividing the lands described in subsection (1) of this section pays the surveyor for performing the interior monumentation work and notifies the governing body of the payment, the governing body, within three months after the notice, shall release the bond or other required security, or return the cash deposit upon a finding that the payment has been made. Upon written request from the person subdividing the land, the governing body may pay the surveyor from moneys within a cash deposit held by it for that purpose and return the excess of the cash deposit, if any, to the person who made the deposit.

(3) In the event of the death, disability or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure or refusal of the surveyor to set the monuments, the subdivider shall cause the monumentation to be completed. [1973 c.696 §14; 1983 c.309 §5]

92.070 Surveyor's affidavits; procedure for recording monumented corners on plat previously recorded.

(1) Except as otherwise provided in this section, all plats or diagrams designating the location of land in any county in the State of Oregon, offered for record, shall have attached thereon an affidavit of the surveyor having surveyed the land represented on the plat, to the effect that the surveyor has correctly surveyed and marked with proper mon-

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agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken. [Amended by 1955 c.31 §1; 1955 c.756 §13; 1965 c.393 §1; 1973 c.696 §16; 1974 s.s. c.74 §3; 1983 c.309 §7]

92.095 Payment of taxes, interest or penalties before plat recorded. (1) No plat shall be recorded unless all ad valorem taxes, including potential additional taxes, interest and penalties imposed on land disqualified for special assessment granted under ORS 308.370 (2), 321.272 (2) or 321.420 (2), and all special assessments, fees, or other charges required by law to be placed upon the tax roll have been paid which have become a lien upon the subdivision or which will become a lien during the calendar year.

(2) After January 1, and before the certification under ORS 311.105 of any year, the subdivider shall:

(a) If the exact amount of taxes, special assessments, fees and charges are able to be computed by the assessor, pay such amount to the tax collector. The assessor is authorized to levy and the tax collector is authorized to collect such amount.

(b) If the assessor is unable to compute such amount at such time, either (A) pay the amount estimated by the assessor to be needed to pay the taxes, special assessments, fees and other charges to become due, or (B) deposit with the tax collector a bond with a good and sufficient undertaking in such amount as the assessor considers adequate to insure payment of the taxes to become due. In no event shall the bond amount exceed twice the amount of the previous year's taxes, special assessments, fees and other charges upon such subdivision.

(3) Taxes paid or bonded for under paragraph (a) or (b) of subsection (2) of this section shall be entitled to the discount provided by ORS 311.505.

(4) ORS 311.370 shall apply to all taxes levied and collected under subsection (2) of this section, except that any deficiency shall constitute a personal debt against the person subdividing the land and not a lien against the subdivision land, and shall be collected as provided by law for the collection of personal property taxes.

(5) If a plat is recorded, any potential additional taxes, interest or penalties imposed upon

land disqualified for special assessment granted under ORS 308.370 (2), 321.272 (2) or 321.420 (2) shall become a lien upon the subdivision on the day before the plat was recorded. [1965 c.393 §2; 1973 c.696 §17; 1979 c.350 §3; 1981 c.804 §69; 1983 c.462 §1]

92.097 Employment of private licensed engineer by private developer; government standards and fees. (1) No city, county or special district shall prohibit the employment by a developer of a licensed engineer to design or supervise the installation of the improvements of streets, water and sewer lines or other public improvements that are to be installed in conjunction with the development of land using private funds.

(2) When design or supervision of installation of improvements is performed by a licensed engineer under subsection (1) of this section, the city, county or special district may elect to establish standards for such improvements, review and approve plans and specifications and inspect the installation of improvements. The city, county or special district may collect a fee for inspection and any other services provided in an amount not to exceed the actual cost of performing the inspection or other services provided. [1979 c.191 §2]

92.100 Approval of plat by city or county surveyor; approval by county assessor and county governing body; fees.

(1) Before any plat can be recorded, covering land within the corporate limits of any city, it must be approved by the city surveyor, if any; otherwise by the county surveyor. However, the governing body of the city may designate the county surveyor to serve in lieu of the city surveyor. Except as provided in subsection (3) of this section, if the land is outside the corporate limits of any city, the plat shall be approved by the county surveyor before it is recorded. All plats must also be approved by the county assessor and the governing body of the county in which the property is located before recording.

(2) Before approving the plat as required by this section, the city surveyor or the county surveyor, as the case may be, shall check the subdivision site and the plat and shall take such measurements and make such computations as are necessary to determine that the plat complies with the provisions of ORS 92.050 and with the subdivision requirements in effect in the area. For performing such service the city or county surveyor shall collect from the subdivider a fee of \$100 plus \$5 for each lot contained in the subdivision. The governing body of a city or county may establish a higher fee by ordinance.

(3) Any plat prepared by the county surveyor in a private capacity shall be approved in accord-

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sion or major partition have been approved by the city or county.

(c) The plat or map complies with any applicable zoning ordinances and regulations and any ordinance or regulation adopted under ORS 92.044 that are then in effect for the city or county within which the land described in the plat or map is situated.

(d) The plat or map is in substantial conformity with the provisions of the tentative plan for the subdivision or the major partition, as approved.

(e) The plat or map contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems, the donation of which was made a condition of the approval of the tentative plan for the subdivision or the major partition.

(f) Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision or the major partition have been recorded and referenced on the plat or map.

(4) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned domestic water supply system or by the owner of a privately owned domestic water supply system, subject to regulation by the Public Utility Commissioner of Oregon, that water will be available to the lot line of each and every lot depicted in the proposed plat;

(b) A bond, contract or other assurance by the subdivider to the city or county that a domestic water supply system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted in the proposed plat; and the amount of any such bond, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to any change in such amount as determined necessary by the city or county; or

(c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the subdivider and indorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner

in any public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written agreement for the sale of the lot. The subdivider shall take a signed receipt from the purchaser upon delivery of such a statement, shall immediately send a copy of the receipt to the commissioner and shall keep any such receipt on file in this state, subject to inspection by the commissioner, for a period of three years after the date the receipt is taken.

(5) Subject to any standards and procedures adopted pursuant to ORS 92.044, no plat of a subdivision shall be approved by a city or county unless the city or county has received and accepted:

(a) A certification by a city-owned sewage disposal system or by the owner of a privately owned sewage disposal system that is subject to regulation by the Public Utility Commissioner of Oregon that a sewage disposal system will be available to the lot line of each and every lot depicted in the proposed plat;

(b) A bond, contract or other assurance by the subdivider to the city or county that a sewage disposal system will be installed by or on behalf of the subdivider to the lot line of each and every lot depicted on the proposed plat; and the amount of such bond, contract or other assurance shall be determined by a registered professional engineer, subject to any change in such amount as the city or county considers necessary; or

(c) In lieu of paragraphs (a) and (b) of this subsection, a statement that no sewage disposal facility will be provided to the purchaser of any lot depicted in the proposed plat, where the Department of Environmental Quality has approved the proposed method or an alternative method of sewage disposal for the subdivision in its evaluation report described in ORS 454.755 (1)(b). A copy of any such statement, signed by the subdivider and indorsed by the city or county shall be filed by the subdivider with the Real Estate Commissioner and shall be included by the commissioner in the public report made for the subdivision under ORS 92.385. If the making of a public report has been waived or the subdivision is otherwise exempt under the Oregon Subdivision Control Law, the subdivider shall deliver a copy of the statement to each prospective purchaser of a lot in the subdivision at or prior to the signing by the purchaser of the first written

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provided in the front part with indices, in which shall be entered in alphabetical order, all plats recorded therein. The dedications to such plats shall also be indexed in the indices of Records of Deeds for the county. When the plats are so filed, bound and indexed they shall be the legal record of all plats. [Amended by 1955 c.756 §18]

92.150 Construction of donations marked on plat. Every donation or grant to the public, including streets and alleys, or to any individual, religious society, corporation or body politic, marked or noted as such on the plat of the subdivision wherein the donation or grant was made, shall be considered a general warranty to the donee or grantee for the use of the donee or grantee for the purposes intended by the donor or grantor. [Amended by 1955 c.756 §19]

92.160 Notice to Real Estate Commissioner of receipt of plat. If the comprehensive plan and land use regulations of a city or county have not been acknowledged under ORS 197.251, the city engineer, city surveyor or county surveyor shall immediately notify the Real Estate Commissioner in writing of receipt for approval of any plat pursuant to ORS 92.100. The notification shall include a general description of the land with the number of lots and total acreage covered by the plat and the names of the persons submitting the plat for approval. [1965 c.584 §2; 1983 c.570 §6a]

92.170 Amending recorded plat; affidavit of correction. (1) Any plat of a subdivision filed and recorded under the provisions of ORS 92.018 to 92.190 may be amended by an affidavit of correction:

(a) To show any courses or distances omitted from the plat;

(b) To correct an error in any courses or distances shown on the plat;

(c) To correct an error in the description of the real property shown on the plat; or

(d) To correct any other errors or omissions where the error or omission is ascertainable from the data shown on the final plat as recorded.

(2) Nothing in this section shall be construed to permit changes in courses or distances for the purpose of redesigning lot configurations.

(3) The affidavit of correction shall be prepared by the registered professional land surveyor who filed the plat of the subdivision. In the event of the death, disability or retirement from practice of the surveyor who filed the plat, the county surveyor may prepare the affidavit of correction. The affidavit shall set forth in detail the corrections made and show the names of the present fee

owners of the property materially affected by the correction. The seal and signature of the registered professional land surveyor making the correction shall be affixed to the affidavit of correction.

(4) The county surveyor or city surveyor having jurisdiction of the plat shall certify that the affidavit of correction has been examined and that the changes shown on the certificate are permitted under this section.

(5) The surveyor who prepared the affidavit of correction shall cause the affidavit to be recorded in the office of the county recorder where the plat is recorded. The county clerk shall promptly provide a recorded copy of the affidavit to the county surveyor. The county surveyor shall note the correction and the recorder's filing information, with permanent red ink, upon the original plat and upon any true and exact copies filed in accordance with ORS 92.120 (2). The corrections and filing information shall be marked in such a manner so as not to obliterate any portion of the plats.

(6) For recording the affidavit in the county deed records, the county clerk shall collect a fee set by the county governing body. The county clerk shall also collect a fee set by the county governing body to be paid to the county surveyor for services provided under this section. [1983 c.309 §2]

REPLATTING

92.180 Authority to review replats. (1) Each agency or body authorized to approve subdivision plats under ORS 92.040 shall have the same review and approval authority over any proposed replat of a recorded plat.

(2) Nothing in this section regarding replatting shall be construed to allow subdividing of land without complying with all the applicable provisions of this chapter. [1985 c.369 §2]

92.185 Reconfiguration of lots and public easements; vacation; notice; utility easements. The act of replatting shall allow the reconfiguration of lots and public easements within a recorded plat. Upon approval by the reviewing agency or body as defined in ORS 92.180, replats will act to vacate the platted lots and easements within the replat area with the following conditions:

(1) A replat, as defined in ORS 92.010 (10) shall apply only to a recorded plat.

(2) Notice shall be provided as described in ORS 92.225 (4) when the replat is replatting all of an undeveloped subdivision as defined in ORS 92.225.

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ance with subsection (2) of this section by the surveyor of a county other than the county where the land is located. The county governing body shall refer such a plat to the county surveyor of another county by indorsement on the plat. The county governing body may provide allowances for travel and other expenses of the surveyor to whom the plat is referred.

(4) Nothing in this section shall be construed to prohibit a city, county or special district from requiring engineering review and approval of a plat to assure compliance with state and local subdivision requirements that relate to matters other than survey adequacy. [Amended by 1955 c.31 §2; 1955 c.756 §14; 1957 c.688 §1; 1963 c.285 §1; 1971 c.419 §1; 1979 c.824 §1]

92.105 Time limit for final action by city or county on tentative plan. The governing body of a city or county or its designate is subject to the provisions of ORS 215.428 or 227.178 in taking final action on an application for approval of a tentative plan for a subdivision or major partition located within an acknowledged urban growth boundary. [1981 c.884 §2; 1983 c.827 §51]

92.110 Land in special districts; approval of plat; appeal from refusal of district to approve or act. All plans, plats, or replats of subdivisions located within the boundaries of an irrigation district, drainage district, water control district or district improvement company shall be submitted to the board of directors of the district or company and its approval thereof shall be indorsed thereon by the board before approval of such plan, plat, or replat of any subdivision by the governing body of the county. Except that if a subdivider is unable to obtain action or approval of any district or company within 45 days, the subdivider shall notify the governing body in writing and thereafter the governing body shall serve notice on that district or company by certified mail advising the district or company that any objections to the plan, plat, or replat must be filed in writing with the governing body within 20 days and failure of the district or company to respond shall be considered by the governing body as approval of such plan, plat, or replat and the governing body shall indorse thereon a finding that the district or company failed to act and the governing body may thereafter approve such plan, plat, or replat without the approval of such district or company indorsed thereon. [Amended by 1955 c.756 §15; 1973 c.351 §1]

92.120 Filing and recording plats; copies. (1) The plat of a subdivision described in ORS 92.050 when made and approved as

required, and offered for record in the records of the county where the described land is situated, shall, upon the payment of the fees provided by law, be filed by the county recording officer. The fact of filing and the date thereof shall be entered thereon, and it shall then be securely bound with other plats of like character in a book especially prepared for that purpose and designated as "Record of Town Plats," or filed in a special cabinet for that purpose so as to insure safekeeping and preservation of the plat.

(2) At the time of filing such plat, the person offering it for filing shall also file with the county recording officer and with the county surveyor, if requested by the county surveyor, an exact copy thereof, made with permanent black india type ink or silver halide permanent photocopy upon a good quality of linen tracing cloth or any other suitable drafting material having the same or better characteristics of strength, stability and transparency. The engineer or surveyor who made the plat shall make an affidavit to indicate that the photocopy or tracing is an exact copy of the plat. The copy filed with the county recording officer shall be certified by that officer to be an exact copy and then shall be filed in the archives of the county, and be preserved by filing without folding. The subdivider shall provide without cost the number of prints from such copy as may be required by the governing body of the county.

(3) For the purpose of preserving the original subdivision or town plats, any such plats may be stored for safekeeping and a copy of the original plat certified by the county recording officer may be used as the official plat for public use. [Amended by 1955 c.756 §16; 1973 c.696 §18; 1977 c.488 §1; 1985 c.522 §10]

92.130 Additional tracings transferred to county surveyor; replacing lost or destroyed records. Any additional tracings of plats as mentioned in ORS 92.120 other than the one copy filed with the county recording officer shall be transferred to the county surveyor, if requested by the county surveyor, who then shall keep them well bound and safeguarded as required by law. If such plat or copy thereof is lost, destroyed, mutilated or missing from the county records, the county surveyor shall make a copy thereof, and file it in the proper office of record. Each such copy made by the county surveyor pursuant to this section shall bear a certificate of the surveyor that it was made in compliance with this section, and that it is a true copy of the original record. [Amended by 1955 c.756 §17]

92.140 Indexing of plat records. The books entitled "Record of Town Plats" shall be

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of the subdivision under subsection (1) of this section, it shall also determine:

(a) If the undeveloped subdivision complies with the comprehensive plan, zoning regulations and ordinances and subdivision ordinances and regulations then in effect with respect to lands in the subdivision; and

(b) If the undeveloped subdivision does not comply with such plan and ordinances and regulations, whether the subdivision may be revised to comply with such plan and ordinances and regulations.

(4) If the agency or body determines that a subdivision is undeveloped after its investigation of the subdivision under subsection (1) of this section, it shall hold a hearing to determine whether the undeveloped subdivision should be revised and the subdivision replatted or vacated and all lands within the subdivision that have been dedicated for public use vacated. Not later than 30 days before the date of a hearing held by an agency or body under this section, the agency or body shall notify, in writing, each owner of record of land described in the plat of the subdivision under review of the date, place, time and purpose of such hearing. [1973 c.569 §3]

92.230 [1963 c.624 §§4, 19; 1969 c.508 §1; repealed by 1973 c.421 §52]

92.234 Revision, vacation of undeveloped subdivisions; vacation proceedings; effect of initiation by affected landowner. (1) Following a hearing conducted as required under ORS 92.225 (4), the agency or body conducting the hearing may:

(a) Require the revision of a subdivision and a replat of the subdivision as it considers necessary, if it finds that the subdivision may be revised to comply with the comprehensive plan, zoning ordinances and regulations and other modern subdivision control standards not in existence when the subdivision was initially approved; or

(b) Initiate proceedings, as provided in subsection (3) of this section, for vacation of the subdivision, if it finds that the subdivision cannot be revised in accordance with the comprehensive plan, zoning ordinances and regulations and other modern subdivision control standards not in existence when the subdivision was initially approved.

(2) If an agency or body requires the revision and replat of a subdivision under paragraph (a) of subsection (1) of this section, it shall approve the subdivision only upon the completion of the revisions as required by it and the replat of the subdivision as provided in ORS 92.180 to 92.190.

(3) If the agency or body determines that it is necessary to vacate a subdivision, the agency or body shall adopt an ordinance vacating the subdivision and providing for the vacation of lands within the subdivision that have been dedicated for public use. Title to lands within a vacated subdivision shall vest as provided in ORS 271.140 and 368.366. Any owner of lands described in the plat of the vacated subdivision who is aggrieved by the action of the agency or body in vacating the subdivision may appeal such action in the manner provided in ORS 34.010 to 34.100. The ordinance adopted by the agency or body for the vacation of the subdivision and the lands therein dedicated to public use shall be filed with the county recording officer as provided in ORS 271.150.

(4) Nothing in ORS 92.205 to 92.245 shall prevent the owner of any lands within an undeveloped subdivision from seeking vacation of such subdivision under city or county vacation procedures and, if such vacation proceedings are commenced after the date of the notice of review of the subdivision by the agency or body, the review proceeding shall be suspended during such vacation proceedings. If the subdivision is vacated at the initiation of an owner, the review proceedings under ORS 92.205 to 92.245 shall be discontinued; but, if the subdivision is not vacated at the request of an owner, the review proceedings under ORS 92.205 to 92.245 shall be resumed at the termination of the proceedings brought by an owner of lands in the subdivision. [1973 c.569 §4; 1981 c.153 §54; 1985 c.369 §7]

92.235 [1969 c.508 §3; repealed by 1973 c.421 §52]

92.240 [1963 c.624 §5; 1969 c.663 §5; 1971 c.106 §1; repealed by 1973 c.421 §52]

92.245 Fees for review proceedings resulting in modification or vacation. The governing body of a city or county may, by ordinance or regulation adopted in accordance with ORS 92.048, prescribe fees sufficient to defray the costs incurred in the review and investigation of and action upon undeveloped subdivisions for which the plat is modified or vacated under ORS 92.205 to 92.245. [1973 c.569 §5]

92.250 [1963 c.624 §6; 1969 c.663 §4; 1971 c.106 §2; repealed by 1973 c.421 §52]

92.255 [1965 c.584 §5; repealed by 1973 c.421 §52]

92.260 [1963 c.624 §§7, 17; 1965 c.584 §6; repealed by 1973 c.421 §52]

92.270 [1963 c.624 §8; 1965 c.584 §7; repealed by 1973 c.421 §52]

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(3) Notice, consistent with the governing body of a city or county approval of a tentative plan of a subdivision plat, shall be provided by the governing body to the owners of property adjacent to the exterior boundaries of the tentative subdivision replat.

(4) When a utility easement is proposed to be realigned, reduced in width or omitted by a tentative replat approval, all affected utility companies or public agencies shall be notified, consistent with a governing body's notice to owners of property contiguous to the tentative plat.

(5) A replat shall comply with all subdivision provisions of this chapter and all applicable ordinances and regulations adopted under this chapter. [1985 c.369 §3]

92.190 Effect of replat; operation of other statutes; use of alternate procedures.

(1) The replat of a portion of a recorded plat shall not act to vacate any recorded covenants or restrictions.

(2) Nothing in ORS 92.180 to 92.190 is intended to prevent the operation of vacation actions by statutes in ORS chapter 271 or 368.

(3) The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust lot lines as described in ORS 92.010 (8), as long as those procedures include the recording or other central filing of the final lot line adjustment. [1985 c.369 §4]

UNDEVELOPED SUBDIVISIONS

92.205 Policy. (1) The Legislative Assembly finds that many subdivisions for which plats have been approved and recorded have not been developed and that many such subdivisions were approved prior to the adoption of a comprehensive plan, zoning regulations and ordinances and modern subdivision control standards by the jurisdiction within which the lands described in the subdivision plats are situated.

(2) The Legislative Assembly finds, therefore, that it is necessary for the protection of the public health, safety and welfare to provide for the review of undeveloped subdivisions for the purpose of modifying such subdivisions, if necessary, to comply with the current comprehensive plan, zoning ordinances and regulations and modern subdivision control standards, or, if such modification is not feasible, of vacating the non-conforming, undeveloped subdivisions and to vacate any lands dedicated for public use that are described in the plat of each such vacated subdivision. [1973 c.569 §1]

92.210 [1963 c.624 §3; 1965 c.584 §3, repealed by 1973 c.421 §52]

92.215 Review authorized; manner.

(1) Each agency or body authorized to approve subdivision plats under ORS 92.040 may:

(a) Review each subdivision approved on or after October 5, 1973, after the expiration of 10 years after the date of such approval.

(b) Review each subdivision plat approved more than 10 years prior to October 5, 1973.

(2) Each review conducted pursuant to subsection (1) of this section shall be conducted in the manner and subject to the conditions prescribed in ORS 92.225. [1973 c.569 §2]

92.220 [1963 c.624 §§1, 2, 25; repealed by 1973 c.421 §52]

92.225 Determining whether subdivision subject to review and need for revision or vacation; determining need for revision or vacation of undeveloped subdivision; hearings; notice to landowners. (1) The agency or body required to conduct the review under ORS 92.215 shall investigate the status of the lands included within a subdivision to determine whether the subdivision is undeveloped.

(2) For the purposes of this section, the lands described in the plat of any subdivision under review shall be considered to be developed if any of the following conditions are found by the agency or body conducting the review to exist on such lands:

(a) Roadways providing access into and travel within the subdivision have been or are being constructed to meet the specifications prescribed therefor by the agency or body that approved the plat of the subdivision;

(b) Facilities for the supply of domestic or industrial water to lots created by the subdivision have been or are being constructed;

(c) Sanitary sewerage disposal facilities have been or are being constructed for lots created by the subdivision, or septic tanks have been or are being installed on the land or permits have been issued for their installation on the land;

(d) Buildings have been or are being constructed upon the land or permits have been issued for the construction of buildings upon the land; and

(e) One or more lots described in the plat of the subdivision have been sold or otherwise transferred prior to the date of the initiation of such review.

(3) If the agency or body determines that a subdivision is undeveloped after its investigation

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whether immediate or future, into 11 or more undivided interests or four or more other interests. "Subdivided lands" and "subdivision" include but are not limited to a subdivision of land located within this state subject to an ordinance adopted under ORS 92.044 and do not include series partitioned lands. "Subdivided lands" and "subdivision" do not mean property submitted to ORS 94.004 to 94.480 or property located outside this state which has been committed to the condominium form of ownership in accordance with the laws of the jurisdiction within which the property is located.

(13) "Subdivider" means any person who causes land to be subdivided into a subdivision, or who undertakes to develop a subdivision, but does not include a public agency or officer authorized by law to make subdivisions. [1974 s.s. c.1 §1; 1977 c.643 §1; 1977 c.484 §30; 1977 c.809 §3a; 1979 c.46 §3; 1979 c.284 §92; 1979 c.650 §21a; 1983 c.570 §7]

92.310 [1963 c.624 §13; repealed by 1973 c.421 §52]

92.313 Policy; construction; citation.

(1) The Legislative Assembly finds that the development of new subdivisions and series partitions and the promotion of sales and leases of such property are now largely uncontrolled and unregulated in this state and that a need exists to protect the public from fraud, deceit and misrepresentation.

(2) The provisions of ORS 92.305 to 92.495 are in addition to, and not in lieu of, the existing provisions of ORS 92.010 to 92.190.

(3) ORS 92.305 to 92.495 may be cited as the Oregon Subdivision and Series Partition Control Law. [1974 s.s. c.1 §2; 1975 c.643 §1a; 1983 c.570 §9]

92.315 [1969 c.508 §4; repealed by 1973 c.421 §52]

92.317 Policy; protection of consumers. The Legislative Assembly finds that the repeal of ORS 92.500 to 92.810 and 92.990 (2) and (3) (1973 Replacement Part), by section 23, chapter 1, Oregon Laws 1974 (special session), may cause irreparable damage to the interests of consumers involved in real estate transactions; and it is therefore declared to be the policy of the State of Oregon that the Attorney General protect the rights of such real estate purchasers to the greatest extent practicable through the application of the provisions of ORS 646.605 to 646.652. [1974 s.s. c.1 §29]

92.320 [1963 c.624 §14; repealed by 1973 c.421 §52]

92.325 Application of ORS 92.305 to 92.495. (1) Except as provided in subsection (2) of this section, no person shall sell or lease any subdivided lands or series partitioned lands without having complied with all the applicable provisions of ORS 92.305 to 92.495.

(2) With respect to a developer, chapter 643, Oregon Laws 1975, applies only to a developer who acquires a lot, parcel or interest in a subdivision or series partition for which a public report has been issued after September 13, 1975, and a developer who acquires a lot or parcel in a subdivision for which a revised public report has been issued under ORS 92.410.

(3) Except as otherwise provided in paragraph (g) of this subsection, ORS 92.305 to 92.495 do not apply to the sale or leasing of:

(a) Apartments or similar space within an apartment building; or

(b) Cemetery lots, parcels or units in Oregon; or

(c) Subdivided lands and series partitioned lands in Oregon which are not in unit ownership or being developed as unit ownerships created under ORS 94.004 to 94.480 and 94.991, to be used for residential purposes and which qualify under ORS 92.337; or

(d) Property submitted to the provisions of ORS 94.004 to 94.480 and 94.991; or

(e) Subdivided lands and series partitioned lands in Oregon expressly zoned for and limited in use to nonresidential industrial or nonresidential commercial purposes; or

(f) Lands in this state sold by lots or parcels of not less than 160 acres each; or

(g) Timeshares regulated or otherwise exempt under ORS 94.803 and 94.807 to 94.945; or

(h) Subdivided and series partitioned lands in a city or county which, at the time tentative approval of a subdivision plat and each partition map for those lands is given under ORS 92.040 or a minor partition ordinance adopted under ORS 92.046, has a comprehensive plan and implementing ordinances that have been acknowledged under ORS 197.251. The subdivider or series partitioner of such lands shall comply with ORS 92.425, 92.427, 92.430, 92.433, 92.460 and 92.485 in the sale or leasing of such lands; or

(i) Mobile home parks, as defined in ORS 446.003 (22), located in Oregon. [1974 s.s. c.1 §2a; 1975 c.643 §19; 1977 c.484 §31; 1977 c.809 §2a; 1979 c.242 §1; 1983 c.530 §47; 1983 c.570 §8; 1985 c.371 §1]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 92.325. Chapter 643, Oregon Laws 1975, enacted into law and amended the ORS sections which may be found by referring to the Comparative Section Table located in volume 6A of Oregon Revised Statutes.

92.330 [1963 c.624 §15; repealed by 1973 c.421 §52]

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MISCELLANEOUS PROVISIONS**92.275** [1973 c.351 §3; repealed by 1977 c.236 §1]**92.280** [1963 c.624 §9; 1965 c.584 §8; repealed by 1973 c.421 §52]**92.285 Retroactive ordinances prohibited.** No retroactive ordinances shall be adopted under ORS 92.010 to 92.048, 92.060 to 92.095, 92.120, 93.640, 93.710 and 215.110. [1973 c.696 §21]**92.290** [1963 c.624 §§10, 11; 1965 c.584 §9; repealed by 1973 c.421 §52]**92.300** [1963 c.624 §12; 1969 c.663 §6; repealed by 1973 c.421 §52]**OREGON SUBDIVISION AND SERIES PARTITION CONTROL LAW****(Generally)****92.305 Definitions for ORS 92.305 to 92.495.** As used in ORS 92.305 to 92.495:

(1) "Blanket encumbrance" means a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting more than one interest in subdivided or series partitioned land, or an agreement affecting more than one such lot, parcel or interest by which the subdivider, series partitioner or developer holds such subdivision or series partition under an option, contract to sell or trust agreement.

(2) "Commissioner" means the Real Estate Commissioner.

(3) Except as otherwise provided in ORS 92.325 (2), "developer" means a person who purchases a lot, parcel or interest in a subdivision or series partition that does not have a single family residential dwelling or duplex thereon to construct a single family residential dwelling or duplex on the lot, parcel or interest and to resell the lot, parcel or interest and the dwelling or duplex for eventual residential use purposes. Developer also includes a person who purchases a lot, parcel or other interest in a subdivision or series partition that does not have a single family residential dwelling or duplex thereon for resale to another person. "Developer" does not mean a "developer" as that term is defined in ORS 94.004.

(4) "Interest" includes a lot or parcel, and a share, undivided interest or membership which includes the right to occupy the land overnight, and lessee's interest in land for more than three years or less than three years if the interest may be renewed under the terms of the lease for a total period more than three years. "Interest" does not include any interest in a condominium as that term is defined in ORS 94.004 or any security

interest under a land sales contract, trust deed or mortgage. "Interest" does not include divisions of land created by lien foreclosures or foreclosures of recorded contracts for the sale of real property.

(5) "Negotiate" means any activity preliminary to the execution of a binding agreement for the sale or lease of land in a subdivision or series partition, including but not limited to advertising, solicitation and promotion of the sale or lease of such land.

(6) "Lot," "parcel," "partition," "major partition" and "minor partition" have the meaning given those terms in ORS 92.010.

(7) "Person" includes a natural person, a domestic or foreign corporation, a partnership, an association, a joint stock company, a trust and any unincorporated organization. As used in ORS 92.305 to 92.495 the term "trust" includes a common law or business trust, but does not include a private trust or a trust created or appointed under or by virtue of any last will and testament, or by a court.

(8) "Real property sales contract" means an agreement wherein one party agrees to lease or to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract.

(9) "Sale" or "lease" includes every disposition or transfer of land in a subdivision or a series partition, or an interest or estate therein, by a subdivider or series partitioner or a developer, or their agents, including the offering of such property as a prize or gift when a monetary charge or consideration for whatever purpose is required by the subdivider, series partitioner or developer or their agents.

(10) "Series partitioned lands" and "series partition" mean a series of partitions of land located within this state resulting in the creation of four or more parcels over a period of more than one calendar year and whether composed of a series of minor partitions, a series of major partitions or a series combining both major partitions and minor partitions.

(11) "Series partitioner" means any person who causes land to be series partitioned into a series partition, or who undertakes to develop a series partition, but does not include a public agency or officer authorized by law to make partitions.

(12) "Subdivided lands" and "subdivision" mean improved or unimproved land or lands divided, or created into interests or sold under an agreement to be subsequently divided or created into interests, for the purpose of sale or lease.

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notice of intention shall contain true information as follows:

(a) The name and the business and residence address of the subdivider or series partitioner;

(b) The names and the business addresses of all licensees of the commissioner and of all other persons selling or leasing, within this state, interests in the subdivision or series partition;

(c) With respect to subdivided or series partitioned lands located in this state:

(A) For "subdivided land" or a "subdivision" as those terms are defined, respectively, by ORS 92.010 (13) and (14), a certified copy of the plat filed for record under ORS 92.120 and a copy of any conditions imposed by the city or county governing body;

(B) For "major partitions" as the term is defined by ORS 92.010 (2) and which are subject to ORS 92.305 to 92.495, a certified copy of the maps filed for record in accordance with ORS 92.010 to 92.190 and evidence of the final approval of the city or county governing body, including a copy of any conditions imposed by the governing body;

(C) For "minor partitions" subject to an ordinance adopted under ORS 92.046 and also subject to ORS 92.305 to 92.495, a copy of any surveys, diagrams, drawings or other writings in the final form required by the city or county governing body and evidence of the final approval of the governing body, including any conditions imposed by the governing body; and

(D) For all other land subject to ORS 92.305 to 92.495, a survey, diagram, drawing or other writing designating and describing, including location and boundaries when applicable, the interests to be sold and a statement from the city or county governing body that the proposal as depicted on the survey, diagram, drawing or other writing has received all necessary local approvals or that no local approval is required;

(d) With respect to subdivided lands located outside this state:

(A) A copy of the plat, map, survey, diagram, drawing or other writing designating and describing, including location and boundaries when applicable, the interests to be sold, in the final recorded form required by the governing body having jurisdiction over the property; and

(B) A written statement from the appropriate governing body that the plat, map, survey, diagram, drawing or other writing is in compliance with all applicable laws, ordinances and regulations;

(e) A brief but comprehensive statement describing the land on and the locality in which the subdivision or series partition is located;

(f) A statement of the condition of the title to the land;

(g) A statement of the provisions, if any, that have been made for legal access, sewage disposal and public utilities in the proposed subdivision or series partition, including water, electricity, gas and telephone facilities;

(h) A statement of the use or uses for which the proposed subdivision or series partition will be offered; and

(i) A statement of the provisions, if any, limiting the use or occupancy of the interests in the subdivision or series partition.

(2) The notice of intention shall be accompanied by a filing fee as follows:

(a) For subdivisions or series partitions containing 10 or fewer lots, parcels or interests, \$100.

(b) For subdivisions or series partitions containing over 10 lots, parcels or interests, \$100, and \$25 for each additional lot, parcel or interest, but in no case shall the fee be more than \$2,500.

(3) For lands located outside this state, the notice of intention shall include only the area shown by the plat, survey, diagram, drawing or other writing required under paragraph (d) of subsection (1) of this section. The subdivision of any contiguous lands located outside this state shall be treated as a separate subdivision for which an additional complete filing must be made, even though the plat, map, survey, diagram, drawing or other writing of the contiguous lands is recorded simultaneously as part of an overall development. [1974 s.s. c.1 §4; 1974 s.s. c.53 §1; 1975 c.643 §3; 1977 c.809 §8; 1979 c.242 §5; 1983 c.570 §11; 1985 c.369 §6]

92.350 [1963 c.624 §18; repealed by 1973 c.421 §52]

92.355 Commissioner may request further information; content. (1) The commissioner may require the subdivider or series partitioner to furnish such additional information in a "Request for Further Information" as the commissioner determines to be necessary in the administration and enforcement of ORS 92.305 to 92.495 including but not limited to:

(a) A statement of the terms and conditions on which it is intended to transfer or dispose of the land or interest therein, together with copies of any contract, conveyance, lease, assignment or other instrument intended to be used;

(b) Copies of all sales pamphlets and literature to be used in connection with the proposed subdivision or series partition; and

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92.335 [1974 s.s. c.1 §3; 1975 c.643 §2; repealed by 1977 c.484 §32]

92.337 Exemption procedures; withdrawal of exemption; filing fee. (1) The commissioner shall grant an exemption pursuant to this section if a subdivider or series partitioner submits on a form prepared by the commissioner, verification that:

(a) The subdivision or series partition is recorded pursuant to ORS 92.010 to 92.190;

(b) Each lot or parcel is situated on a surfaced roadway which, together with means for operation and maintenance, meets the standards of the governing body of the local jurisdiction and is either a concrete or asphalt surface road which has right of way and improvements, including curbs and necessary and adequate drainage structures, or a road which meets alternative standards of the governing body of the local jurisdiction;

(c) The subdivision or series partition, where necessary, has drainage structures and fill designed to prevent flooding and approved by the appropriate governing body;

(d) Energy sources and telephone services for normal domestic use are economically available to the subdivision or series partition and are ready for hookup for each lot or parcel at time of sale or lease;

(e) Water is available for each lot or parcel at the time of sale or lease of each lot or parcel in quantity and quality for domestic use as determined by the Health Division of the Department of Human Resources;

(f) A municipally owned disposal system, an individual or collective subsurface sewage disposal system to serve the lot or parcel, or a privately owned sewage disposal system is available for each lot or parcel at the time of sale or lease of each lot or parcel which meets the requirements of the Environmental Quality Commission;

(g) A surety bond, or bonds, or other security or agreements to complete the improvements is provided by the subdivider or series partitioner to the city or county having jurisdiction so that all of the subdivision or series partition improvements committed by the subdivider or series partitioner to the city or county will be completed; and

(h) Provisions, satisfactory to the commissioner, have been made for satisfaction of all liens and encumbrances existing against the subdivision or series partition which secure or evidence the payment of money.

(2) A subdivision or series partition granted exemption under this section shall be exempt from the provisions of ORS 92.305 to 92.495 and 92.820 except ORS 92.375, 92.385, 92.425, 92.427, 92.430, 92.433, 92.455, 92.460, 92.465, 92.475, 92.485, 92.490 and 92.495.

(3) The commissioner may withdraw the exemption provided by this section if the commissioner determines that the subdivider or series partitioner has provided false information or omitted to state material facts to obtain the exemption or has failed to comply with any provision to which the subdivider or series partitioner is subject under subsections (1) and (2) of this section.

(4) In the event that any provision under subsection (1) of this section is not or cannot be satisfied and without invoking the power granted under subsection (3) of this section, the commissioner and the subdivider or series partitioner may mutually agree in writing upon a written disclosure of the condition that shall be provided to any prospective purchaser prior to the sale or lease of any interest in the subdivision or series partition to carry out the public policy stated in ORS 92.313.

(5) The form required by subsection (1) of this section shall be accompanied by a filing fee of \$100 plus \$10 for each lot, parcel or interest in the subdivision or series partition, with a maximum fee of \$500.

(6) For purposes of verification by the subdivider or series partitioner under paragraphs (b), (c) and (g) of subsection (1) of this section, a copy of the conditions imposed by the appropriate governing body will be sufficient. [1975 c.643 §20; 1977 c.809 §1; 1979 c.242 §2; 1983 c.570 §10]

92.339 Use of fees. The moneys received under ORS 92.305 to 92.495 and this section shall be paid into the State Treasury and placed to the credit of the General Fund in the Real Estate Account established under ORS 696.490. [Formerly 92.820]

92.340 [1963 c.624 §16; repealed by 1973 c.421 §52]

(Filing Requirements)

92.345 Notice of intention; fee. (1) Prior to negotiating within this state for the sale or lease of subdivided lands located outside this state, or prior to the sale or lease of any subdivided or series partitioned lands located within this state, the subdivider, series partitioner or agent of the subdivider or series partitioner shall by a "Notice of Intention" notify the commissioner in writing of the intention to sell or lease. A

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commissioner, duplicate copies of such process, with duplicate copies of any papers required by law to be delivered in connection with such service.

(5) When served with any such process, the commissioner shall immediately cause one of the copies thereof, with any accompanying papers, to be forwarded by registered mail to the subdivider, series partitioner or developer at the address set forth in the consent.

(6) The commissioner shall keep a record of all processes, notices and demands served upon the commissioner under this section, and shall record therein the time of such service and action with reference thereto. [1974 s.s. c.1 §6; 1975 c.643 §5; 1983 c.570 §14]

92.380 [1963 c.624 §23; 1965 c.584 §11; repealed by 1973 c.421 §52]

(Examination of Subdivision and Series Partition; Public Report)

92.385 Examination; public report; waiver of examination in other state. (1) The commissioner may make an examination of any subdivision or series partition subject to ORS 92.305 to 92.495 to be offered for sale or lease and may make a public report of the commissioner's findings. If a subdivision or series partition is located within this state and if no report is made within 45 days after examination of the subdivision or series partition, the report shall be deemed waived.

(2) The commissioner may waive an examination of a real estate subdivision located in another state only when that state has an existing subdivision law which provides for the examination of and a public report on the real estate subdivision and only where that state will waive examination of a real estate subdivision or series partition located within this state and will accept in lieu thereof a report prepared by the commissioner under subsection (1) of this section. [1974 s.s. c.1 §8; 1975 c.643 §6; 1983 c.570 §15]

92.390 [1963 c.624 §24; repealed by 1973 c.421 §52]

92.395 Waiver of examination in this state; notice to subdivider or series partitioner. With respect to any subdivision or series partition within this state, if, after examination of the preliminary notice of intention required by ORS 92.345 or the reply to the commissioner's request for further information, the commissioner concludes that the sale or lease of any portion of such subdivision or series partition would be reasonably certain not to involve any misrepresentation, deceit or fraud, the com-

missioner shall waive all of the provisions of ORS 92.305 to 92.495, except ORS 92.475 to 92.495 and 92.990 (2), which the commissioner considers unnecessary for the protection of the public from fraud, deceit or misrepresentation. The commissioner shall notify the subdivider or series partitioner within 15 days of receipt of the preliminary notice of intention of the approval or disapproval of any waiver. However, the commissioner may, for good and sufficient cause, revoke any waiver at any time upon 10 days' notice and a hearing held for such purpose. [1974 s.s. c.1 §9; 1983 c.570 §16]

92.405 Sale prohibited where public report not waived; distribution and use of public report. (1) Unless the making of a public report has been waived, no person shall sell or lease any lot, parcel or interest in a subdivision or series partition prior to the issuance of the report.

(2) A copy of the public report, when issued, shall be given to the prospective purchaser by the subdivider, series partitioner or developer, or their agents, prior to the execution of a binding contract or agreement for the sale or lease of any lot, parcel, or interest in a subdivision or series partition. The subdivider, series partitioner or developer, or their agents, shall take a receipt from such prospective purchaser or lessee upon delivery of a copy of the commissioner's public report, and such receipts shall be kept on file within this state in the possession of the subdivider, series partitioner or developer subject to inspection by the commissioner for a period of three years from the date the receipt is taken.

(3) The commissioner's public report shall not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized or printed in larger or heavier type than the balance of the report unless the true copy of the report so emphasizes such portion.

(4) The commissioner may furnish at cost copies of the public report for the use of subdividers, series partitioners and developers.

(5) The requirements of this section extend to lots, parcels or other interests sold by the subdivider, series partitioner or developer after repossession.

(6) Violations of this section shall be subject to the provisions of ORS 646.605 to 646.656, 646.705 to 646.836, 646.890, 646.935 to 646.992 and 815.410, in addition to other sanctions provided by law. [1974 s.s. c.1 §10; 1975 c.643 §7; 1977 c.809 §9; 1983 c.570 §17]

92.410 Review of subdivisions for which public report issued; revised public

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(c) Any other information that the subdivider or series partitioner may desire to present.

(2) The subdivider's or series partitioner's reply to the first request for further information required by the commissioner under subsection (1) of this section shall be accompanied by proof of the financial ability of the subdivider or series partitioner to complete improvements and facilities which are:

(a) Required by the appropriate state, city and county authorities; and

(b) Promised to prospective purchasers. [1974 s.s. c.1 §5, 1983 c.570 §12]

92.360 [1963 c.624 §21, repealed by 1973 c.421 §52]

92.365 Filing information to be kept current; fee for notice of material change.

(1) The information required under ORS 92.345 and 92.355 shall be kept current by the subdivider or series partitioner. Any material change in the information furnished to the commissioner shall be reported by the subdivider or series partitioner within 10 days after the change occurs.

(2) A subdivider or series partitioner shall be responsible for the accuracy of and for providing all information required by ORS 92.345, 92.355 and this section for as long as the subdivider or series partitioner retains any unsold lot, parcel or interest in the subdivision or series partition to which the information pertains.

(3) A developer who acquires a lot, parcel or interest in a subdivision or series partition shall be responsible for as long as the developer retains any unsold lot, parcel or interest in the subdivision or series partition for all material changes in the information contained in the public report which the developer receives on acquisition of the property:

(a) Which the developer causes by action of the developer; and

(b) Concerning the zoning, sewage disposal and water supply which substantially affect the intended use of the property as stated in the public report.

(4) A developer shall accurately report to the commissioner a material change specified in subsection (3) of this section within 10 days after the change occurs. However, a developer who acquires less than 11 lots, parcels or interests in a subdivision or series partition during a six consecutive month period shall only be responsible for a material change specified in paragraph (b) of subsection (3) of this section and may revise a public report to reflect such material change

without reporting the material change to the commissioner.

(5) The commissioner shall require a fee sufficient to recover any administrative expenses after receipt of a material change notice if, because of the changes, a public report must be issued or revised by the commissioner. The fee is subject to the review of the Executive Department and prior approval of the appropriate legislative review agency, as defined in ORS 291.371. [1974 s.s. c.1 §7, 1975 c.643 §4, 1983 c.181 §1, 1983 c.570 §13]

92.370 [1963 c.624 §22, 1965 c.584 §10, repealed by 1973 c.421 §52]

92.375 Consent to service of process on commissioner. (1) Every nonresident subdivider or series partitioner, at the time of filing the notice of intention and information required by ORS 92.345 and 92.355, and every nonresident developer who acquires more than 10 lots or parcels in a subdivision or series partition during a six consecutive month period, at the time the developer acquires the lots, parcels or interests in a subdivision or series partition, shall also file with the commissioner an irrevocable consent that if, in any suit or action commenced against the developer, subdivider or series partitioner in this state arising out of a violation of ORS 92.305 to 92.495, personal service of summons or process upon the developer, subdivider or series partitioner cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon the developer, subdivider or series partitioner by service on the commissioner.

(2) The consent shall be in writing executed and verified by an officer of a corporation or association, a general partner of a partnership or by an individual subdivider, series partitioner or developer and shall set forth:

(a) The name of the subdivider, series partitioner or developer.

(b) The address to which documents served upon the commissioner are to be forwarded.

(c) If the subdivider, series partitioner or developer is a corporation or unincorporated association, that the consent signed by such officer was authorized by resolution duly adopted by the board of directors.

(3) The address for forwarding documents served under this section may be changed by filing a new consent in the form prescribed in subsection (2) of this section.

(4) Service on the commissioner of any such process shall be made by delivery to the commissioner or a clerk on duty in any office of the

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tion; procedure; effect; waiver; exemptions. (1) A purchaser of a lot, parcel or interest in a subdivision or series partition may cancel, for any reason, any contract, agreement or any evidence of indebtedness associated with the sale of the lot, parcel or interest in the subdivision or series partition within three business days from the date of signing by the purchaser of the first written offer or contract to purchase.

(2) Cancellation, under subsection (1) of this section, occurs when the purchaser of a lot, parcel or interest gives written notice to the seller at the seller's address. The three business days cancellation period in subsection (1) of this section does not begin until the seller provides the purchaser with seller's address for cancellation purposes.

(3) A notice of cancellation given by a purchaser of a lot, parcel or interest in a subdivision or series partition need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract or evidence of indebtedness.

(4) Notice of cancellation, if given by mail, shall be given by certified mail, return receipt requested, and is effective on the date that such notice is deposited with the United States Postal Service, properly addressed and postage prepaid.

(5) Upon receipt of a timely notice of cancellation, the seller shall immediately return to the purchaser all payments received from the purchaser. In case of payments made by check, the seller shall not be required to return the payment to a purchaser until the check is finally paid as provided in ORS 74.2130. Upon return of all such payments the purchaser shall immediately transfer the purchaser's rights in the lot, parcel or interest to the seller, not subject to any encumbrance created or suffered by the purchaser. In the case of cancellation by a purchaser of any evidence of indebtedness, the purchaser shall return the purchaser's copy of the executed evidence of indebtedness to the seller, and the seller shall cancel the evidence of indebtedness. Any encumbrances against the purchaser's interest in the lot, parcel or interest arising by operation of law from an obligation of the purchaser existing prior to transfer of the lot, parcel or interest to the purchaser shall be extinguished by the reconveyance.

(6) No act of a purchaser shall be effective to waive the right of cancellation granted by subsection (1) of this section. A subdivider, series partitioner or developer may require that a purchaser of a lot, parcel or interest in a subdivision or series partition execute and deliver to the sub-

divider, series partitioner or developer, after the expiration of the three-day cancellation period, a signed statement disclaiming any notice of cancellation that may have been made by the purchaser prior to expiration of the three-day cancellation period for the offer under subsection (1) of this section, that may have been timely and properly done under this section and that has not been received by the subdivider, series partitioner or developer. In case of execution of any such statement by the purchaser, the statement shall be sufficient to rescind the notice of cancellation.

(7) This section shall not apply to:

(a) The sale of a lot in a subdivision or a parcel in a series partition that has a residential dwelling upon it at the time of sale;

(b) The sale of a lot in a subdivision or a parcel in a series partition when, at the time of sale, the seller has contracted with the purchaser to build a residential dwelling upon the lot or parcel; or

(c) The sale of a lot in a subdivision or a parcel in a series partition to a person who derives a substantial portion of income from the development or purchase and sale of real property. [1975 c.643 §16; 1983 c.570 §20]

92.430 Notice to purchaser of cancellation rights; form. (1) Subject to ORS 92.427 (7), the first written real property sales contract signed by the purchaser for the sale of a lot, parcel or interest in a subdivision or series partition shall contain, either upon the first page of such contract or upon a separate sheet attached to such first page, the following notice in at least 8-point type:

NOTICE TO PURCHASER

BY SIGNING THIS AGREEMENT YOU ARE INCURRING A CONTRACTUAL OBLIGATION TO PURCHASE AN INTEREST IN LAND. HOWEVER, YOU HAVE THREE BUSINESS DAYS AFTER SIGNING THIS AGREEMENT TO CANCEL THE AGREEMENT BY WRITTEN NOTICE TO THE SELLER OR THE SELLER'S AGENT AT THE FOLLOWING ADDRESS:

BEFORE EXECUTING THIS AGREEMENT, OR BEFORE THE THREE-DAY

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report; compliance with ORS 92.305 to 92.495. (1) Notwithstanding the effective date of chapter 643, Oregon Laws 1975, prior to February 1, 1976, the commissioner may review any subdivision for which a public report has been issued and is dated prior to September 13, 1975, and when the commissioner considers it necessary for the protection of the public from fraud, deceit or misrepresentation, the commissioner may, after notice to the subdivider, issue a revised public report for the subdivider and subsequent developers of interests in the subdivision to comply with the provisions of ORS 92.305 to 92.495 as though the public report had been issued and dated after September 13, 1975.

(2) Any subdivision for which a public report has been issued and is dated prior to September 13, 1975, and for which the commissioner has not issued a revised public report under subsection (1) of this section prior to February 1, 1976, shall not be required to comply with the amendments to ORS 92.305 to 92.495 and made by chapter 643, Oregon Laws 1975. [1975 c.643 §22]

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "this Act" in 92.410, Chapter 643, Oregon Laws 1975, enacted into law and amended the ORS sections which may be found by referring to the Comparative Section Table located in volume 6A of Oregon Revised Statutes.

92.415 Advance of travel expense for examination of subdivision or series partition. When an examination is to be made of subdivided or series partitioned lands situated in the State of Oregon, or of subdivided lands situated outside the state which will be offered for sale or lease within this state, the commissioner, in addition to the filing fee provided in ORS 92.355, may require the subdivider or series partitioner to advance payment of an amount estimated by the commissioner to be the expense incurred in going to and returning from the location of the project, and an amount estimated to be necessary to cover the additional expense of such examination, subject to the review of the Executive Department and prior approval of the appropriate legislative review agency, as defined in ORS 291.371. The amounts estimated by the commissioner, under this section shall be based upon any applicable limits established and regulated by the Executive Department under ORS 292.220. [1974 s.s. c.1 §11, 1975 c.643 §8; 1979 c.242 §6; 1983 c.181 §2; 1983 c.570 §18]

(Requirements for Sale)**92.425 Conditions prerequisite to sale.**

(1) No lot, parcel or interest in a subdivision or series partition shall be sold by a subdivider,

series partitioner or developer by means of a land sale contract unless a collection escrow is established within this state with a person or firm authorized to receive escrows under the laws of this state and all of the following are deposited in the escrow:

(a) A copy of the title report or abstract, as it relates to the property being sold.

(b) The original sales document or an executed copy thereof relating to the purchase of real property in the subdivision or series partition clearly setting forth the legal description of the property being purchased, the principal amount of the encumbrance outstanding at the date of the sales document and the terms of the document.

(c) A commitment to give a partial release for the lot, parcel or other interest being sold from the terms and provisions of any blanket encumbrance as described in ORS 92.305 (1). Except as otherwise provided in subsection (4) of this section, the commitment shall be in a form satisfactory to the commissioner.

(d) A commitment to give a release of any other lien or encumbrance existing against such lot, parcel or other interest being sold as revealed by such title report. Except as otherwise provided in subsection (4) of this section, the commitment shall be in a form satisfactory to the commissioner.

(e) A warranty or bargain and sale deed in good and sufficient form conveying merchantable and marketable title to the purchaser of such lot, parcel or other interest.

(2) The subdivider, series partitioner or developer shall submit written authorization allowing the commissioner to inspect all escrow deposits established pursuant to subsection (1) of this section.

(3) In lieu of the procedures provided in subsection (1) of this section, the subdivider, series partitioner or developer shall conform to such alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this section.

(4) The requirements of paragraphs (c) and (d) of subsection (1) of this section relating to use of a commitment form acceptable to the commissioner and the provisions of subsection (2) of this section shall not apply to subdivided or series partitioned lands described by ORS 92.325 (3)(h). [1974 s.s. c.1 §12; 1975 c.643 §9; 1977 c.809 §10; 1979 c.242 §7; 1983 c.530 §54; 1983 c.570 §19]

92.427 Cancellation of agreement to buy interest in subdivision or series parti-

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tioner, agent or employe of such persons or other person, who with intent, directly or indirectly, to sell or lease subdivided or series partitioned lands or lots, parcels or interests therein, to authorize, use, direct or aid in the publication, distribution or circularization of any advertisement, radio broadcast or telecast concerning subdivided or series partitioned lands, which contains any statement, pictorial representation or sketch which is false or misleading. Nothing in this section shall be construed to hold the publisher or employe of any newspaper, any job printer, broadcaster or telecaster liable for any publication referred to in ORS 92.305 to 92.495 unless the publisher, employe, printer, broadcaster or telecaster has actual knowledge of the falsity thereof or has an interest in the subdivided or series partitioned lands advertised or the sale thereof. [1974 s.s. c.1 §17; 1975 c.643 §12; 1983 c.570 §26]

92.485 Waiver of legal rights void. Any condition, stipulation or provision in any sales contract or lease, or in any other legal document, binding any purchaser or lessee to waive any legal rights under ORS 92.305 to 92.495 against the subdivider, series partitioner or developer shall be deemed to be contrary to public policy and void. [1974 s.s. c.1 §18; 1975 c.643 §13; 1983 c.570 §27]

(Enforcement)

92.490 Civil penalty; hearings; lien. (1) In addition to any other penalties provided by law, the commissioner may impose a civil penalty for violation of the provisions of ORS 92.305 to 92.495. No civil penalty shall exceed \$1,000 per violation.

(2) A civil penalty may be imposed by the commissioner after notice and hearing.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded in accordance with the provisions of ORS 18.320 to 18.370. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property in the county owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. [1975 c.643 §23; 1979 c.242 §8; 1983 c.696 §7a]

92.495 Cease and desist order; injunction. (1) Whenever the commissioner finds that any owner, subdivider, series partitioner, devel-

oper or other person is violating any of the provisions of ORS 92.305 to 92.495 or of the alternative requirements of the commissioner prescribed pursuant to ORS 92.425 (3), the commissioner may order the persons to desist and refrain from violating the provisions or requirements, or from the further sale or lease of lots, parcels or interests within the subdivision or series partition.

(2) Whenever the commissioner finds that any subdivider, series partitioner, developer or other person is violating, or has violated or is about to violate, any of the provisions of ORS 92.305 to 92.495 or the alternative requirements of the commissioner prescribed pursuant to ORS 92.425 (3) the commissioner may bring proceedings in the circuit court within the county in which the violation or threatened violation has occurred or is about to occur, or in the county where the person, firm or corporation resides or carries on business, in the name of and on behalf of the people of the State of Oregon against the person, firm or corporation, and any other person or persons concerned in or in any way participating or about to participate in the violation, to enjoin the person, firm or corporation or any other person from continuing the violation or engaging in the violation or doing any act or acts in furtherance of the violation, and to apply for the appointment of a receiver or conservator of the assets of the defendant where an appointment is appropriate. [1974 s.s. c.1 §§19, 20; 1975 c.643 §14; 1983 c.570 §28]

92.500 [1973 c.421 §1; repealed by 1974 s.s. c.1 §23]

92.505 [1973 c.421 §2; repealed by 1974 s.s. c.1 §23]

92.510 [1973 c.421 §3; repealed by 1974 s.s. c.1 §23]

92.515 [1973 c.421 §6; repealed by 1974 s.s. c.1 §23]

92.530 [1973 c.421 §4; repealed by 1974 s.s. c.1 §23]

92.535 [1973 c.421 §8(1); repealed by 1974 s.s. c.1 §23]

92.545 [1973 c.421 §16; repealed by 1974 s.s. c.1 §23]

92.550 [1973 c.421 §8(2); repealed by 1974 s.s. c.1 §23]

92.555 [1973 c.421 §17; repealed by 1974 s.s. c.1 §23]

92.560 [1973 c.421 §8(3); repealed by 1974 s.s. c.1 §23]

92.565 [1973 c.421 §8(4), (5); repealed by 1974 s.s. c.1 §23]

92.570 [1973 c.421 §8(6); repealed by 1974 s.s. c.1 §23]

92.575 [1973 c.421 §28(1); repealed by 1974 s.s. c.1 §23]

92.580 [1973 c.421 §18; repealed by 1974 s.s. c.1 §23]

92.585 [1973 c.421 §19; repealed by 1974 s.s. c.1 §23]

92.590 [1973 c.421 §20; repealed by 1974 s.s. c.1 §23]

92.595 [1973 c.421 §27; repealed by 1974 s.s. c.1 §23]

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CANCELLATION PERIOD ENDS. YOU SHOULD DO THE FOLLOWING:

(1) CAREFULLY EXAMINE THE PUBLIC REPORT, IF ANY, ON THE SUBDIVISION OR SERIES PARTITION AND ANY ACCOMPANYING INFORMATION DELIVERED BY THE SELLER.

(2) INQUIRE OF YOUR LENDER AS TO WHETHER YOU CAN GET ADEQUATE FINANCING AT AN ACCEPTABLE INTEREST RATE.

(3) INQUIRE OF THE SELLER AND THE LENDER WHAT THE AMOUNT OF THE CLOSING COSTS WILL BE.

(2) A copy of the notice set forth in subsection (1) of this section shall be given to each purchaser under a contract described in subsection (1) of this section at the time of or immediately following the purchaser's signing of such contract, for the use of the purchaser. [1975 c.643 §17; 1983 c.570 §21]

92.433 Escrow documents required of successor to vendor's interest. (1) A purchaser of a vendor's interest or a holder of an encumbrance secured by a vendor's interest in a land sale contract for which an escrow has been established pursuant to ORS 92.425 shall deposit in the escrow any instruments necessary to assure that the contract vendee can obtain the legal title bargained for upon compliance with the terms and conditions of the contract.

(2) A subdivider, series partitioner or developer who has sold lots, parcels or interests in a subdivision or series partition under a land sale contract shall not dispose of or subsequently encumber the vendor's interest therein unless the terms of the instrument of disposition or the encumbrance provide the means by which the purchaser or holder of the encumbrance will comply with subsection (1) of this section. [1977 c.809 §13; 1983 c.570 §22]

92.435 [1974 s.s. c.1 §13; repealed by 1977 c.484 §32]

92.445 [1974 s.s. c.1 §16; repealed by 1975 c.643 §18]

92.455 Inspection of records. Records of the sale or lease of real property within a subdivision or series partition shall be subject to inspection by the commissioner. [1974 s.s. c.1 §14; 1975 c.643 §10; 1983 c.570 §23]

(Prohibited Acts)

92.460 Blanket encumbrance permitted only in certain circumstances. (1) Subject to the provisions of ORS 92.425, no lot,

parcel or other interest in a subdivision or series partition shall be sold by a subdivider, series partitioner or developer subject to a blanket encumbrance unless there exists in the blanket encumbrance or other supplementary agreement a provision which by its terms shall unconditionally provide that the purchaser or lessee of a lot, parcel or other interest can obtain legal title or other interest bargained for, free and clear of the blanket encumbrance, upon compliance with the terms and conditions of the purchase or lease.

(2) In lieu of the requirement of subsection (1) of this section, the subdivider, series partitioner or developer shall conform to any alternative requirement or method which the commissioner deems acceptable to carry into effect the intent and provisions of this section. [1977 c.809 §12; 1983 c.570 §24]

92.465 Fraud and deceit prohibited.

No person shall, in connection with the offer, sale or lease of any lot, parcel or interest in a real estate subdivision or series partition, directly or indirectly:

(1) Employ any device, scheme or artifice to defraud;

(2) Make any untrue statement of a material fact or fail to state a material fact necessary to make the statement made, in the light of the circumstances under which it is made, not misleading;

(3) Engage in any act, practice or course of business which operates or would operate as a fraud or deception upon any person;

(4) Issue, circulate or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet or other literature which contains an untrue statement of a material fact or fails to state a material fact necessary in order to make the statements therein made, in the light of the circumstances under which they are made, not misleading;

(5) Issue, circulate or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating or publishing the matter or making the representation is clearly indicated; or

(6) Make any statement or representation, or issue, circulate or publish any advertising matter containing any statement to the effect that the real estate subdivision or series partition has been in any way approved or indorsed by the commissioner. [1974 s.s. c.1 §15; 1975 c.643 §11; 1983 c.570 §25]

92.475 False or misleading advertising prohibited; liability. It shall be unlawful for any owner, subdivider, developer, series parti-

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- 92.600** [1973 c.421 §§21, 22; repealed by 1974 s.s. c.1 §23]
- 92.605** [1973 c.421 §23; repealed by 1974 s.s. c.1 §23]
- 92.610** [1973 c.421 §24; repealed by 1974 s.s. c.1 §23]
- 92.615** [1973 c.421 §25; repealed by 1974 s.s. c.1 §23]
- 92.620** [1973 c.421 §26; repealed by 1974 s.s. c.1 §23]
- 92.625** [1973 c.421 §30; repealed by 1974 s.s. c.1 §23]
- 92.650** [Subsection (1) enacted as 1973 c.421 §9; subsection (2) enacted as 1973 c.421 §12(8); repealed by 1974 s.s. c.1 §23]
- 92.655** [1973 c.421 §12(1), (2), (3), (4), (7), (10); repealed by 1974 s.s. c.1 §23]
- 92.660** [1973 c.421 §12(5), (6), (9); repealed by 1974 s.s. c.1 §23]
- 92.665** [1973 c.421 §13; repealed by 1974 s.s. c.1 §23]
- 92.670** [1973 c.421 §14; repealed by 1974 s.s. c.1 §23]
- 92.675** [1973 c.421 §45; repealed by 1974 s.s. c.1 §23]
- 92.685** [1973 c.421 §34; repealed by 1974 s.s. c.1 §23]
- 92.690** [1973 c.421 §35; repealed by 1974 s.s. c.1 §23]
- 92.695** [1973 c.421 §36; repealed by 1974 s.s. c.1 §23]
- 92.700** [1973 c.421 §37; repealed by 1974 s.s. c.1 §23]
- 92.710** [1973 c.421 §38; repealed by 1974 s.s. c.1 §23]
- 92.715** [1973 c.421 §41; repealed by 1974 s.s. c.1 §23]
- 92.720** [1973 c.421 §39; repealed by 1974 s.s. c.1 §23]
- 92.725** [1973 c.421 §40; repealed by 1974 s.s. c.1 §23]
- 92.745** [1973 c.421 §§5, 43; repealed by 1974 s.s. c.1 §23]
- 92.750** [1973 c.421 §15; repealed by 1974 s.s. c.1 §23]
- 92.755** [1973 c.421 §31; repealed by 1974 s.s. c.1 §23]
- 92.760** [1973 c.421 §44; repealed by 1974 s.s. c.1 §23]
- 92.765** [1973 c.421 §28(2); repealed by 1974 s.s. c.1 §23]
- 92.770** [1973 c.421 §11; repealed by 1974 s.s. c.1 §23]

- 92.775** [1973 c.421 §29; repealed by 1974 s.s. c.1 §23]
- 92.780** [1973 c.421 §46; repealed by 1974 s.s. c.1 §23]
- 92.785** [1973 c.421 §47; repealed by 1974 s.s. c.1 §23]
- 92.800** [1973 c.421 §42; repealed by 1974 s.s. c.1 §23]
- 92.805** [1973 c.421 §33; repealed by 1974 s.s. c.1 §23]
- 92.810** [1973 c.421 §32; repealed by 1974 s.s. c.1 §23]
- 92.820** [1974 s.s. c.1 §21; 1977 c.41 §1; renumbered 92.339]

PENALTIES

92.990 Penalties. (1) Violation of any provision of ORS 92.010 to 92.090, 92.100 and 92.110 to 92.170 or of any regulation or ordinance adopted thereunder, is punishable, upon conviction, by a fine of not less than \$50 nor more than \$500 or imprisonment in the county jail for not less than 25 days nor more than 50 days, or both.

(2) Any person who violates any of the provisions of ORS 92.325 (1), 92.345 to 92.365, 92.405 (1), (2) and (3), 92.425, 92.433, 92.460 to 92.475 and any alternative requirements of the commissioner prescribed pursuant to ORS 92.425 (3), not waived by the commissioner pursuant to ORS 92.395, or who provides false information or omits to state material facts pursuant to ORS 92.337, shall be punished by a fine not exceeding \$10,000, or by imprisonment in the penitentiary for a period not exceeding three years, or in the county jail not exceeding one year, or by both such fine and imprisonment. [Amended by 1955 c.756 §20; subsection (2) enacted as 1963 c.624 §20; 1965 c.584 §12; 1973 c.421 §48; subsection (2) (1973 Replacement Part) enacted as 1973 c.421 §10; subsection (3) (1973 Replacement Part) enacted as 1973 c.421 §49; subsections (2), (3) (1973 Replacement Part) repealed by 1974 s.s. c.1 §23; subsection (2) (1974 Replacement Part) enacted as 1974 s.s. c.1 §22; 1975 c.643 §21; 1977 c.809 §14]

OREGON'S STATEWIDE PLANNING GOALS



Land Conservation and Development Commission

INTRODUCTION

OREGON'S STATEWIDE PLANNING PROGRAM

The Statewide Planning Goals

The goals in this tabloid constitute the framework for a statewide program of land-use planning. They are state policies on land use, resource management, economic development, and citizen involvement.

Each of the 19 sections in this document has two parts, one labeled *Goal* and the other labeled *Guidelines*. All text under the heading *Goal* is mandatory and has the force of law. All text under the heading *Guidelines* is not mandatory; it contains suggested, not required, courses of action. All of the goals are adopted as administrative rules in accordance with Oregon law.

Although each of the goals addresses a different topic, one can identify four broad categories of goals. The first set, those that deal with the planning process, contains Goal 1 (Citizen Involvement) and Goal 2 (Land Use Planning.) A second group, the conservation goals, deals with topics such as farm lands, forest lands, and natural resources. The third group is made up of goals that relate to development (Housing, Transportation, and Public Facilities and Services, for example). The fourth category contains the four goals that deal with Oregon's coastal resources.

City and County Planning

Oregon's statewide goals are achieved through local comprehensive planning. State law requires each city and county to have a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect.

The locally adopted comprehensive plans must be consistent with the statewide planning goals. The plans are reviewed for such consistency by the state's Land Conservation and Development Commission (LCDC). When LCDC has officially approved a local government's plan, that plan is said to be "acknowledged." An acknowledged local comprehensive plan is the controlling document for land use in the area covered by that plan.

Oregon's planning laws not only require that cities and counties comply with statewide planning goals; they also specify that special districts and state agencies must conform to those same goals. And the laws further require that special districts and state agencies carry out their programs in accordance with acknowledged local plans.

Coordination of Planning

Oregon's planning laws also place strong emphasis on coordination of planning. A city's plan, for example, must be consistent with the related county plan—and vice versa. The programs of special districts and state agencies must be coordinated with local plans.

A Partnership

Oregon's statewide planning program is a partnership between state and local governments. The state requires that cities and counties plan, and it sets the standards for such planning. Local governments do the planning and administer most of the land-use

regulations. The resulting mosaic of state-approved local comprehensive plans covers the entire state.

The State of Oregon does not write comprehensive plans. It does not zone land, and it does not administer permits for local planning actions, such as variances and conditional uses. It also does not require environmental impact statements (EIS's), a review process that is used in several other states.

The Land Conservation and Development Commission

Oregon's statewide planning program is directed by the Land Conservation and Development Commission (LCDC). The commission's seven members are unsalaried volunteers, appointed by the governor and confirmed by the state senate.

The Department of Land Conservation and Development

LCDC's administrative arm is the Department of Land Conservation and Development (DLCD). The department's main office is in Salem. DLCD has field representatives in Portland, Newport, Medford, Bend, and LaGrande.

The Land Use Board of Appeals

The state has a special court to rule on matters involving planning: the Land Use Board of Appeals. The three-member board, known as LUBA, is based in Salem.

(Continued on next page)

Citizen Involvement

It is no coincidence that the first among Oregon's 19 planning goals is *Citizen Involvement*. Extensive citizen involvement has been the hallmark of the state's planning program from the outset. Every city and county has a special committee to monitor and encourage active citizen participation in planning. A state body, the Citizen Involvement Advisory Committee (CIAC), is directed by law to see that such participation occurs in all phases of the planning process.

The Local Comprehensive Plan

Comprehensive plans provide overall guidance for a community's land use, economic development, and resource management. Each plan contains two main parts. One is a body of data and information called the inventory, background report, or factual base. It describes a community's resources and features. It must address all of the topics

specified in the applicable statewide goals. The other part is the policy element. That part of the plan sets forth the community's long-range objectives and the policies by which it intends to achieve them. The policy element of each community's plan is adopted by ordinance and has the force of law.

Local plans evolve as a result of two processes, plan amendment and periodic review. Plan amendments are adjustments that occur irregularly; they usually deal only with small parts of a plan or small geographic areas. Periodic reviews are broad evaluations of an entire plan that occur every three to five years. A plan may be modified extensively after such a review.

Each local plan is accompanied by a set of implementing measures. There are many different kinds, but the two most common ones are zoning and land-division ordinances. Every city and county in Oregon has adopted such land-use controls.

Need More Information?

Open Space Applications (Library Holding).pdf
 If you would like more information about Oregon's statewide planning program, please contact:

Department of Land Conservation
 and Development
 1175 Court Street NE
 Salem, OR 97310

(503) 378-4926

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Oregon's statewide planning goals have been adopted as administrative rules (OAR 606, Division 15) in accordance with the procedures set forth in ORS 197.225-246.

Adoption

Goals 1-14 December 27, 1974
 Goal 15 December 5, 1975
 Goals 16-19 December 18, 1976

Amendments

Goals 2-4 December 30, 1983
 Goal 8 October 19, 1984
 Goals 16-19 October 19, 1984

1.

CITIZEN INVOLVEMENT

GOAL

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state and regional agencies, and special-purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

1. **Citizen Involvement** — To provide for widespread citizen involvement.

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized citizen advisory committee or committees broadly representative of geographic areas and interests related to land use and land-use decisions. Citizen advisory committee members shall be selected by an open, well-publicized public process.

The citizen advisory committee shall be responsible for assisting the governing body with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the state Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is used, its members shall be selected by an open, well-publicized public process.

2. **Communication** — to assure effective two-way communication with citizens.

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

3. **Citizen Influence** — To provide the opportunity for citizens to be involved in all phases of the planning process.

Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goals and guidelines for Land-Use Planning, including *Preparation of Plans and*

Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan, and Implementation Measures.

4. **Technical Information** — To assure that technical information is available in an understandable form.

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

5. **Feedback Mechanisms** — To assure that citizens will receive a response from policymakers.

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policymakers. The rationale used to reach land-use policy decisions shall be available in the form of a written record.

6. **Financial Support** — To insure funding for the citizen involvement program.

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

the elements necessary for the development of the plans.

2. **Plan Preparation** — The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land-use plans.

3. **Adoption Process** — The general public, through the local citizen involvement programs, should have the opportunity to review and recommend change to the proposed comprehensive land-use plans prior to the public hearing process to adopt comprehensive land-use plans.

4. **Implementation** — The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land-use plan.

The general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

5. **Evaluation** — The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land-use plans.

6. **Revision** — The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land-use plans prior to the public hearing process to formally consider the proposed changes.

D. TECHNICAL INFORMATION

1. Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, water construction, transportation, subdivision studies and zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities and timeline in the planning process of these agencies should be clearly defined and publicized.

2. Technical information should include, but not be limited to, energy, natural environment, political, legal, economic and social data and places of cultural significance, as well as those maps and photos necessary for effective planning.

E. FEEDBACK MECHANISM

1. At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policy-makers.

2. A process for quantifying and synthesizing citizens' attitudes should be developed and reported to the general public.

F. FINANCIAL SUPPORT

- A. The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

GUIDELINES

A. CITIZEN INVOLVEMENT

1. A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings and meetings).
2. Universities, colleges, community colleges, secondary and primary educational institutions and other agencies and institutions with interests in land-use planning should provide information on land-use education to citizens, as well as develop and offer courses in land-use education which provide for a diversity of educational backgrounds in land-use planning.
3. In the selection of members for the Citizen Advisory Committee, the following selection process should be observed: citizens should receive notice they can understand the opportunity to serve on citizen advisory committees; citizen advisory committee appointees should receive official notification of their selection; and, citizen advisory committee appointments should be well publicized.

B. COMMUNICATION

Newsletters, mailings, posters, mail-back questionnaires, and other available media should be used in the citizen involvement program.

C. CITIZEN INFLUENCE

1. **Data Collection** — The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing and evaluating

2.

LAND USE PLANNING

GOAL

PART I - PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS 197.705 through 197.795.

All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs. The required information shall be contained in the plan document or in supporting documents. The plans, supporting documents and implementation ordinances shall be filed in a public office or other place easily accessible to the public. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.

All land-use plans and implementation ordinances shall be adopted by the governing body after public hearing and shall be reviewed and, as needed, revised on a periodic cycle to take into account changing public policies and circumstances, in accord with a schedule set forth in the plan. Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

Affected Governmental Units — are those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan.

Comprehensive Plan — as defined in ORS 197.015 (5).

Coordinated — as defined in ORS 197.015 (5). Note: It is included in the definition of comprehensive plan.

Implementation Measures — are the means used to carry out the plan. These are of two general types: (1) management implementation measures such as ordinances, regulations or project plans, and (2) site or area specific implementation measures such as permits and grants for construction, construction of public facilities or provision of services.

Plans — as used here encompass all plans which guide land-use decisions, including both comprehensive and single-purpose plans of cities, counties, state and federal agencies and special districts.

PART II - EXCEPTIONS

A local government may adopt an exception to a goal when:

- (a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;
- (b) The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

- (1) Reasons justify why the state policy embodied in the applicable goals 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.

COMPATIBLE, as used in subparagraph (4), is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons which demonstrate that the standards for an exception have or have not been met.

Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

Upon review of a decision approving or denying an exception:

- (a) The commission shall be bound by any finding of fact for which there is substantial evidence in the record of the local government proceedings resulting in approval or denial of the exception;
- (b) The commission shall determine whether the local government's findings and reasons demonstrate that the standards for an exception have or have not been met; and
- (c) The commission shall adopt a clear statement of reasons which sets forth the basis for the determination that the standards for an exception have or have not been met.

EXCEPTION means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

- (a) is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;
- (b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and
- (c) Complies with standards for an exception.

PART III - USE OF GUIDELINES

Governmental units shall review the guidelines set forth for the goals and either utilize the guidelines or develop alternative means that will achieve the goals. All land-use plans shall state how the guidelines or alternative means utilized achieve the goals.

Guidelines—are suggested directions that would aid local governments in activating the mandated goals. They are intended to be instructive, directional and positive, not limiting local government to a single course of action when some other course would achieve the same result. Above all, guidelines

are not intended to be a grant of power to the state to carry out zoning from the state level under the guise of guidelines. (Guidelines or the alternative means selected by governmental bodies will be part of the Land Conservation and Development Commission's process of evaluating plans for compliance with goals.)

GUIDELINES

A. PREPARATION OF PLANS AND IMPLEMENTATION MEASURES

Preparation of plans and implementation measures should be based on a series of broad phases, proceeding from the very general identification of problems and issues to the specific provisions for dealing with these issues and for interrelating the various elements of the plan. During each phase opportunities should be provided for review and comment by citizens and affected governmental units.

The various implementation measures which will be used to carry out the plan should be considered during each of the planning phases.

The number of phases needed will vary with the complexity and size of the area, number of people involved, other governmental units to be consulted, and availability of the necessary information.

Sufficient time should be allotted for:

- (1) collection of the necessary factual information
- (2) gradual refinement of the problems and issues and the alternative solutions and strategies for development
- (3) incorporation of citizen needs and desires and development of broad citizen support
- (4) identification and resolution of possible conflicts with plans of affected governmental units.

B. REGIONAL, STATE AND FEDERAL PLAN CONFORMANCE

It is expected that regional, state and federal agency plans will conform to the comprehensive plans of cities and counties. Cities and counties are expected to take into account the regional, state and national needs. Regional, state and federal agencies are expected to make their needs known during the preparation and revision of city and county comprehensive plans. During the preparation of their plans, federal, state and regional agencies are expected to create opportunities for review and comment by cities and counties.

In the event existing plans are in conflict or an agreement cannot be reached during the plan preparation process, then the Land Conservation and Development Commission expects the affected governmental units to take steps to resolve the issues. If an agreement cannot be reached the appeals procedures in ORS chapter 197 may be used.

C. PLAN CONTENT

1. Factual Basis for the Plan

Inventories and other forms of data are needed as the basis for the policies and other decisions set forth in the plan. This factual base should include data on the following as they relate to the goals and other provisions of the plan:

- (a) Natural resources, their capabilities and limitations
- (b) Man-made structures and utilities, their location and condition

(Continued on next page)

2.

LAND USE PLANNING (Continued)

- (c) Population and economic characteristics of the area
- (d) Roles and responsibilities of governmental units.

2. Elements of the Plan

The following elements should be included in the plan:

- (a) Applicable statewide planning goals
- (b) Any critical geographic area designated by the Legislature
- (c) Elements that address any special needs or desires of the people in the area
- (d) Time periods of the plan, reflecting the anticipated situation at appropriate future intervals

All of the elements should fit together and relate to one another to form a consistent whole at all times.

D. FILING OF PLANS

City and county plans should be filed, but not recorded, in the Office of the County Recorder. Copies of all plans should be available to the public and to affected governmental units.

E. MAJOR REVISIONS AND MINOR CHANGES IN THE PLAN AND IMPLEMENTATION MEASURES

The citizens in the area and any affected governmental unit should be given an opportunity to review and comment prior to any changes in the plan and implementation ordinances. There should be at least 30 days notice of the public hearing on the proposed change.

1. Major Revisions

Major revisions include land use changes that have widespread and significant impact beyond the immediate area such as quantitative changes producing large volumes of traffic; a qualitative change in the character of the land use itself, such as conversion of residential to industrial use; or a spatial change that affects large areas or many different ownerships.

The plan and implementation measures should be revised when public needs and desires change and when development occurs at a different rate than contemplated by the plan. Areas experiencing rapid growth and development should provide for a frequent review so needed revisions can be made to keep the plan up to date; however, major revisions should not be made more frequently than every two years, if at all possible.

The plan and implementation measures should be reviewed at least every two years and a public statement issued on whether any revision is needed. They can be reviewed in their entirety or in major portions. The review should begin with re-examining the data and problems and continue through the same basic phases as the initial preparation of the plan and implementation measures.

2. Minor Changes

Minor changes, i.e., those which do not have significant effect beyond the immediate area of the change, should be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. Minor changes should not be made more frequently than once a year, if at all possible.

F. IMPLEMENTATION MEASURES

The following types of measure should be considered for carrying out plans:

1. Management Implementation Measures

- (a) Ordinances controlling the use and construction on the land such as building codes, sign ordinances, subdivision and zoning ordinances. ORS Chapter 197 requires that the provisions of the zoning and subdivision ordinances conform to the comprehensive plan.
- (b) Plans for public facilities that are more

specific than those included in the comprehensive plan. They show the size, location, and capacity serving each property but are not as detailed as construction drawings.

- (c) Capital improvement budget which sets out the projects to be constructed during the budget period.
- (d) State and federal regulations affecting land use.
- (e) Annexations, consolidations, mergers and other reorganization measures.

2. Site and Area Specific Implementation Measures

- (a) Building permits, septic tank permits, driveway permits, etc; the review of subdivisions and land partitioning applications, the changing of zones and granting of conditional uses, etc.
- (b) The construction of public facilities (schools, roads, water lines, etc.)
- (c) The provision of land-related public services such as fire and police.
- (d) The awarding of state and federal grants to local governments to provide these facilities and services.
- (e) Leasing of public lands.

G. USE OF GUIDELINES FOR THE STATEWIDE PLANNING GOALS

Guidelines for most statewide planning goals are found in two sections—planning and implementation. Planning guidelines relate primarily to the process of developing plans that incorporate the provisions of the goals. Implementation guidelines should relate primarily to the process of carrying out the goals once they have been incorporated into the plans. Techniques to carry out the goals and plan should be considered during the preparation of the plan.

3.

AGRICULTURAL LANDS

GOAL

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215. Such minimum lot sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area.

Conversion of rural agricultural land to urbanizable land shall be based upon consideration of the following factors: (1) environmental, energy, social and economic consequences; (2) demonstrated need consistent with LCDC goals; (3) unavailability of an alternative suitable location for the requested use; (4) compatibility of the proposed use with related agricultural land; and (5) the retention of Class I, II, III and IV soils in farm use. A governing body proposing to convert rural agricultural land to urbanizable land shall follow the procedures and requirements set forth in the Land Use Planning goal (Goal 2) for goal exceptions.

Counties may designate agricultural land as marginal land and allow those uses and land divisions on the designated marginal land as allowed by ORS 197.247.

Agricultural Land—in western Oregon is land of predominantly Class I, II, III and IV soils and in eastern Oregon is land of predominantly Class I, II, III, IV, V and VI soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal.

Farm Use — is as set forth in ORS 215.203 and includes the non-farm uses authorized by ORS 215.213.

GUIDELINES

A. PLANNING

1. Urban growth should be separated from agricultural lands by buffer or transitional areas of open space.
2. Plans providing for the preservation and maintenance of farm land for farm use,

should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Non-farm uses permitted within farm use zones under ORS 215.213 (2) and (3) should be minimized to allow for maximum agricultural productivity.
2. Extension of services, such as sewer and water supplies into rural areas should be appropriate for the needs of agriculture, farm use and non-farm uses established under ORS 215.213.
3. Services that need to pass through agricultural lands should not be connected with any use that is not allowed under ORS 215.203 and 215.213, should not be assessed as part of the farm unit and should be limited in capacity to serve specific service areas and identified needs.
4. Forest and open space uses should be permitted on agricultural land that is being preserved for future agricultural growth. The interchange of such lands should not be subject to tax penalties.

4.

FOREST LANDS

GOAL

To conserve forest lands for forest uses.

Forest land shall be retained for the production of wood fibre and other forest uses. Lands suitable for forest uses shall be inventoried and designated as forest lands. Existing forest land uses shall be protected unless proposed changes are in conformance with the comprehensive plan.

In the process of designating forest lands, comprehensive plans shall include the determination and mapping of forest site classes according to the United States Forest Service manual "Field Instructions for Integrated Forest Survey and Timber Management Inventories - Oregon, Washington and California, 1974."

Counties may designate forest land as marginal land and allow those uses and land divisions on the designated marginal land as allowed by ORS 197.247.

Forest lands — are (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses; (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation; (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use; (4) other forested lands in urban and agricultural areas which provide urban buff-

ers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors, and recreational use.

Forest uses — are (1) the production of trees and the processing of forest products; (2) open space, buffers from noise, and visual separation of conflicting uses; (3) watershed protection and wildlife and fisheries habitat; (4) soil protection from wind and water; (5) maintenance of clean air and water; (6) outdoor recreational activities and related support services and wilderness values compatible with these uses; and (7) grazing land for livestock.

GUIDELINES

A. PLANNING

1. Forest lands should be inventoried so as to provide for the preservation of such lands for forest uses.
2. Plans providing for the preservation of forest lands for forest uses should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Before forest land is changed to another use, the productive capacity of the land in

each use should be considered and evaluated.

2. Developments that are allowable under the forest lands classification should be limited to those activities for forest production and protection and other land management uses that are compatible with forest production. Forest lands should be available for recreation and other uses that do not hinder growth.
3. Forestation or reforestation should be encouraged on land suitable for such purposes, including marginal agricultural land not needed for farm use.
4. Road standards should be limited to the minimum width necessary for management and safety.
5. Highways through forest lands should be designed to minimize impact on such lands.
6. Rights-of-way should be designed so as not to preclude forest growth whenever possible.
7. Maximum utilization of utility rights-of-way should be required before permitting new ones.
8. Comprehensive plans should consider other land uses that are adjacent to forest lands so that conflicts with forest harvest and management are avoided.

5.

OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

GOAL

To conserve open space and protect natural and scenic resources.

Programs shall be provided that will (1) insure open space, (2) protect scenic and historic areas and natural resources for future generations, and (3) promote healthy and visually attractive environments in harmony with the natural landscape character. The location, quality and quantity of the following resources shall be inventoried:

- a. Land needed or desirable for open space;
- b. Mineral and aggregate resources;
- c. Energy sources;
- d. Fish and wildlife areas and habitats;
- e. Ecologically and scientifically significant natural areas, including desert areas;
- f. Outstanding scenic views and sites;
- g. Water areas, wetlands, watersheds and groundwater resources;
- h. Wilderness areas;
- i. Historic areas, sites, structures and objects;
- j. Cultural areas;
- k. Potential and approved Oregon recreation trails;
- l. Potential and approved federal wild and scenic waterways and state scenic waterways.

Where no conflicting uses for such resources have been identified, such resources shall be managed so as to preserve their original character. Where conflicting uses have been identified the economic, social, environmental and energy consequences of the conflicting uses shall be determined and programs developed to achieve the goal.

Cultural Area — refers to an area characterized by evidence of an ethnic, religious or social group with distinctive traits, beliefs and social forms.

Historic Areas — are lands with sites, structures and objects that have local, regional, statewide or national historical significance.

Natural Area — includes land and water that has substantially retained its natural character and land and water that, although altered in character, is important as habitats for plant, animal or marine life, for the study of its natural historical, scientific or paleontological features, or for the appreciation of its natural features.

Open Space — consists of lands used for agricultural or forest uses, and any land area that would, if preserved and continued in its present use:

- (a) Conserve and enhance natural or scenic resources;
- (b) Protect air or streams or water supply;
- (c) Promote conservation of soils, wetlands, beaches or tidal marshes;

- (d) Conserve landscaped areas, such as public or private golf courses, that reduce air pollution and enhance the value of abutting or neighboring property;
- (e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;
- (f) Enhance recreation opportunities;
- (g) Preserve historic sites;
- (h) Promote orderly urban development.

Scenic Area — are lands that are valued for their aesthetic appearance

Wilderness Areas — are areas where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. It is an area of undeveloped land retaining its primeval character and influence, without permanent improvement or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) may also contain ecological, geological, or other features of scientific, educational, scenic, or historic value.

GUIDELINES

A. PLANNING

1. The need for open space in the planning area should be determined, and standards developed for the amount, distribution, and type of open space.
2. Criteria should be developed and utilized to determine what uses are consistent with open space values and to evaluate the effect of converting open space lands to inconsistent uses. The maintenance and development of open space in urban areas should be encouraged.
3. Natural resources and required sites for the generation of energy (i.e. natural gas, oil, coal, hydro, geothermal, uranium, solar and others) should be conserved and protected; reservoir sites should be identified and protected against irreversible loss.
4. Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.
5. The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites.
6. In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected.
7. As a general rule, plans should prohibit outdoor advertising signs except in commercial or industrial zones. Plans should not provide for the reclassification of land for the purpose of accommodating an outdoor advertising sign. The term "outdoor advertising sign" has the meaning set forth in ORS 377.710 (20).

B. IMPLEMENTATION

1. Development should be planned and directed so as to conserve the needed amount of open space.
2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.
3. The efficient consumption of energy should be considered when utilizing natural resources.
4. Fish and wildlife areas and habitats should be protected and managed in accordance with the Oregon Wildlife Commission's fish and wildlife management plans.
5. Stream flow and water levels should be protected and managed at a level adequate for fish, wildlife, pollution abatement, recreation, aesthetics and agriculture.
6. Significant natural areas that are historically, ecologically or scientifically unique, outstanding or important, including those identified by the State Natural Area Preserves Advisory Committee, should be inventoried and evaluated. Plans should provide for the preservation of natural areas consistent with an inventory of scientific, educational, ecological, and recreational needs for significant natural areas.
7. Local, regional and state governments should be encouraged to investigate and utilize fee acquisition, easements, cluster developments, preferential assessment, development rights acquisition and similar techniques to implement this goal.
8. State and federal agencies should develop statewide natural resource, open space, scenic and historic area plans and provide technical assistance to local and regional agencies. State and federal plans should be reviewed and coordinated with local and regional plans.
9. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and "second use" utilization as well as for the primary use.

6. AIR, WATER AND LAND RESOURCES QUALITY

GOAL

To maintain and improve the quality of the air, water and land resources of the state.

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.

Waste and Process Discharges — refers to solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom. Included here also are indirect sources of air pollution which result in emissions of air contaminants for which the state has established standards.

GUIDELINES

A. PLANNING

1. Plans should designate alternative areas suitable for use in controlling pollution including but not limited to waste water treatment plants, solid waste disposal sites and sludge disposal sites.

2. Plans should designate areas for urban and rural residential use only where approvable sewage disposal alternatives have been clearly identified in such plans.

3. Plans should buffer and separate those land uses which create or lead to conflicting requirements and impacts upon the air, water and land resources.

4. Plans which provide for the maintenance and improvement of air, land and water resources of the planning area should consider as a major determinant the carrying capacity of the air, land, and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

5. All plans and programs affecting waste and process discharges should be coordinated within the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plan.

6. Plans of state agencies before they are adopted, should be coordinated with and reviewed by local agencies with respect to the impact of these plans on the air, water and land resources in the planning area.

7. In all air quality maintenance areas, plans

should be based on applicable state rules for reducing indirect pollution and be sufficiently comprehensive to include major transportation, industrial, institutional, commercial, recreational and governmental developments and facilities.

B. IMPLEMENTATION

1. Plans should take into account methods and devices for implementing this goal, including but not limited to the following: (1) tax incentives and disincentives, (2) land use controls and ordinances, (3) multiple-use and joint development practices, (4) capital facility programming, (5) fee and less-than-fee acquisition techniques, and (6) enforcement of local health and safety ordinances.

2. A management program that details the respective implementation roles and responsibilities for carrying out this goal in the planning area should be established in the comprehensive plan.

3. Programs should manage land conservation and development activities in a manner that accurately reflects the community's desires for a quality environment and a healthy economy and is consistent with state environmental quality statutes, rules, standards and implementation plans.

7. AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

GOAL

To protect life and property from natural disasters and hazards.

Developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazards.

Areas of Natural Disasters and Hazards — are areas that are subject to natural events that are known to result in death or endanger the works of man, such as stream flooding, ocean flooding, ground water, erosion and deposition, landslides, earthquakes, weak foundation soils and other hazards unique to local or regional areas.

GUIDELINES

A. PLANNING

1. Areas subject to natural hazards should be evaluated as to the degree of hazard present. Proposed developments should be keyed to the degree of hazard and to the limitations on use imposed by such hazard in the planning areas.
2. In planning for floodplain areas, uses that will not require protection through dams,

dikes and levees should be preferred over uses that will require such protection.

3. Low density and open space uses that are least subject to loss of life or property damage such as open storage, forestry, agriculture and recreation should be preferred in floodplains, especially the floodway portion. The floodway portion should be given special attention to avoid development that is likely to cause an impediment to the flow of floodwaters.

4. Plans taking into account known areas of natural disasters and hazards should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

5. Planning for known areas of natural disasters and hazards should include an evaluation of the beneficial impact on natural resources and the environment from letting such events naturally reoccur.

B. IMPLEMENTATION

1. Cities and counties not already eligible should qualify for inclusion in the National

Flood Insurance Program, provided under the National Flood Insurance Act of 1968 (Public Law 90-448). The Act requires that development in flood-prone areas be appropriate to the probability of flood damage, and the danger to human life. The Flood Disaster Protection Act of 1973 (P.L. 93-234) and other pertinent federal and state programs should be considered. The United States Department of Housing and Urban Development should identify all flood and mud-slide prone cities and counties in Oregon, and priority should be given to the completion of flood rate maps for such areas.

2. When locating developments in areas of known natural hazards, the density or intensity of the development should be limited by the degree of the natural hazard.
3. When regulatory programs and engineering projects are being considered, the impacts of each should be considered.
4. Natural hazards that could result from new developments, such as runoff from paving projects and soil slippage due to weak foundation soils, should be considered, evaluated and provided for.

8.

RECREATIONAL NEEDS

GOAL

To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

RECREATION PLANNING

The requirements for meeting such needs, now and in the future, shall be planned for by governmental agencies having responsibility for recreation areas, facilities and opportunities: (1) in coordination with private enterprise; (2) in appropriate proportions and (3) in such quantity, quality and location as is consistent with the availability of the resources to meet such requirements. State and federal agency recreation plans shall be coordinated with local and regional recreational needs and plans.

DESTINATION RESORT SITING

Comprehensive plans may provide for the siting of destination resorts on rural lands subject to the provisions of the Goal and without a Goal 2 exception to Goals 3, 4, 11, or 14.

1. To assure that resort development does not conflict with the objectives of other Statewide Planning Goals, destination resorts allowed by this Goal shall not be sited in the following areas:
 - (a) Within 30 air miles of an urban growth boundary with an existing population of 100,000 or more;
 - (b) On a site with 50 or more contiguous acres of unique or prime farm land identified and mapped by the Soil Conservation Service; or within three miles of farm land within a High-Value Crop Area.
 - (c) On predominantly Cubic Foot Site Class 1 or 2 forest lands which are not subject to an approved Goal exception;
 - (d) In the Columbia River Gorge (as defined by ORS 390.460);
 - (e) On areas protected as Goal 5 resource sites in acknowledged comprehensive plans protected in spite of identified conflicting uses ("3A" sites designated pursuant to OAR 660-16-010(1)).
 - (f) Especially sensitive big game habitat as generally mapped by the Oregon Department of Fish and Wildlife in July 1984 and as further refined through development of comprehensive plans implementing this requirement.
2. Counties shall ensure that destination resorts are compatible with the site and adjacent land uses through the following measures:
 - (a) Important natural features, including habitat of threatened or endangered species, streams, rivers, and significant wetlands shall be maintained. Riparian vegetation within 100 feet of streams, rivers, and significant wetlands shall be maintained. Alterations to important natural features, including placement of structures which maintain the overall values of the feature may be allowed.
 - (b) Improvements and activities shall be located and designed to avoid or minimize adverse effects of the resort on uses on surrounding lands, particularly effects on intensive farming operations in the area. At a minimum, measures to accomplish this shall include:
 - (i) Establishment and maintenance of buffers between the resort and adjacent land uses, including natural vegetation and where appropriate, fences, berms, landscaped

areas, and other similar types of buffers.

- (ii) Setbacks of structures and other improvements from adjacent land uses.

3. Comprehensive plans allowing for destination resorts shall include implementing measures which:

- (a) Map areas where destination resorts are permitted by requirement (1) above.
- (b) Limit uses and activities to those permitted by this Goal.
- (c) Assure developed recreational facilities and key facilities intended to serve the entire development and visitor oriented accommodations are physically provided or are guaranteed through surety bonding or substantially equivalent financial assurances prior to closure of sale of individual lots or units. In phased developments, developed recreational facilities and other key facilities intended to serve a particular phase shall be constructed prior to sales in that phase or guaranteed through surety bonding.

DEFINITIONS

Destination Resort — a self-contained development providing visitor-oriented accommodations and developed recreational facilities in a setting with high natural amenities. To qualify as a destination resort under Goal 8, a proposed development must meet the following standards:

- (1) The resort is located on a site of 160 acres or more except within two miles of the ocean shoreline and the site is 40 acres or more.
- (2) At least 50 percent of the site is dedicated permanent open space excluding yards, streets, and parking areas.
- (3) At least \$2 million (in 1984 dollars) is spent on improvements for on-site developed recreational facilities and visitor-oriented accommodations exclusive of costs for land, sewer, and water facilities and roads. Not less than one-third of this amount shall be spent on developed recreational facilities.
- (4) Visitor-oriented accommodations including meeting rooms, restaurants with seating for 100 persons, and 150 separate rentable units for overnight lodging are provided. Accommodations available for residential use shall not exceed two such units for each unit of overnight lodging.
- (5) Commercial uses provided are limited to types and levels necessary to meet the needs of visitors to the development, and industrial uses are not permitted.

Developed Recreation Facilities — are improvements constructed for the purpose of recreation and may include but are not limited to golf courses, tennis courts, swimming pools, marinas, ski runs, and bicycle paths.

High Value Crop Area — an area in which there is a concentration of commercial farms capable of producing crops or products with a minimum gross value of \$1000 per acre per year. These crops and products include field crops, small fruits, berries, tree fruits, nuts, or vegetables, dairying, livestock feedlots, or Christmas trees as these terms are used in the 1983 County and State Agricultural Estimates prepared by the Oregon State University Extension Service. The High Value Crop Area designation is used for the purpose of minimizing conflicting uses in resort siting and is not meant to

revise the requirements of Goal 3 or administrative rules interpreting the Goal.

Overnight Lodgings — are permanent, separately rentable accommodations which are not available for residential use. Overnight lodgings include hotel or motel rooms, cabins, and time share units. Individually owned units may be considered overnight lodgings if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, mobile homes, dormitory rooms, and similar accommodations do not qualify as overnight lodgings for the purpose of this definition.

Recreation Area, Facilities and Opportunities — provide for human development and enrichment, and include but are not limited to: open space and scenic landscapes; recreational lands; history, archaeology and natural science resources; scenic roads and travelways; sports and cultural events; camping, picnicking and recreational lodging; tourist facilities and accommodations; trails; waterway use facilities; hunting; angling; winter sports; mineral resources; active and passive games and activities.

Recreation Needs — refers to existing and future demand by citizens and visitors for recreation areas, facilities and opportunities.

Self-contained Development — means that community sewer, water, and recreational facilities are provided on-site and are limited to meet the needs of the resort.

Visitor-oriented Accommodations — are overnight lodging, restaurants, meeting facilities which are designed to and provide for the needs of visitors rather than year-round residents.

GUIDELINES

A. PLANNING

1. An inventory of recreation needs in the planning area should be made based upon adequate research and analysis of public wants and desires.
2. An inventory of recreation opportunities should be made based upon adequate research and analysis of the resources in the planning area which are available to meet recreation needs.
3. Recreation land use to meet recreational needs and development standards, roles and responsibilities should be developed by all agencies in coordination with each other and with the private interests. Long range plans and action programs to meet recreational needs should be developed by each agency responsible for developing comprehensive plans.
4. The planning for lands and resources capable of accommodating multiple uses should include provision for appropriate recreation opportunities.
5. The *State Comprehensive Outdoor Recreation Plan* could be used as a guide when planning, acquiring and developing recreation resources, areas and facilities.
6. When developing recreation plans, energy consequences should be considered, and to the greatest extent possible nonmotorized types of recreational activities should be preferred over motorized activities.

(Continued on next page)

8. RECREATIONAL NEEDS (Continued)

7. Planning and provision for recreation facilities and opportunities should give priority to areas, facilities and uses that
 - (a) meet recreational needs requirements for high density population centers,
 - (b) meet recreational needs of persons of limited mobility and finances,
 - (c) meet recreational needs requirements while providing the maximum conservation of energy both in the transportation of persons to the facility or area and in the recreational use itself,
 - (d) minimize environmental deterioration,
 - (e) are available to the public at nominal cost, and
 - (f) meet needs of visitors to the state.
8. Unique areas or resources capable of meeting one or more specific recreational needs requirements should be inventoried and protected or acquired.
9. All state and federal agencies developing recreation plans should allow for review of recreation plans by affected local agencies.
10. Comprehensive plans should be designed to give a high priority to enhancing recreation opportunities on

the public waters and shorelands of the state especially on existing and potential state and federal wild and scenic waterways, and Oregon Recreation Trails.

11. Plans which provide for satisfying the recreation needs of persons in the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Plans should take into account various techniques in addition to fee acquisition such as easements, cluster developments, preferential assessments, development rights acquisition, subdivision park land dedication which benefits the subdivision, and similar techniques to meet recreation requirements through tax policies, land leases, and similar programs.

C. RESORT SITING

Measures should be adopted to minimize the

adverse environmental effects of resort development on the site, particularly in areas subject to natural hazards. Plans and ordinances should prohibit or discourage alterations and structures in the 100 year floodplain and on slopes exceeding 25 percent. Uses and alterations which are appropriate for these areas include:

1. minor drainage improvements which do not significantly impact important natural features of the site;
2. roads, bridges and utilities where there are no feasible alternative locations on the site; and
3. outdoor recreation facilities including golf courses, bike paths, trails, boardwalks, picnic tables, temporary open sided shelters, boating facilities, ski lifts and runs.

Alterations and structures permitted in these areas should be adequately protected from geologic hazards or of minimal value and designed to minimize adverse environmental effects.

9. ECONOMY OF THE STATE

GOAL

To diversify and improve the economy of the state.

Both state and federal economic plans and policies shall be coordinated by the state with local and regional needs. Plans and policies shall contribute to a stable and healthy economy in all regions of the state. Plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability; labor market factors; transportation; current market forces; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

Economic growth and activity in accordance with such plans shall be encouraged in areas that have underutilized human and natural resource capabilities and want increased growth and activity. Alternative sites suitable for economic growth and expansion shall be designated in such plans.

Diversity — refers to increasing the variety, type, scale and location of business, industrial and commercial activities.

Improve the Economy of the State — refers to a beneficial change in those business, industrial and commercial activities which generate employment, products and services consistent with the availability of long term human and natural resources.

Areas Which Have Underutilized Human and Natural Resource Capabilities — refer to cities, counties, or regions which are characterized by chronic unemployment or a narrow economic base, but have the capacity and resources to support additional economic activity.

GUIDELINES

A. PLANNING

1. A principal determinant in planning for major industrial and commercial developments should be the comparative advantage of the region within which the developments would be located. Comparative advantage industries are those economic activities which represent the most efficient use of resources, relative to other geographic areas.
2. The economic development projections and the comprehensive plan which is drawn from the projections should take into account the availability of the necessary natural resources to support the expanded industrial development and associated populations. The plan should also take into account the social, environmental, energy, and economic impacts upon the resident population.
3. Plans should designate the type and level of public facilities and services appropriate to support the degree of economic development being proposed.

4. Plans should strongly emphasize the expansion of and increased productivity from existing industries and firms as a means to strengthen local and regional economic development.

5. Plans directed toward diversification and improvement of the economy of the planning area should consider as a major determinant, the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. Plans should take into account methods and devices for overcoming certain regional conditions and deficiencies for implementing this goal, including but not limited to (1) tax incentives and disincentives; (2) land use controls and ordinances; (3) preferential assessments; (4) capital improvement programming; and (5) fee and less-than-fee acquisition techniques.
2. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those private and governmental bodies which operate in the planning area and have interests in carrying out this goal and in supporting and coordinating regional and local economic plans and programs.

10.

HOUSING

GOAL

To provide for the housing needs of citizens of the state.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Buildable Lands — refers to lands in urban and urbanizable areas that are suitable, available and necessary for residential use.

Household — refers to one or more persons occupying a single housing unit.

GUIDELINES

A. PLANNING

- In addition to inventories of buildable lands, housing elements of a comprehensive plan should, at a minimum, include: (1) a comparison of the distribution of the existing population by income with the distribution of available housing units by cost; (2) a determination of vacancy rates, both overall and at varying rent ranges and cost levels; (3) a determination of expected housing demand at varying rent ranges and cost levels; (4) allowance for a variety of densities and types of residences in each community; and (5) an inventory of sound housing in urban areas including units capable of being rehabilitated.

- Plans should be developed in a manner that insures the provision of appropriate types and amounts of land within urban growth boundaries. Such land should be necessary and suitable for housing that meets the housing needs of households of all income levels.
- Plans should provide for the appropriate type, location and phasing of public facilities and services sufficient to support housing development in areas presently developed or undergoing development or redevelopment.
- Plans providing for housing needs should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

- Plans should provide for a continuing review of housing need projections and should establish a process for accommodating needed revisions.
- Plans should take into account the effects of utilizing financial incentives and resources to (a) stimulate the rehabilitation of substandard housing without regard to the financial capacity of the owner so long as benefits accrue to the occupants; and (b) bring into compliance with codes adopted to assure safe and sanitary housing the dwellings of individuals who cannot on their own afford to meet such codes.

individuals who cannot on their own afford to meet such codes.

- Decisions on housing development proposals should be expedited when such proposals are in accordance with zoning ordinances and with provisions of comprehensive plans.
- Ordinances and incentives should be used to increase population densities in urban areas taking into consideration (1) key facilities, (2) the economic, environmental, social and energy consequences of the proposed densities and (3) the optimal use of existing urban land particularly in sections containing significant amounts of unsound substandard structures.
- Additional methods and devices for achieving this goal should, after consideration of the impact on lower income households, include, but not be limited to: (1) tax incentives and disincentives; (2) building and construction code revision; (3) zoning and land use controls; (4) subsidies and loans; (5) fee and less-than-fee acquisition techniques; (6) enforcement of local health and safety codes; and (7) coordination of the development of urban facilities and services to disperse low income housing throughout the planning area.
- Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

11. PUBLIC FACILITIES AND SERVICES

GOAL

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

Urban and rural development shall be guided and supported by types and levels of urban and rural public facilities and services appropriate for, but limited to, the needs and requirements of the urban, urbanizable and rural areas to be served. A provision for key facilities shall be included in each plan. To meet current and long-range needs, a provision for solid waste disposal sites, including sites for inert waste, shall be included in each plan.

A Timely, Orderly and Efficient Arrangement — refers to a system or plan that coordinates the type, location and delivery of public facilities and services in a manner that best supports the existing and proposed land uses.

Rural Facilities and Services — refers to facilities and services which the governing body determines to be suitable and appropriate solely for the needs of rural use.

Urban Facilities and Services — refers to key facilities and to appropriate types and levels of at least the following: police protection; fire protection; sanitary facilities; storm drainage facilities; planning, zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services.

GUIDELINES

A. PLANNING

- Plans providing for public facilities and services should be coordinated with plans for designation of urban boundaries, urbanizable land, rural uses and for the transition of rural land to urban uses.
- Public facilities and services for rural areas should be provided at levels appropriate for rural use only and should not support urban uses.
- Public facilities and services in urban areas should be provided at levels necessary and suitable for urban uses.
- Public facilities and services in urbanizable areas should be provided at levels necessary and suitable for existing uses. The provision for future public facilities and services in these areas should be based upon: (1) the time required to provide the service; (2) reliability of service; (3) financial cost; and (4) levels of service needed and desired.
- A public facility or service should not be provided in an urbanizable area unless there is provision for the coordinated development of all the other urban facilities and services appropriate to that area.
- All utility lines and facilities should be located on or adjacent to existing public or private rights-of-way to avoid dividing existing farm units.
- Plans providing for public facilities and services should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and develop-

ment actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

- Capital improvement programming and budgeting should be utilized to achieve desired types and levels of public facilities and services in urban, urbanizable and rural areas.
- Public facilities and services should be appropriate to support sufficient amounts of land to maintain an adequate housing market in areas undergoing development or redevelopment.
- The level of key facilities that can be provided should be considered as a principal factor in planning for various densities and types of urban and rural land uses.
- Plans should designate sites of power generation facilities and the location of electric transmission lines in areas intended to support desired levels of urban and rural development.
- Additional methods and devices for achieving desired types and levels of public facilities and services should include but not be limited to the following: (1) tax incentives and disincentives; (2) land use controls and ordinances; (3) multiple use and joint development practices; (4) fee and less-than-fee acquisition techniques; and (5) enforcement of local health and safety codes.
- Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

12.

TRANSPORTATION

GOAL

To provide and encourage a safe, convenient and economic transportation system.

A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) facilitate the flow of goods and services so as to strengthen the local and regional economy; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.

Transportation — refers to the movement of people and goods.

Transportation Facility — refers to any physical facility that moves or assists in the movement of people and goods excluding electricity, sewage and water.

Transportation System — refers to one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

Mass Transit — refers to any form of passenger transportation which carries members of the public on a regular and continuing basis.

Transportation Disadvantaged — refers to those individuals who have difficulty in

obtaining transportation because of their age, income, physical or mental disability.

GUIDELINES

A. PLANNING

1. All current area-wide transportation studies and plans should be revised in coordination with local and regional comprehensive plans and submitted to local and regional agencies for review and approval.
2. Transportation systems, to the fullest extent possible, should be planned to utilize existing facilities and rights-of-way within the state provided that such use is not inconsistent with the environmental, energy, land-use, economic or social policies of the state.
3. No major transportation facility should be planned or developed outside urban boundaries on Class I and II agricultural land, as defined by the U.S. Soil Conservation Service unless no feasible alternative exists.
4. Major transportation facilities should avoid dividing existing economic farm units and urban social units unless no feasible alternative exists.
5. Population densities and peak hour travel patterns of existing and planned developments should be considered in the choice of transportation modes for trips taken by persons. While high density developments with concentrated trip origins and destinations should be designed to be principally served by mass transit, low-density developments with dispersed origins and destinations should be principally served by the auto.
6. Plans providing for a transportation system should consider as a major determinant the carrying capacity of the air, land

and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. The number and location of major transportation facilities should conform to applicable state or local land use plans and policies designed to direct urban expansion to areas identified as necessary and suitable for urban development. The planning and development of transportation facilities in rural areas should discourage urban growth while providing transportation service necessary to sustain rural and recreational uses in those areas so designated in the comprehensive plan.
2. Plans for new or for the improvement of major transportation facilities should identify the positive and negative impacts on: (1) local land use patterns, (2) environmental quality, (3) energy use and resources, (4) existing transportation systems and (5) fiscal resources in a manner sufficient to enable local governments to rationally consider the issues posed by the construction and operation of such facilities.
3. Lands adjacent to major mass transit stations, freeway interchanges, and other major air, land and water terminals should be managed and controlled so as to be consistent with and supportive of the land use and development patterns identified in the comprehensive plan of the jurisdiction within which the facilities are located.
4. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

13.

ENERGY CONSERVATION

GOAL

To conserve energy.

Land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.

GUIDELINES

A. PLANNING

1. Priority consideration in land use planning should be given to methods of analysis and implementation measures that will assure achievement of maximum efficiency in energy utilization.
2. The allocation of land and uses permitted on the land should seek to minimize the depletion of non-renewable sources of energy.

3. Land use planning should, to the maximum extent possible, seek to recycle and re-use vacant land and those uses which are not energy efficient.
4. Land use planning should, to the maximum extent possible, combine increasing density gradients along high capacity transportation corridors to achieve greater energy efficiency.
5. Plans directed toward energy conservation within the planning area should consider as a major determinant the existing and potential capacity of the renewable energy sources to yield useful energy output. Renewable energy sources include water, sunshine, wind, geothermal heat and municipal, forest and farm waste. Whenever possible, land conservation and development actions provided for

under such plans should utilize renewable energy sources.

B. IMPLEMENTATION

1. Land use plans should be based on utilization of the following techniques and implementation devices which can have a material impact on energy efficiency:
 - a. Lot size, dimension, and siting controls;
 - b. Building height, bulk and surface area;
 - c. Density of uses, particularly those which relate to housing densities;
 - d. Availability of light, wind and air;
 - e. Compatibility of and competition between competing land use activities; and
 - f. Systems and incentives for the collection, reuse and recycling of metallic and nonmetallic waste.

URBANIZATION

GOAL

To provide for an orderly and efficient transition from rural to urban land use.

Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.

Establishment and change of the boundaries shall be based upon considerations of the following factors:

- (1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- (2) Need for housing, employment opportunities, and livability;
- (3) Orderly and economic provision for public facilities and services;
- (4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- (5) Environmental, energy, economic and social consequences;
- (6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- (7) Compatibility of the proposed urban uses with nearby agricultural activities.

The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable land from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning goal (Goal 2) for goal exceptions.

Any urban growth boundary established prior to January 1, 1975, which includes rural lands that have not been built upon shall be reviewed by the governing body, utilizing the same factors applicable to the establishment or change of urban growth boundaries.

Establishment and change of the boundaries shall be a cooperative process between a city and the county or counties that surround it.

Land within the boundaries separating urbanizable land from rural land shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- (1) Orderly, economic provision for public facilities and services;
- (2) Availability of sufficient land for the various uses to insure choices in the market place;
- (3) LCDC goals; and,
- (4) Encouragement of development within urban areas before conversion of urbanizable areas.

GUIDELINES

A. PLANNING

1. Plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion, taking into account (1) the growth policy of the area, (2) population needs (by the year 2000) (3) the carrying capacity of the planning area, and (4) open space and recreational needs.
2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.
3. Plans providing for the transition from rural to urban land use should take into consideration as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not

exceed the carrying capacity of such resources.

B. IMPLEMENTATION

1. The type, location and phasing of public facilities and services are factors which should be utilized to direct urban expansion.
2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.
3. Financial incentives should be provided to assist in maintaining the use and character of lands adjacent to urbanizable areas.
4. Local land use controls and ordinances should be mutually supporting, adopted and enforced to integrate the type, timing and location of public facilities and services in a manner to accommodate increased public demands as urbanizable lands become more urbanized.
5. Additional methods and devices for guiding urban land use should include but not be limited to the following: (1) tax incentives and disincentives; (2) multiple use and joint development practices; (3) fee and less-than-fee acquisition techniques; and (4) capital improvement programming.
6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

15. WILLAMETTE RIVER GREENWAY

The Willamette River Greenway presents a unique and unprecedented problem. The outlines of the problem are (1) a legislative policy directing development and maintenance of a natural, scenic, historical and recreational greenway along the Willamette River; (2) accomplishment of this purpose by the development and implementation of a "plan" (3) through the "cooperative efforts" of the state and local units of government (ORS 390.314(1) and (2)(a)) Except for this broad directive, there is no specific legislative guidance as to how this undertaking is to be accomplished for what amounts to over 600 miles of riverbank. The legislature did direct the Oregon Department of Transportation (DOT) to prepare a plan "for the development and management of the Willamette River Greenway." (ORS 390.318(1)) However, the detail as to what was to go into the plan is sketchy. The legislature required the setting forth of the boundaries of the Greenway, interests to be acquired by units of government, the location of publicly owned property and the locations of aggregate deposits. (ORS 390.318(2) and (3)) The legislature also directed the Land Conservation and Development Commission (LCDC), following preparation of the Plan by DOT, to make such investigation and review of the plan "as it considers necessary" and to "revise the plan... itself or require such revision by the Department and units of local government."

(ORS 390.322(1)) Again, however, the question of how the Greenway was to come about through the cooperative efforts of the various units of government was not spelled out.

The situation therefore calls for some overall management framework within which the various public agencies can act to accomplish the legislative intent.

Accordingly, the LCDC deems a statewide planning goal to be necessary not only to implement the policy of the Greenway Law, but also to provide the parameters within which the DOT plan can be formulated and carried out for the Greenway. Within those parameters local governments can formulate and implement (in a manner in harmony with the DOT plan), those Greenway portions of their comprehensive plans and implementing ordinances within their boundaries.

GOAL

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

A. GENERAL

1. The qualities of the Willamette River Greenway shall be protected, conserved, enhanced and maintained consistent with

the lawful uses present on December 8, 1975. Intensification of uses, changes in use or developments may be permitted after this date only when they are consistent with the Willamette Greenway Statute, this goal, the interim goals in ORS 215.515(1) and the statewide planning goals, as the case may be, and when such changes have been approved as provided in the Preliminary Greenway Plan or similar provisions in the completed plan as appropriate.

2. The Willamette Greenway Program shall be composed of cooperative local and state government plans for the protection, conservation, enhancement and maintenance of the Greenway, and of implementation measures including management through ordinances, rules, regulations, permits, grants as well as acquisition and development of property, etc. It shall also become a part of all other local and state plans and programs within and near the Greenway.
3. The Greenway Program shall include:
 - a. Boundaries within which special Greenway considerations shall be taken into account;
 - b. Management of uses on lands within

(Continued on next page)

15. WILLAMETTE RIVER GREENWAY (Continued)

and near the Greenway to maintain the qualities of the Greenway;

- c. Acquisition of lands or interests in lands from a donor or willing seller or as otherwise provided by law in areas where the public's need can be met by public ownership.

B. INVENTORIES AND DATA

Information and data shall be collected to determine the nature and extent of the resources, uses and rights associated directly with the Willamette River Greenway. These inventories are for the purpose of determining which lands are suitable or necessary for inclusion within the Willamette River Greenway boundaries and to develop the plans and management and acquisition programs.

Each of the following items shall be inventoried¹ as it relates to the Greenway objectives:

1. All agricultural lands as provided in Goal 3. This includes all land currently in farm use as defined in ORS Chapter 215.203(2);
2. All current aggregate excavation and processing sites, and all known extractable aggregate sources;
3. All current public recreation sites, including public access points to the river and hunting and fishing areas;
4. Historical and archaeological sites;
5. Timber resources;
6. Significant natural and scenic areas, and vegetative cover;
7. Fish and wildlife habitats;
8. Areas of annual flooding and flood plains;
9. Land currently committed to industrial, commercial and residential uses;
10. The ownership of property, including riparian rights;
11. Hydrological conditions;
12. Ecologically fragile areas;
13. Recreational needs as set forth in Goal 8;
14. Other uses of land and water in or near the Greenway;
15. Acquisition areas which include the identification of areas suitable for protection or preservation through public acquisition of lands or an interest in land. Such acquisition areas shall include the following:
 - a. Areas which may suitably be protected by scenic easements;
 - b. Scenic and recreational land for exclusive use of the public;
 - c. Sites for the preservation and restoration of historic places;
 - d. Public access corridors;
 - e. Public parks;

¹When information on such items is not available through previous studies, information will be maintained by the agencies for those portions of the plan for which they are responsible. The requirement shall not limit units of government from collecting information on other items.

²See ORS Chapter 390.318 (1) for specific statutory language. There shall be included within the boundaries of the Willamette River Greenway all lands situated within 150 feet from the ordinary low water line on each side of each channel of the Willamette River and such other lands along the Willamette River as the department and units of local government consider necessary for the development of such Greenway; however, the total area included within the boundaries of such Greenway shall not exceed, on the average, 320 acres per river mile along the Willamette River; however, for the purpose of computing the maximum acreage of lands within such Greenway, the acreage of lands situated on such islands and within state parks and recreation areas shall be excluded.

- f. Ecologically fragile areas; and
- g. Other areas which are desirable for public acquisition may also be identified if the reasons for public acquisition for the Greenway are also identified.

C. CONSIDERATIONS AND REQUIREMENTS

The Oregon Department of Transportation (DOT) Greenway Plan, the portions of each city and county comprehensive plan within the Greenway, the portions of plans and programs and implementation measures of all special districts, state and federal agencies within the Greenway shall be based on the following factors:

1. General Considerations and Requirements

- a. Statutory requirements in ORS Chapter 390.010 to 390.220 and in ORS Chapter 390.310 to 390.368;
- b. City, county and regional comprehensive plans adopted pursuant to ORS Chapter 197 for jurisdictions along the river;
- c. Statewide planning goals and guidelines adopted pursuant to ORS Chapter 197 by LDCD;
- d. Interim goals set forth in ORS Chapter 215.515(1).

2. Boundary Considerations and Requirements.² The temporary and preliminary Greenway boundaries shall be reviewed as to their appropriateness and refined as needed based on the information contained in the Inventories. The refined boundaries shall include such lands along the Willamette River as are necessary to carry out the purpose and intent of the Willamette River Greenway through a coordinated management and acquisition program.

Within farm areas, consideration shall be given to the ability of agricultural land adjacent to the Willamette River Greenway to enhance and protect the Greenway.

3. Use Management Considerations and Requirements. Plans and implementation measures shall provide for the following:

- a. Agricultural lands—The agricultural lands identified in the inventory shall be preserved and maintained as provided in Goal 3 as an effective means to carry out the purposes of the Greenway including those agricultural lands near the Greenway. Lands devoted to farm use which are not located in an exclusive farm use zone shall be allowed to continue in such farm use without restriction as provided in ORS 390.314(2)(c), ORS 390.332(4) and ORS 390.334(2);
- b. Recreation—
 - (1) Local, regional and state recreational needs shall be provided for consistent with the carrying capacity of the land;
 - (2) Zoning provisions shall allow recreational uses on lands to the extent that such use would not substantially interfere with the long-term capacity of the land for farm use as defined in ORS 215.203;
 - (3) The possibility that public recreation use might disturb adjacent property shall be considered and minimized to the greatest extent practicable;
 - (4) The public parks established by section 8a of Chapter 558, 1973 Oregon Laws, shall be set forth on the appropriate comprehensive

plans and zoning established which will permit their development, use and maintenance;

- c. Access—Adequate public access to the river shall be provided for, with emphasis on urban and urbanizable areas;
- d. Fish and wildlife habitat—Significant fish and wildlife habitats shall be protected;
- e. Scenic qualities and views—identified scenic qualities and viewpoints shall be preserved;
- f. Protection and safety—The Willamette River Greenway Program shall provide for the maintenance of public safety and protection of public and private property, especially from vandalism and trespass in both rural and urban areas to the maximum extent practicable;
- g. Vegetative fringe—The natural vegetative fringe along the River shall be enhanced and protected to the maximum extent practicable;
- h. Timber resource—The partial harvest of timber shall be permitted beyond the vegetative fringes in areas not covered by a scenic easement when the harvest is consistent with an approved plan under the Forest Practices Act, or, if not covered by the Forest Practices Act, then with an approved plan under the Greenway compatibility review provisions. Such plan shall insure that the natural scenic qualities of the Greenway will be maintained to the greatest extent practicable or restored within a brief period of time;
- i. Aggregate extraction—Extraction of known aggregate deposits may be permitted when compatible with the purposes of the Willamette River Greenway and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation;
- j. Development away from river—Developments shall be directed away from the river to the greatest possible degree; provided, however, lands committed to urban uses within the Greenway shall be permitted to continue as urban uses, including port, industrial, commercial and residential uses pertaining to navigational requirements, water and land access needs and related facilities;
- k. Greenway setback—A setback line will be established to keep structures separated from the river in order to protect, maintain, preserve and enhance the natural, scenic, historic and recreational qualities of the Willamette River Greenway, as identified in the Greenway Inventories. The setback line shall not apply to water-related or water-dependent uses.

4. Areas to be Acquired—Considerations and Requirements

Areas to be acquired must:

- a. Have potential to serve the purposes of the Greenway;
- b. To the maximum extent practicable, be consistent with non-interference or non-interruption of farm uses as defined in ORS Chapter 215.203(2);
- c. Be suitable for permitting the enforcement of existing statutes relating to trespass and vandalism along the Greenway, and be suitable for allowing maintenance of the lands or interests acquired.

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15. WILLAMETTE RIVER GREENWAY (Continued)

D. DOT GREENWAY PLAN

The DOT will prepare and keep current, through appropriate revisions, a Greenway Plan setting forth the state interests in the Greenway. The plan will show:

1. The boundaries of the Willamette River Greenway;
2. The boundaries of the areas in which interests in property may be acquired. These shall be depicted clearly on maps or photographs together with the nature of the acquisition such as fee title or scenic easement; the general public purposes of each such area, and the conditions under which such acquisition may occur.
3. Use Intensity Classifications for the areas acquired by the State for Greenway purposes; and
4. The locations of public access, either already existing or to be acquired.

The DOT plan or revision thereto will be reviewed by the Land Conservation and Development Commission (LCDC) as provided in ORS 390.322. When the Commission has determined that the revision is consistent with the statutes and this goal it shall approve the plan for recording.

E. COMPREHENSIVE PLANS OF CITIES AND COUNTIES

Each city and county in which the Willamette River Greenway is located, shall incorporate the portions of the approved DOT Greenway Plan in its comprehensive plan and implementing ordinances and other implementation measures.

1. **Boundaries:** Boundaries of the approved Willamette River Greenway shall be shown on every comprehensive plan.
2. **Uses:** Each comprehensive plan shall designate the uses to be permitted for the rural and urban areas of each jurisdiction, which uses shall be consistent with the approved DOT Greenway Plan, the Greenway Statutes and this Goal.
3. **Acquisition Areas:** Each comprehensive plan shall designate areas identified for possible public acquisition and the conditions under which such acquisition may occur as set forth in the approved DOT Willamette Greenway Plan and any other area which the city or county intends to acquire.

F. IMPLEMENTATION MEASURES

Implementation of the Greenway Program shall occur through the cooperative efforts of state and local units of government and shall be consistent with the approved DOT Greenway Plan and the city and county comprehensive plans, the goals and appropriate statutes.

1. **Boundaries:** Willamette River Greenway boundaries shall be shown on city and county zoning maps and referred to in the zoning ordinance and the subdivision ordinance.
2. **Uses:** Measures for managing uses within the Greenway shall include at least:
 - a. Exclusive farm use zoning of all agricultural land within and adjacent to the Greenway;
 - b. Flood plain zoning of all areas subject to flooding;
 - c. Open space zoning (see ORS Chapter 308.740) of all open space areas; and
 - d. Provisions for the use management considerations and requirements set forth in C 3 of this Goal.

3. **Greenway Compatibility Review:** Cities and counties shall establish provisions by ordinance for the review of intensifications, changes of use or developments to insure their com-

patibility with the Willamette River Greenway. Such ordinances shall include the matters in a through e below:

- a. The establishment of Greenway compatibility review boundaries adjacent to the river within which review of developments shall take place. Such boundaries in urban areas shall be not less than 150 feet from the ordinary low water line of the Willamette River; in rural areas such boundaries shall include all lands within the boundaries of the Willamette River Greenway;
 - b. The review of intensification, changes of use and developments as authorized by the Comprehensive Plan and zoning ordinance to insure their compatibility with the Greenway statutes and to insure that the best possible appearance, landscaping and public access are provided. Such review shall include the following findings, that to the greatest possible degree:
 - (1) The intensification, change of use or development will provide the maximum possible landscaped area, open space or vegetation between the activity and the river;
 - (2) Necessary public access will be provided to and along the river by appropriate legal means;
 - c. Provision is made for at least one public hearing on each application to allow any interested person an opportunity to speak;
 - d. Provision is made for giving notice of such hearing at least to owners of record of contiguous property and to any individual or groups requesting notice; and
 - e. Provision is made to allow the imposing of conditions on the permit to carry out the purpose and intent of the Willamette River Greenway Statutes.
- f. As an alternative to the review procedures in subparagraphs 3 (a) to 3 (e), a city or county governing body may prepare and adopt, after public hearing and notice thereof to DOT, a design plan and administrative review procedure for a portion of the Greenway. Such design plan must provide for findings equivalent to those required in subparagraphs 3 (b) (1) and (2) of paragraph F so as to insure compatibility with the Greenway of proposed intensification, changes of use or developments. If this alternative procedure is adopted and approved by DOT and LCDC, a hearing will not be required on each individual application.

G. NOTICE OF PROPOSED INTENSIFICATION, CHANGE OF USE OR DEVELOPMENT

Government agencies, including cities, counties, state agencies, federal agencies, special districts, etc., shall not authorize or allow intensification, change of use or development on lands within the boundaries of the Willamette River Greenway compatibility review area established by cities and counties as required by paragraph F 3.a without first giving written notice to the DOT by immediately forwarding a copy of any application by certified mail—return receipt requested. Notice of the action taken by federal, state, city, county, and special districts on an application shall be furnished to DOT.

H. AGENCY JURISDICTION

Nothing in this order is intended to interfere with the duties, powers and responsibilities vested by statute in agencies to

control or regulate activities on lands or waters within the boundaries of the Greenway so long as the exercise of the authority is consistent with the legislative policy set forth in ORS 390.310 to 390.368 and the applicable statewide planning goal for the Willamette River Greenway, as the case may be. An agency receiving an application for a permit to conduct an activity on lands or waters within the Greenway shall immediately forward a copy of such request to the Department of Transportation.

I. DOT SCENIC EASEMENTS

Nothing in this Goal is intended to alter the authority of DOT to acquire property or a scenic easement therein as set forth in ORS 390.310 to 390.368.

J. TRESPASS BY PUBLIC

Nothing in this Goal is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in allowance with law to authorize such use.

K. DEFINITIONS FOR WILLAMETTE RIVER GREENWAY GOAL

1. **Change of Use** means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit had been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building.

Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for the purposes of this Goal.

2. **Lands Committed to Urban Use** means those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate. Economic, developmental and locational factors include such matters as ports, industrial, commercial, residential or recreational uses of property; the effect these existing uses have on properties in their vicinity, previous public decisions regarding the land in question, as contained in ordinances and such plans as the Lower Willamette River Management Plan, the city or county comprehensive plans and similar public actions.

3. **Intensification** means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the

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15. WILLAMETTE RIVER GREENWAY (Continued)

completion of a structure for which a valid permit was issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures

necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures or construction or place-

ment of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this Goal. Seasonal increases in gravel operations shall not be considered an intensification of use.

16. ESTUARINE RESOURCES

GOAL

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

Comprehensive management programs to achieve these objectives shall be developed by appropriate local, state, and federal agencies for all estuaries.

To assure diversity among the estuaries of the State, by June 15, 1977, LCDC with the cooperation and participation of local governments, special districts, and state and federal agencies shall classify the Oregon estuaries to specify the most intensive level of development or alteration which may be allowed to occur within each estuary. After completion for all estuaries of the inventories and initial planning efforts, including identification of needs and potential conflicts among needs and goals and upon request of any coastal jurisdiction, the Commission will review the overall Oregon Estuary Classification.

Comprehensive plans and activities for each estuary shall provide for appropriate uses (including preservation) with as much diversity as is consistent with the overall Oregon Estuary Classification, as well as with the biological, economic, recreational, and aesthetic benefits of the estuary. Estuary plans and activities shall protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features and water quality.

The general priorities (from highest to lowest) for management and use of estuarine resources as implemented through the management unit designation and permissible use requirements listed below shall be:

1. Uses which maintain the integrity of the estuarine ecosystem;
2. Water-dependent uses requiring estuarine location, as consistent with the overall Oregon Estuary Classification;
3. Water-related uses which do not degrade or reduce the natural estuarine resources and values;
4. Nondependent, nonrelated uses which do not alter, reduce or degrade estuarine resources and values.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for designating estuary uses and policies. These inventories shall provide information on the nature, location, and extent of physical, biological, social, and economic resources in sufficient detail to establish a sound basis for estuarine management and to enable the identification of

areas for preservation and areas of exceptional potential for development.

State and federal agencies shall assist in the inventories of estuarine resources. The Department of Land Conservation and Development, with assistance from local government, state and federal agencies, shall establish common inventory standards and techniques, so that inventory data collected by different agencies or units of government, or data between estuaries, will be comparable.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon inventories, the limits imposed by the overall Oregon Estuary Classification, and needs identified in the planning process, comprehensive plans for coastal areas shall:

1. Identify each estuarine area;
2. Describe and maintain the diversity of important and unique environmental, economic and social features within the estuary;
3. Classify the estuary into management units; and
4. Establish policies and use priorities for each management unit using the standards and procedures set forth below.
5. Consider and describe in the plan the potential cumulative impacts of the alterations and development activities envisioned. Such a description may be general but shall be based on the best available information and projections.

MANAGEMENT UNITS

Diverse resources, values, and benefits shall be maintained by classifying the estuary into distinct water use management units. When classifying estuarine areas into management units, the following shall be considered in addition to the inventories:

1. Adjacent upland characteristics and existing land uses;
2. Compatibility with adjacent uses;
3. Energy costs and benefits; and
4. The extent to which the limited water surface area of the estuary shall be committed to different surface uses.

As a minimum, the following kinds of management units shall be established:

1. **Natural** — In all estuaries, areas shall be designated to assure the protection of significant fish and wildlife habitats, of continued biological productivity within the estuary, and of scientific, research, and educational needs. These shall be managed to preserve the natural resources in recognition of dynamic, natural, geological, and evolutionary processes. Such areas shall include, at a minimum, all major tracts of salt marsh, tidelands, and seagrass and algae beds.

Permissible uses in natural management units shall include the following:

- a. undeveloped low-intensity, water-dependent recreation;
- b. research and educational observations;

- c. navigation aids, such as beacons and buoys;
- d. protection of habitat, nutrient, fish, wildlife and aesthetic resources;
- e. passive restoration measures;
- f. dredging necessary for on-site maintenance of existing functional tidegates and associated drainage channels and bridge crossing support structures;
- g. riprap for protection of uses existing as of October 7, 1977, unique natural resources, historical and archeological values; and public facilities; and
- h. bridge crossings.

Where consistent with the resource capabilities of the area and the purposes of this management unit the following uses may be allowed:

- a. aquaculture which does not involve dredge or fill or other estuarine alteration other than incidental dredging for harvest of benthic species or removable in-water structures such as stakes or racks;
- b. communication facilities;
- c. active restoration of fish and wildlife habitat or water quality and estuarine enhancement;
- d. boat ramps for public use where no dredging or fill for navigational access is needed; and,
- e. pipelines, cables and utility crossings, including incidental dredging necessary for their installation.
- f. installation of tidegates in existing functional dikes.
- g. temporary alterations.
- h. bridge crossing support structures and dredging necessary for their installation.

A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education.

2. **Conservation** — In all estuaries, except those in the overall Oregon Estuary Classification which are classed for preservation, areas shall be designated for long-term uses of renewable resources that do not require major alteration of the estuary, except for the purpose of restoration. These areas shall be managed to conserve the natural resources and benefits. These shall include areas needed for maintenance and enhancement of biological productivity, recreational and aesthetic uses, and aquaculture. They shall include tracts of significant habitat smaller or of less biological importance than those in (1) above, and recreational or commercial oyster and clam beds not included in (1) above. Areas that are partially altered

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16. ESTUARINE RESOURCES (Continued)

and adjacent to existing development of moderate intensity which do not possess the resource characteristics of natural or development units shall also be included in this classification.

Permissible uses in conservation management units shall be all uses listed in (1) above except temporary alterations.

Where consistent with the resource capabilities of the area and the purposes of this management unit the following uses may be allowed:

- a. high-intensity water-dependent recreation, including boat ramps, marinas and new dredging for boat ramps and marinas;
- b. minor navigational improvements;
- c. mining and mineral extraction, including dredging necessary for mineral extraction;
- d. other water dependent uses requiring occupation of water surface area by means other than dredge or fill;
- e. aquaculture requiring dredge or fill or other alteration of the estuary;
- f. active restoration for purposes other than those listed in 1(d).
- g. temporary alterations.

A use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or that the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values and aquaculture.

3. **Development** — In estuaries classified in the overall Oregon Estuary Classification for more intense development or alteration, areas shall be designated to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses, consistent with the level of development or alteration allowed by the overall Oregon Estuary Classification. Such areas shall include deep-water areas adjacent or in proximity to the shoreline, navigation channels, subtidal areas for in-water disposal of dredged material and areas of minimal biological significance needed for uses requiring alteration of the estuary not included in (1) and (2) above.

Permissible uses in areas managed for water-dependent activities shall be navigation and water-dependent commercial and industrial uses.

As appropriate the following uses shall also be permissible in development management units:

- a. Dredge or fill, as allowed elsewhere in the goal;
- b. Navigation and water-dependent commercial enterprises and activities;
- c. Water transport channels where dredging may be necessary;
- d. Flow-lane disposal of dredged material monitored to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.
- e. Water storage areas where needed for products used in or resulting from industry, commerce, and recreation;
- f. Marinas.

Where consistent with the purposes of this management unit and adjacent shorelands designated especially suited for water-dependent uses or designated for waterfront redevelopment, water-related and nondependent, nonrelated uses not requiring

dredge or fill; mining and mineral extraction; and activities identified in (1) and (2) above shall also be appropriate.

In designating areas for these uses, local governments shall consider the potential for using upland sites to reduce or limit the commitment of the estuarine surface area for surface uses.

IMPLEMENTATION REQUIREMENTS

1. Unless fully addressed during the development and adoption of comprehensive plans, actions which would potentially alter the estuarine ecosystem shall be preceded by a clear presentation of the impacts of the proposed alteration. Such activities include dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, flow-lane disposal of dredged material, and other activities which could affect the estuary's physical processes or biological resources.

The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. It shall include information on:

- a. The type and extent of alterations expected;
- b. The type of resource(s) affected;
- c. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation and other existing and potential uses of the estuary; and
- d. The methods which could be employed to avoid or minimize adverse impacts.

2. Dredging and/or filling shall be allowed only:

- a. If required for navigation or other water-dependent uses that require an estuarine location or if specifically allowed by the applicable management unit requirements of this goal; and,
- b. if a need (i.e., a substantial public benefit) is demonstrated and the use or alteration does not unreasonably interfere with public trust rights; and
- c. if no feasible alternative upland locations exist; and,
- d. if adverse impacts are minimized.

Other uses and activities which could alter the estuary shall only be allowed if the requirements in (b), (c), and (d) are met. All or portions of these requirements may be applied at the time of plan development for actions identified in the plan. Otherwise, they shall be applied at the time of permit review.

3. State and federal agencies shall review, revise, and implement their plans, actions, and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries. Local government shall recognize these authorities in managing lands rather than developing new or duplicatory management techniques or controls. Existing programs which shall be utilized include:

- a. The Oregon Forest Practices Act and Administrative Rules, for forest lands as defined in ORS 527.610 - 527.730 and 527.990 and the Forest Lands Goal;
- b. The programs of the Soil and Water Conservation Commission and local districts and the Soil Conservation Service, for Agricultural Lands Goal;
- c. The nonpoint source discharge water quality program administered by the Department of Environmental Quality under Section 208 of the Federal Water

Quality Act as amended in 1972 (PL 92-500); and

d. The Fill and Removal Permit Program administered by the Division of State Lands under ORS 541.605 - 541.665.

4. The State Water Policy Review Board, assisted by the staff of the Oregon Department of Water Resources, and the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Division of State Lands, and the U.S. Geological Survey, shall consider establishing minimum fresh-water flow rates and standards so that resources and uses of the estuary, including navigation, fish and wildlife characteristics, and recreation, will be maintained.

5. When dredge or fill activities are permitted in intertidal or tidal marsh areas, their effects shall be mitigated by creation, restoration or enhancement of another area to ensure that the integrity of the estuarine ecosystem is maintained. Comprehensive plans shall designate and protect specific sites for mitigation which generally correspond to the types and quantity of intertidal area proposed for dredging or filling, or make findings demonstrating that it is not possible to do so.

6. Local government and state and federal agencies shall develop comprehensive programs, including specific sites and procedures for disposal and stockpiling of dredged materials. These programs shall encourage the disposal of dredged material in uplands or ocean waters, and shall permit disposal in estuary waters only where such disposal will clearly be consistent with the objectives of this goal and state and federal law. Dredged material shall not be disposed in intertidal or tidal marsh estuarine areas unless part of an approved fill project.

7. Local government and state and federal agencies shall act to restrict the proliferation of individual single-purpose docks and piers by encouraging community facilities common to several uses and interests. The size and shape of a dock or pier shall be limited to that required for the intended use. Alternatives to docks and piers, such as mooring buoys, dryland storage, and launching ramps shall be investigated and considered.

8. State and federal agencies shall assist local government in identifying areas for restoration. Restoration is appropriate in areas where activities have adversely affected some aspect of the estuarine system, and where it would contribute to a greater achievement of the objective of this goal. Appropriate sites include areas of heavy erosion or sedimentation, degraded fish and wildlife habitat, anadromous fish spawning areas, abandoned diked estuarine marsh areas, and areas where water quality restricts the use of estuarine waters for fish and shellfish harvest and production, or for human recreation.

9. State agencies with planning, permit, or review authorities affected by this goal shall review their procedures and standards to assure that the objectives and requirements of the goal are fully addressed. In estuarine areas the following authorities are of special concern:

Division of State Lands	
Fill and Removal Law	ORS 541.605 - ORS 541.665
Mineral Resources	ORS 273.551; ORS 273.775 - 273.780
Submersible and Submerged Lands	ORS 274.005 - 274.940

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16. ESTUARINE RESOURCES (Continued)

Economic Development Department
Ports Planning ORS 777.835

Water Resources Department
Appropriation of ORS 537.010 - 537.990
Water ORS 543.010 - 543.620

Department of Geology and Mineral Industries
Mineral Extraction ORS 520.005
Oil and Gas Drilling - 520.095

Department of Forestry
Forest Practices Act ORS 527.610
- 527.730

Department of Energy
Regulation of Thermal
Power and Nuclear ORS 469.300
Installation - 469.570

Department of Environmental Quality
Water Quality ORS 468.700
- 468.775
Sewage Treatment ORS 454.010
and Disposal Systems - 454.755

GUIDELINES

The requirements of the Estuarine Resources Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to estuarine areas and implementation of the Estuarine Resources Goal.

Because of the strong relationship between estuaries and adjacent coastal shorelands, the inventories and planning requirements for these resources should be closely coordinated. These inventories and plans should also be fully coordinated with the requirements in other state planning goals, especially the Goals for Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water, and Land Resources Quality; Recreational Needs; Transportation; and Economy of the State.

A. INVENTORIES

In detail appropriate to the level of development or alteration proposed, the inventories for estuarine features should include:

1. Physical characteristics
 - a. Size, shape, surface area, and contour, including water depths;
 - b. Water characteristics including, but not limited to, salinity, temperature, and dissolved oxygen. Data should reflect average and extreme values for the months of March, June, September, and December as a minimum; and
 - c. Substrate mapping showing location and extent of rock, gravel, sand, and mud.
2. Biological characteristics—Location, Description, and Extent of:
 - a. The common species of benthic (living in or on bottom) flora and fauna;
 - b. The fish and wildlife species, including part-time residents;
 - c. The important resting, feeding, and nesting areas for migrating and resident shorebirds, wading birds and wildlife;
 - d. The areas important for recreational fishing and hunting, including areas used for clam digging and crabbing;
 - e. Estuarine wetlands;
 - f. Fish and shellfish spawning areas;
 - g. Significant natural areas; and
 - h. Areas presently in commercial aquaculture.
3. Social and economic characteristics—Location, Description, and Extent of:
 - a. The importance of the estuary to the economy of the area;
 - b. Existing land uses surrounding the estuary;
 - c. Man-made alterations of the natural estuarine system;

- d. Water-dependent industrial and/or commercial enterprises;
- e. Public access;
- f. Historical or archaeological sites associated with the estuary; and
- g. Existing transportation systems.

B. HISTORIC, UNIQUE, AND SCENIC WATERFRONT COMMUNITIES

Local government comprehensive plans should encourage the maintenance and enhancement of historic, unique, and scenic waterfront communities, allowing for nonwater-dependent uses as appropriate in keeping with such communities.

C. TRANSPORTATION

Local governments and state and federal agencies should closely coordinate and integrate navigation and port needs with shoreland and upland transportation facilities and the requirements of the Transportation Goal. The cumulative effects of such plans and facilities on the estuarine resources and values should be considered.

D. TEMPORARY ALTERATIONS

The provision for temporary alterations in the Goal is intended to allow alterations to areas and resources that the Goal otherwise requires to be preserved or conserved. This exemption is limited to alterations in support of uses permitted by the Goal; it is not intended to allow uses which are not otherwise permitted by the Goal.

Application of the resource capabilities test to temporary alterations should ensure:

1. That the short-term damage to resources is consistent with resource capabilities of the area; and
2. That the area and affected resources can be restored to their original condition.

17. COASTAL SHORELANDS

GOAL

To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and

To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

Programs to achieve these objectives shall be developed by local, state, and federal agencies having jurisdiction over coastal shorelands.

Land use plans, implementing actions and permit reviews shall include consideration of the critical relationships between coastal shorelands and resources of coastal waters, and of the geologic and hydrologic hazards associated with coastal shorelands. Local, state and federal agencies shall within the limit of their authorities maintain the diverse environmental, economic, and social values of coastal shorelands and water quality in

coastal waters. Within those limits, they shall also minimize man-induced sedimentation in estuaries, nearshore ocean waters, and coastal lakes.

General priorities for the overall use of coastal shorelands (from highest to lowest) shall be to:

1. Promote uses which maintain the integrity of estuaries and coastal waters;
2. Provide for water-dependent uses;
3. Provide for water-related uses;
4. Provide for nondependent, nonrelated uses which retain flexibility of future use and do not prematurely or insalterably commit shorelands to more intensive uses;
5. Provide for development, including nondependent, nonrelated uses, in urban areas compatible with existing or committed uses;
6. Permit nondependent, nonrelated uses which cause a permanent or long-term change in the features of coastal shorelands only upon a demonstration of public need.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying coastal shorelands and designating uses and policies. These inventories shall provide infor-

mation on the nature, location, and extent of geologic and hydrologic hazards and shoreland values, including fish and wildlife habitat, water-dependent uses, economic resources, recreational uses, and aesthetics in sufficient detail to establish a sound basis for land and water use management.

The inventory requirements shall be applied within an area known as a coastal shorelands planning area. This planning area is not an area within which development or use is prohibited. It is an area for inventory, study, and initial planning for development and use to meet the Coastal Shorelands Goal.

The planning area shall be defined by the following:

1. All lands west of the Oregon Coast Highway as described in ORS 366.235, except that:
 - a. In Tillamook County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Brooten Road (County Road 887) northerly from its junction with the Oregon Coast Highway to Pacific City, McPhillips Drive (County Road 915) northerly from

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17. COASTAL SHORELANDS (Continued)

Pacific City to its junction with Sandlake Road (County Road 871), Sandlake-Cape Lookout Road, (County Road 871) northerly to its junction with Cape Lookout Park, Netarts Bay Drive (County Road 665) northerly from its junction with the Sandlake-Cape Lookout Road (County Road 871) to its junction at Netarts with State Highway 131, and northerly along State Highway 131 to its junction with the Oregon Coast Highway near Tillamook.

- b. In Coos County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Oregon State 240, Cape Arago Secondary (FAS 283) southerly from its junction with the Oregon Coast Highway to Charleston; Seven Devils Road (County Road 33) southerly from its junction with Oregon State 240 (FAS 283) to its junction with the Oregon Coast Highway, near Bandon;

and

- 2. All lands within an area defined by a line measured horizontally
 - a. 1000 feet from the shoreline of estuaries; and
 - b. 500 feet from the shoreline of coastal lakes.

COMPREHENSIVE PLAN REQUIREMENTS
Based upon inventories, comprehensive plans for coastal areas adjacent to the ocean, estuaries, or coastal lakes shall:

- 1. Identify coastal shorelands;
- 2. Establish policies and uses of coastal shorelands in accordance with standards set forth below:

IDENTIFICATION OF COASTAL SHORELANDS

Lands contiguous with the ocean, estuaries, and coastal lakes shall be identified as coastal shorelands. The extent of shorelands shall include at least:

- 1. Areas subject to ocean flooding and lands within 100 feet of the ocean shore or within 50 feet of an estuary or a coastal lake;
- 2. Adjacent areas of geologic instability where the geologic instability is related to or will impact a coastal water body;
- 3. Natural or man-made riparian resources, especially vegetation necessary to stabilize the shoreline and to maintain water quality and temperature necessary for the maintenance of fish habitat and spawning areas;
- 4. Areas of significant shoreland and wetland biological habitats whose habitat quality is primarily derived from or related to the association with coastal water areas;
- 5. Areas necessary for water-dependent and water-related uses, including areas of recreational importance which utilize coastal water or riparian resources, areas appropriate for navigation and port facilities, dredge material disposal and mitigation sites, and areas having characteristics suitable for aquaculture;
- 6. Areas of exceptional aesthetic or scenic quality, where the quality is primarily derived from or related to the association with coastal water areas; and
- 7. Coastal headlands.

COASTAL SHORELAND USES

- 1. Major marshes, significant wildlife habitat, coastal headlands, and exceptional aesthetic resources inventoried in the Identification Section, shall be protected. Uses in these areas shall be consistent with protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with

the Oregon Forest Practices Act, grazing, harvesting, wild crops, and low intensity water-dependent recreation.

- 2. Shorelands in urban and urbanizable areas and in rural areas built upon or irrevocably committed to non-resource use especially suited for water-dependent uses shall be protected for water-dependent recreational, commercial and industrial uses. Some factors which contribute to this special suitability are:

- a. deep water close to shore with supporting land transport facilities suitable for ship and barge facilities;
 - b. potential for aquaculture;
 - c. protected areas subject to scour which would require little dredging for use as marinas; and
 - d. potential for recreational utilization of coastal water or riparian resources.
- Other uses which may be permitted in these areas are temporary uses which involve minimal capital investment and no permanent structures, or a use in conjunction with and incidental to a water-dependent use.

- 3. Local governments shall determine whether there are any existing, developed commercial/industrial waterfront areas which are suitable for redevelopment which are not designated as especially suited for water-dependent uses. Plans shall be prepared for these areas which allow for a mix of water-dependent, water-related, and water oriented nondependent uses and shall provide for public access to the shoreline.

- 4. Shorelands in rural areas other than those built upon or irrevocably committed to nonresource use and those designated in (1) above shall be used as appropriate for:

- a. farm uses as provided in ORS Chapter 215;
- b. propagation and harvesting of forest products consistent with the Oregon Forest Practices Act;
- c. private and public water-dependent recreation developments;
- d. aquaculture;
- e. water-dependent commercial and industrial uses, water-related uses and other uses only upon a finding by the county that such uses satisfy a need which cannot be accommodated on uplands or in urban and urbanizable areas or in rural areas built upon or irrevocably committed to non-resource use.

IMPLEMENTATION REQUIREMENTS

- 1. The Oregon Department of Forestry shall recognize the unique and special values provided by coastal shorelands when developing standards and policies to regulate uses of forest lands within coastal shorelands. With other state and federal agencies, the Department of Forestry shall develop forest management practices and policies including, where necessary, amendments to the FPA rules and programs which protect and maintain the special shoreland values and forest uses especially for natural shorelands and riparian vegetation.
- 2. Local government, with assistance from state and federal agencies, shall identify coastal shoreland areas which may be used to fulfill the mitigation requirement of the Estuarine Resources Goal. These areas shall be protected from new uses and activities which would prevent their ultimate restoration or addition to the estuarine ecosystem.
- 3. Coastal shorelands identified under the Estuarine Resources Goal for dredged material disposal shall be protected from new uses and activities which would pre-

vent their ultimate use for dredged material disposal.

- 4. Because of the importance of the vegetative fringe adjacent to coastal waters to water quality, fish and wildlife habitat, recreational use and aesthetic resources, riparian vegetation shall be maintained; and where appropriate, restored and enhanced, consistent with water-dependent uses.

- 5. Land-use management practices and non-structural solutions to problems or erosion and flooding shall be preferred to structural solutions. Where shown to be necessary, water and erosion control structures, such as jetties, bulkheads, seawalls, and similar protective structures; and fill, whether located in the waterways or on shorelands above ordinary high water mark, shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns.

- 6. Local government in coordination with the Parks and Recreation Division shall develop and implement a program to provide increased public access. Existing public ownerships, rights of way, and similar public easements in coastal shorelands which provide access to or along coastal waters shall be retained or replaced if sold, exchanged or transferred. Rights of way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.

GUIDELINES

The requirements of the Coastal Shorelands Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to coastal shoreland areas and implementation of the Coastal Shorelands Goal.

Because of the strong relation of estuarine shorelands to adjacent estuaries, the inventory and planning requirements for estuaries and estuarine shorelands should also be fully coordinated. Coastal shoreland inventories and planning should also be fully coordinated with those required in other statewide planning goals, supplementing them where necessary. Of special importance are the plan requirements of the Goals for Agricultural Lands; Forest Lands; Open Spaces, Scenic and Historic Areas and Natural Resources; Air, Water, and Land Resources Quality; Areas Subject to Natural Disasters and Hazards; Recreational Needs; and Economy of the State.

A. INVENTORIES

In coastal shoreland areas the following inventory needs should be reviewed. The level of detail of information needed will differ depending on the development or alteration proposed and the degree of conflict over the potential designation.

- 1. Hazard areas, including at least:
 - a. Areas the use of which may result in significant hydraulic alteration of other lands or water bodies;
 - b. Areas of geological instability in, or adjacent to shorelines; and
 - c. The 100-Year Floodplain.
- 2. Existing land uses and ownership patterns, economic resources, development needs, public facilities, topography, hydrography, and similar information affecting shorelands;
- 3. Areas of aesthetic and scenic importance;

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17. COASTAL SHORELANDS (Continued)

4. Coastal shoreland and wetland biological habitats which are dependent upon the adjacent water body, plus other coastal shoreland and adjacent aquatic areas of biological importance (feeding grounds, nesting sites, areas of high productivity, etc.) natural areas and fish and wildlife habitats;
5. Areas of recreational importance;
6. Areas of vegetative cover which are riparian in nature or which function to maintain water quality and to stabilize the shoreline;
7. Sedimentation sources;
8. Areas of present public access and recreational use;
9. The location of archaeological and historical sites; and
10. Coastal headlands.

B. FLOODPLAIN

In the development of comprehensive plans, the management of uses and development in floodplain areas should be expanded beyond the minimal considerations necessary to comply with the National Flood Insurance Program and the requirements of the Flood Disaster Protection Act of 1973. Communities may wish to distinguish between the floodway and floodfringe in developing coastal shoreland plans; development in the floodway should be more strictly controlled.

Government projects in coastal shorelands should be examined for their impact on flooding, potential flood damage, and effect on growth patterns in the floodplain. Nonwater-dependent emergency service structures (such as hospitals, police, and fire stations) should not be constructed in the floodplain. Although they may be flood-proofed, access and egress may be prevented during a flood emergency.

C. OPEN SPACE, NATURAL AREAS AND AESTHETIC RESOURCES, AND RECREATION

Coastal shorelands provide many areas of unique or exceptional value and benefit for open space, natural areas, and aesthetic and recreational use. The requirements of the Goals for Open Spaces, Scenic and Historic Areas, and Natural Resources (Goal 5) and Recreational Needs (Goal 8) should be carefully coordinated with the coastal shoreland planning effort.

The plan should provide for appropriate public access to and recreational use of coastal waters. Public access through and the use of private property shall require the consent of the owner and is a trespass unless appropriate easements and access have been acquired in accordance with law.

D. DEVELOPMENT NEEDS

In coordination with planning for the Estuarine Resources Goal, coastal shoreland plans should designate appropriate sites for water-dependent activities, and for dredged material disposal.

Historic, unique, and scenic waterfront communities should be maintained and enhanced, allowing for nonwater-dependent uses as appropriate in keeping with such communities.

E. TRANSPORTATION

The requirements of the Transportation Goal should be closely coordinated with the Coastal Shorelands Goal. Coastal transportation systems frequently utilize shoreland areas and may significantly affect the resources and values of coastal shorelands and adjacent waters; they should allow appropriate access to coastal shorelands and adjacent waters, and be planned in full recognition of the protection needs for the special resources and benefits which shorelands provide.

F. EXAMPLES OF INCIDENTAL USES

Examples of uses that are in conjunction with and incidental to a water-dependent use include a restaurant on the second floor of an existing seafood processing plant and a retail sales room as part of a seafood processing plant. Generally, to be in conjunction with and incidental to a water dependent use, a non-water-dependent use must be constructed at the same time or after the water-dependent use of the site is established and be carried out together with the water-dependent use. Incidental means that the size of nonwater-dependent use is small in relation to the water-dependent operation and that it does not interfere with conduct of the water-dependent use.

18. BEACHES AND DUNES

GOAL

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development.

INVENTORY REQUIREMENTS

Inventories shall be conducted to provide information necessary for identifying and designating beach and dune uses and policies. Inventories shall describe the stability, movement, groundwater resource, hazards and values of the beach and dune areas in sufficient detail to establish a sound basis for planning and management. For beach and dune areas adjacent to coastal waters, inventories shall also address the inventory requirements of the Coastal Shorelands Goal.

COMPREHENSIVE PLAN REQUIREMENTS

Based upon the inventory, comprehensive plans for coastal areas shall:

1. Identify beach and dune areas; and
2. Establish policies and uses for these areas consistent with the provisions of this goal.

IDENTIFICATION OF BEACHES AND DUNES

Coastal areas subject to this goal shall include beaches, active dune forms, recently stabilized dune forms, older stabilized dune forms and interdune forms.

USES

Uses shall be based on the capabilities and limitations of beach and dune areas to sustain different levels of use or development, and the need to protect areas of critical environmental concern, areas having scenic, scientific, or biological importance, and significant wildlife habitat as identified through application of Goals 5 and 17.

IMPLEMENTATION REQUIREMENTS

1. Local governments and state and federal agencies shall base decisions on plans, ordinances and land use actions in beach and dune areas, other than older stabilized dunes, on specific findings that shall include at least:
 - a. The type of use proposed and the adverse effects it might have on the site and adjacent areas;
 - b. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
 - c. Methods for protecting the surrounding area from any adverse effects of the development; and
 - d. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.
2. Local governments and state and federal agencies shall prohibit residential developments and commercial and industrial

buildings on beaches, active foredunes, on other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if the findings required in (1) above are presented and it is demonstrated that the proposed development:

- a. Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; or is of minimal value; and
- b. Is designed to minimize adverse environmental effects.

3. Local governments and state and federal agencies shall regulate actions in beach and dune areas to minimize the resulting erosion. Such actions include, but are not limited to, the destruction of desirable vegetation (including inadvertent destruction by moisture loss or root damage), the exposure of stable and conditionally stable areas to erosion, and construction of shore structures which modify current or wave patterns leading to beach erosion.
4. Local, state and federal plans, implementing actions and permit reviews shall protect the groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies. Building permits for single family dwellings are exempt from this requirement if appropriate findings are provided in the comprehensive plan or at the time of subdivision approval.

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18. BEACHES AND DUNES (Continued)

5. Permits for beachfront protective structures shall be issued only where development existed on January 1, 1977. Local comprehensive plans shall identify areas where development existed on January 1, 1977. For the purposes of this requirement and Implementation Requirement 7 "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved.

The criteria for review of all shore and beachfront protective structures shall provide that:

- a. visual impacts are minimized;
 - b. necessary access to the beach is maintained;
 - c. negative impacts on adjacent property are minimized; and
 - d. long-term or recurring costs to the public are avoided.
6. Foredunes shall be breached only to replenish sand supply in interdune areas, or on a temporary basis in an emergency (e.g., fire control, cleaning up oil spills, draining farm lands, and alleviating flood hazards), and only if the breaching and restoration after breaching is consistent with sound principles of conservation.
7. Grading or sand movement necessary to maintain views or to prevent sand inundation may be allowed for structures in foredune areas only if the area is committed to development and only as part of an overall plan for managing foredune grading. A foredune grading plan shall include the following elements based on consideration of factors affecting the stability of the shoreline to be managed including sources of sand, ocean flooding, and patterns of accretion and erosion (including wind erosion), and effects of beachfront protective structures and jetties. The plan shall:
- a. Cover an entire beach and foredune area subject to an accretion problem, including adjacent areas potentially affected by changes in flooding, erosion, or accretion as a result of dune grading;
 - b. Specify minimum dune height and width requirements to be maintained for protection from flooding and erosion. The minimum height for flood protection is 4 feet above the 100 year flood elevation;
 - c. Identify and set priorities for low and narrow dune areas which need to be built up;
 - d. Prescribe standards for redistribution of sand and temporary and permanent stabilization measures including the timing of these activities; and
 - e. Prohibit removal of sand from the beach-foredune system.

The Commission shall, by January 1, 1987, evaluate plans and actions which implement this requirement and determine whether or not they have interfered with maintaining the integrity of beach and dune areas and minimize flooding and erosion problems. If the Commission determines that these measures have interfered it shall initiate Goal amendment proceedings to revise or repeal these requirements.

GUIDELINES

The requirements of the Beaches and Dunes Goal should be addressed with the same consideration applied to previously adopted goals and guidelines. The planning process described in the Land Use Planning Goal (Goal 2), including the exceptions provisions described in Goal 2, applies to beaches and dune areas and implementation of the Beaches and Dunes Goal.

Beaches and dunes, especially interdune areas (deflation plains) provide many unique or exceptional resources which should be addressed in the inventories and planning requirements of other goals, especially the Goals for Open Spaces, Scenic and Historic Areas and Natural Resources; and Recreational Needs. Habitat provided by these areas for coastal and migratory species is of special importance.

A. INVENTORIES

Local government should begin the beach and dune inventory with a review of Beaches and Dunes of the Oregon Coast, USDA Soil Conservation Service and OCCDC, March 1975, and determine what additional information is necessary to identify and describe:

1. The geologic nature and stability of the beach and dune landforms;
2. Patterns of erosion, accretion, and migration;
3. Storm and ocean flood hazards;
4. Existing and projected use, development and economic activity on the beach and dune landforms; and
5. Areas of significant biological importance.

B. EXAMPLES OF MINIMAL DEVELOPMENT

Examples of development activity which are of minimal value and suitable for development of conditionally stable dunes and deflation plains include beach and dune boardwalks, fences which do not affect sand erosion or migration, and temporary open-sided shelters.

C. EVALUATING BEACH AND DUNE PLANS AND ACTIONS

Local government should adopt strict controls for carrying out the Implementation Requirements of this goal. The controls could include:

1. requirement of a site investigation report financed by the developer;

2. posting of performance bonds to assure that adverse effects can be corrected; and
3. requirement of re-establishing vegetation within a specific time.

D. SAND BY-PASS

In developing structures that might excessively reduce the sand supply or interrupt the longshore transport or littoral drift, the developer should investigate, and where possible, provide methods of sand by-pass.

E. PUBLIC ACCESS

Where appropriate, local government should require new developments to dedicate easements for public access to public beaches, dunes and associated waters. Access into or through dune areas, particularly conditionally stable dunes and dune complexes, should be controlled or designed to maintain the stability of the area, protect scenic values and avoid fire hazards.

F. DUNE STABILIZATION

Dune stabilization programs should be allowed only when in conformance with the comprehensive plan, and only after assessment of their potential impact.

G. OFF-ROAD VEHICLES

Appropriate levels of government should designate specific areas for the recreational use of off-road vehicles (ORVs). This use should be restricted to limit damage to natural resources and avoid conflict with other activities, including other recreational use.

H. FOREDUNE GRADING PLANS

Plans which allow foredune grading should be based on clear consideration of the fragility and ever-changing nature of the foredune and its importance for protection from flooding and erosion. Foredune grading needs to be planned for on an areawide basis because the geologic processes of flooding, erosion, sand movement, wind patterns, and littoral drift affect entire stretches of shoreline. Dune grading cannot be carried out effectively on a lot-by-lot basis because of these areawide processes and the off-site effects of changes to the dunes.

Plans should also address in detail the findings specified in Implementation Requirement (1) of this Goal with special emphasis placed on the following:

- Identification of appropriate measures for stabilization of graded areas and areas of deposition, including use of fire-resistant vegetation;
- Avoiding or minimizing grading or deposition which could adversely affect surrounding properties by changing wind, ocean erosion, or flooding patterns;
- Identifying appropriate sites for public and emergency access to the beach.

17. COASTAL SHORELANDS (Continued)

4. Coastal shoreland and wetland biological habitats which are dependent upon the adjacent water body, plus other coastal shoreland and adjacent aquatic areas of biological importance (feeding grounds, nesting sites, areas of high productivity, etc.) natural areas and fish and wildlife habitats;
5. Areas of recreational importance;
6. Areas of vegetative cover which are riparian in nature or which function to maintain water quality and to stabilize the shoreline;
7. Sedimentation sources;
8. Areas of present public access and recreational use;
9. The location of archaeological and historical sites; and
10. Coastal headlands.

B. FLOODPLAIN

In the development of comprehensive plans, the management of uses and development in floodplain areas should be expanded beyond the minimal considerations necessary to comply with the National Flood Insurance Program and the requirements of the Flood Disaster Protection Act of 1973. Communities may wish to distinguish between the floodway and floodfringe in developing coastal shoreland plans; development in the floodway should be more strictly controlled.

Government projects in coastal shorelands should be examined for their impact on flooding, potential flood damage, and effect on growth patterns in the floodplain. Nonwater-dependent emergency service structures (such as hospitals, police, and fire stations) should not be constructed in the floodplain. Although they may be flood-proofed, access and egress may be prevented during a flood emergency.

C. OPEN SPACE, NATURAL AREAS AND AESTHETIC RESOURCES, AND RECREATION

Coastal shorelands provide many areas of unique or exceptional value and benefit for open space, natural areas, and aesthetic and recreational use. The requirements of the Goals for Open Spaces, Scenic and Historic Areas, and Natural Resources (Goal 5) and Recreational Needs (Goal 8) should be carefully coordinated with the coastal shoreland planning effort.

The plan should provide for appropriate public access to and recreational use of coastal waters. Public access through and the use of private property shall require the consent of the owner and is a trespass unless appropriate easements and access have been acquired in accordance with law.

D. DEVELOPMENT NEEDS

In coordination with planning for the Estuarine Resources Goal, coastal shoreland plans should designate appropriate sites for water-dependent activities, and for dredged material disposal.

Historic, unique, and scenic waterfront communities should be maintained and enhanced, allowing for nonwater-dependent uses as appropriate in keeping with such communities.

E. TRANSPORTATION

The requirements of the Transportation Goal should be closely coordinated with the Coastal Shorelands Goal. Coastal transportation systems frequently utilize shoreland areas and may significantly affect the resources and values of coastal shorelands and adjacent waters; they should allow appropriate access to coastal shorelands and adjacent waters, and be planned in full recognition of the protection needs for the special resources and benefits which shorelands provide.

F. EXAMPLES OF INCIDENTAL USES

Examples of uses that are in conjunction with and incidental to a water-dependent use include a restaurant on the second floor of an existing seafood processing plant and a retail sales room as part of a seafood processing plant. Generally, to be in conjunction with and incidental to a water dependent use, a nonwater-dependent use must be constructed at the same time or after the water-dependent use of the site is established and be carried out together with the water-dependent use. Incidental means that the size of nonwater-dependent use is small in relation to the water-dependent operation and that it does not interfere with conduct of the water-dependent use.

18. BEACHES AND DUNES

GOAL

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

IDENTIFICATION OF BEACHES AND DUNES

Coastal areas subject to this goal shall include beaches, active dune forms, recently

buildings on beaches, active foredunes, or other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping.

1. Designate areas within the proposed development where activities such as exploration and extraction, will be prohibited;
2. Specify methods and equipment to be used and standards to be met;
3. Require the developer to finance monitoring and inspection of the development by the appropriate state agency;
4. Require that pollution abatement utilize the best available technology when needed to protect coastal resources;
5. Require the developer to be liable for individual or public damage caused by the development and to post adequate bonding or other evidence of financial responsibility to cover damages;
6. Specify the extent of restoration that must be accomplished, where appropriate, when the development is finished;
7. Specify that the state or federal government may revoke or modify a permit to prevent or halt damage to the environment and that such revocation or modification will recognize vested rights of the developer;
8. Require the developer to describe the extent and magnitude of onshore support and operation facilities and their social, economic and environmental impacts on the Oregon coast; and
9. Be available for public review and comment before issuance.

DEFINITIONS

ACCRETION. The build-up of land along a beach or shore by the deposition of waterborne or airborne sand, sediment, or other material.

AGRICULTURAL LAND. See definition in Agricultural Lands Goal.

ANADROMOUS. Referring to fish, such as salmon which hatch in fresh water, migrate to ocean waters to grow and mature, and return to fresh waters to spawn.

ARCHAEOLOGICAL RESOURCES. Those districts, sites, buildings, structures, and artifacts which possess material evidence of human life and culture of the prehistoric and historic past. (See Historical Resources definition.)

AVULSION. A tearing away or separation by the force of water. Land which is separated from uplands or adjacent properties by the action of a stream or river cutting through the land to form a new stream bed.

BEACH. Gently sloping areas of loose material (e.g., sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or landform, or to the line of vegetation.

BENTHIC. Living on or within the bottom sediments in water bodies.

BRIDGE CROSSINGS. The portion of a bridge spanning a waterway not including supporting structures or fill located in the waterway or adjacent wetlands.

BRIDGE CROSSING SUPPORT STRUCTURES. Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

CARRYING CAPACITY. Level of use which can be accommodated and continued without irreversible impairment of natural resource productivity, the ecosystem and the quality of air, land, and water resources.

CITIZEN. Any individual within the planning area; any public or private entity or association within the planning area, including corporations, governmental and private agencies, associations, firms, partnerships, joint stock companies and any group of citizens.

COASTAL LAKES. Lakes in the coastal zone that are bordered by a dune formation or that have a direct hydrologic surface or subsurface connection with saltwater.

COASTAL SHORELANDS. Those areas immediately adjacent to the ocean, all estuaries and associated wetlands, and all coastal lakes.

COASTAL STREAM. Any stream within the coastal zone.

COASTAL WATERS. Territorial ocean waters of the continental shelf; estuaries; and coastal lakes.

COASTAL ZONE. The area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction, and in the east by the crest of the coastal mountain range, with the exception of: (a) The Umpqua River basin, where the coastal zone shall extend to Scottsburg; (b) The Rogue River basin, where the coastal zone shall extend to Agness; (c) The Columbia River basin, where the coastal zone shall extend to the downstream end of Puget Island. (Formerly ORS 191.110)

CONSERVE. To manage in a manner which avoids wasteful or destructive uses and provides for future availability.

CONSERVATION. The act of conserving the environment.

CONTINENTAL SHELF. The area seaward from the ocean shore to the distance when the ocean depth is 200 meters, or where the ocean floor slopes more steeply to the deep ocean floor. The area beyond the state's jurisdiction is the OUTER Continental Shelf.

DEFLATION PLAIN. The broad interdune area which is wind-scoured to the level of the summer water table.

DEVELOP. To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access.

DEVELOPMENT. The act, process or result of developing.

DIVERSITY. The variety of natural, environmental, economic, and social resources, values, benefits, and activities.

DUNE. A hill or ridge of sand built up by the wind along sandy coasts.

DUNE, ACTIVE. A dune that migrates, grows and diminishes from the effect of wind and supply of sand. Active dunes include all open sand dunes, active hummocks, and active foredunes.

DUNE, CONDITIONALLY STABLE. A dune presently in a stable condition, but vulnerable to becoming active due to fragile vegetative cover.

DUNE, OLDER STABILIZED. A dune that is stable from wind erosion, and that has significant soil development and that may include diverse forest cover. They include older foredunes.

DUNE, OPEN SAND. A collective term for active, unvegetated dune landforms.

DUNE, RECENTLY STABILIZED. A dune with sufficient vegetation to be stabilized from wind erosion, but with little, if any, development of soil or cohesion of the sand under the vegetation. Recently stabilized dunes include conditionally stable foredunes, conditionally stable dunes, dune complexes, and younger stabilized dunes.

DUNE, YOUNGER STABILIZED. A wind-stable dune with weakly developed soils and vegetation.

DUNE COMPLEX. Various patterns of small dunes with partially stabilized intervening areas.

ECOSYSTEM. The living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are inter-related.

ENCOURAGE. Stimulate; give help to; foster.

ESTUARY. A body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from the land. The estuary includes: (a) estuarine water; (b) tidelands; (c) tidal marshes; and (d) submerged lands. Estuaries extend upstream to the head of tidewater, except for the Columbia River Estuary, which by definition is considered to extend to the western edge of Puget Island.

ESTUARINE ENHANCEMENT. An action which results in a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

FILL. The placement by man of sand, sediment, or other material, usually in submerged lands or wetlands, to create new uplands or raise the elevation of land.

FLOODFRINGE. The area of the floodplain lying outside of the floodway, but subject to periodic inundation from flooding.

FLOODPLAIN. The area adjoining a stream, tidal estuary or coast that is subject to regional flooding.

FLOOD, REGIONAL (100-YEAR). A standard statistical calculation used by engineers to determine the probability of severe flooding. It represents the largest flood which has a one-percent chance of occurring in any one year in an area as a result of periods of higher-than-normal rainfall or streamflows, extremely high tides, high winds, rapid snowmelt, natural stream blockages, tsunamis, or combinations thereof.

FLOODWAY. The normal stream channel and that adjoining area of the natural floodplain needed to convey the waters of a regional flood while causing less than one foot increase in upstream flood elevations.

FOREDUNE, ACTIVE. An unstable barrier ridge of sand paralleling the beach and subject to wind erosion, water erosion, and growth from new sand deposits. Active foredunes may include areas with beach grass, and occur in sand spits and at river mouths as well as elsewhere.

FOREDUNE, CONDITIONALLY STABLE. An active foredune that has ceased growing in height and that has become conditionally stable with regard to wind erosion.

FOREDUNE, OLDER. A conditionally stable foredune that has become wind stabilized by diverse vegetation and soil development.

FOREST LANDS. See definition of commercial forest lands and uses in the Oregon Forest Practices Act and the Forest Lands Goal.

GEOLOGIC. Relating to the occurrence and properties of earth. Geologic hazards include faults, land and mudslides, and earthquakes.

HEADLANDS. Bluffs, promontories or points of high shoreland jutting out into the ocean, generally sloping abruptly into the water. Oregon headlands are generally identified in the report on *Visual Resource Analysis of the Oregon Coastal Zone*, OCCDC, 1974.

HISTORICAL RESOURCES. Those districts, sites, buildings, structures, and artifacts which have a relationship to events or conditions of the human past. (See Archaeological Resources definition.)

HUMMOCK, ACTIVE. Partially vegetated (usually with beach grass), circular, and elevated mounds of sand which are actively growing in size.

HYDRAULIC. Related to the movement or pressure of water. Hydraulic hazards are those associated with erosion or sedimentation caused by the action of water flowing in a river or streambed, or oceanic currents and waves.

(Continued on next page)

19.

OCEAN RESOURCES

GOAL

To conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

All local, state, and federal plans, policies, projects, and activities which affect the territorial sea shall be developed, managed and conducted to maintain, and where appropriate, enhance and restore, the long-term benefits derived from the nearshore oceanic resources of Oregon. Since renewable ocean resources and uses, such as food production, water quality, navigation, recreation, and aesthetic enjoyment, will provide greater long-term benefits than will nonrenewable resources, such plans and activities shall give clear priority to the proper management and protection of renewable resources.

INVENTORY REQUIREMENTS

As state and federal agencies develop and implement plans or carry out actions, projects, or activities related to or affecting ocean resources, they shall develop inventory information necessary to understand the impacts and relationship of the proposed activity to continental shelf and nearshore ocean resources. As specific actions are proposed, inventory information shall be gathered by the unit of government considering the action with assistance from those agencies and governments which use or manage the resources. The inventory shall be sufficient to describe the long-term impacts of the proposed action on resources and uses of the continental shelf and nearshore ocean.

IMPLEMENTATION REQUIREMENTS

1. State and federal agencies with planning, permit, or review authorities affected by the Ocean Resources Goal shall review their procedures and standards to assure that the objectives and requirements of the goal are fully addressed. The following authorities are of special concern:

Division of State Lands	
Fill and Removal Law	ORS 541.605 - 541.685
Mineral Resources	ORS 273.775 - 273.780
Submersible and Submerged Lands	ORS 274.005 - 274.940
Kelp Law	ORS 274.885 - 274.895

Economic Development Department	
Ports Planning	ORS 777.835

Department of Geology & Mineral Industries	
Mineral Extraction and Oil & Gas Drilling	ORS 520.005 - 520.095

Department of Energy	
Regulation of Thermal Power & Nuclear Installation	ORS 469.300 - 469.570

Department of Environmental Quality	
Water Quality Permits	ORS 468.700 - 468.775
Oil Spillage Regulation	ORS 468.780 - 468.815

Department of Fish and Wildlife	
Fisheries Regulation	ORS Chapter 506

2. Each state and federal agency, special district, city and county within the limits of its jurisdiction and as necessary to:

- i. determine the impact of proposed projects or actions; and
- ii. for the sound conservation of ocean resources; shall:

a. Fishery Resources

- i. Develop scientific information on the stocks and life histories of commercially, recreationally, and eco-

logically important species of fish, shellfish, marine mammals and other marine fauna.

- ii. Designate and enforce fishing regulations to maintain the optimum sustainable yield (OSY) while protecting the natural marine ecosystem.
- iii. Develop and encourage improved fishing practices and equipment to achieve the OSY while protecting the natural marine ecosystem.
- iv. Develop scientific understanding of the effects of man's activities, including navigation, mineral extraction, recreation, and waste discharge, on the marine ecosystem.

b. Biological Habitat

- i. Identify and protect areas of important biological habitat, including kelp and other algae beds, seagrass beds, rock reef areas and areas of important fish, shellfish and invertebrate concentration.
- ii. 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.
- iii. Determine and protect the integrity of the marine ecosystem, including its natural biological productivity and diversity.

c. Navigation and Ports

- i. Determine for the state as a whole, the navigation needs for the coast of Oregon. Such needs will reflect, in part, the capability of each port to handle differing types of ship traffic, consistent with other statewide planning goals.
- ii. Maintain appropriate navigation lanes and facilities free from interference by other uses to provide safe transportation along and to the Oregon Coast.

d. Aesthetic Use

Maintain the aesthetic enjoyment and experiences provided by ocean resources.

e. Recreation

Identify, maintain, and enhance the diversity, quality, and quantity of recreational opportunities on and over the Oregon continental shelf, as consistent with the Beaches and Dunes Goal and Estuarine Resources Goal.

f. Waste Discharge and Mineral Extraction

Provide that extraction of materials from or discharge of waste products into or affecting the Oregon territorial sea do not substantially interfere with or detract from the use of the continental shelf for fishing, navigation, recreation, or aesthetic purposes, or from the long-term protection of renewable resources.

g. Dredged Material Disposal

Provide for suitable sites and practices for the open sea discharge of dredged materials, which do not substantially interfere with or detract from the use of the continental shelf for fishing, navigation, or recreation, or from the long-term protection of renewable resources.

h. Archaeological Sites

Identify and protect, whenever possi-

ble, significant underwater archaeological sites of the continental shelf.

3. Contingency Plans

Before issuing permits for development on the Oregon continental shelf, state and federal agencies, in coordination with the permittee, shall establish contingency plans and emergency procedures to be followed in the event that the operation results in conditions which threaten to damage the environment.

GUIDELINES

A. IMPLEMENTATION

The Ocean Resources Goal does not include any specific plan requirements. It primarily sets implementation requirements, giving priority to certain uses and requiring that actions affecting Ocean Resources must be preceded by an inventory and based on sound information.

These requirements address all units of government. Examples of plans, actions or programs of local government which might affect the identified ocean resources include construction and expansion of port and navigation facilities, recreation use, and disposal of chemical, thermal, sewage or dredged material wastes. Other kinds of actions in ocean resource and continental shelf areas are primarily under the regulatory authority of state and federal agencies; these activities must be closely coordinated with local government to avoid or minimize impact on adjacent and affected upland areas.

B. INVENTORY

The goal does not intend that local government and state and federal agencies develop complete inventories of ocean resources. Rather, it requires that actions affecting the nearshore ocean and continental shelf areas be based upon a sound understanding of the resources and potential impacts. Therefore, the inventory should identify the affected ocean area and describe the extent and significance of:

1. Hydrographic conditions and processes, including characteristics of ocean waves, current, tidal, water quality, and bottom;
2. Geology;
3. Biological features, including fish and shellfish stocks; other biologically important species; important habitat areas including seagrass and algae beds; and other elements important to maintaining the biological resource such as plankton and benthos;
4. Mineral deposits, including sand and gravel and hydrocarbon resources; and
5. Present and projected uses, use patterns, and values associated with the ocean resource, including commercial fishing, port and navigation uses, recreational activities, and waste discharges.

C. RESEARCH

Resource agencies and research organizations should continue to develop complete and comprehensive information on ocean resources to promote their proper management and protection.

D. FISH HARVEST

State and federal agencies should encourage, where appropriate and in keeping with sound practices for conservation of ocean resources, the exploitation of unutilized and underutilized fish species.

E. PERMITS

Permits for development on the Oregon continental shelf should:

(Continued on next page)

DEFINITIONS (Continued)

HYDRAULIC PROCESSES. Actions resulting from the effect of moving water or water pressure on the bed, banks, and shorelands of water bodies (oceans, estuaries, streams, lakes, and rivers).

HYDROGRAPHY. The study, description and mapping of oceans, estuaries, rivers and lakes.

HYDROLOGIC. Relating to the occurrence and properties of water. Hydrologic hazards include flooding (the rise of water) as well as hydraulic hazards associated with the movement of water.

IMPACT. The consequences of a course of action; effect of a goal, guideline, plan or decision.

INSURE. Guarantee; make sure or certain something will happen.

INTEGRITY. The quality or state of being complete and functionally unimpaired; the wholeness or entirety of a body or system, including its parts, materials, and processes. The integrity of an ecosystem emphasizes the interrelatedness of all parts and the unity of its whole.

INTERDUNE AREA. Low-lying areas between higher sand landforms and which are generally under water during part of the year. (See also Deflation Plain.)

INTERTIDAL. Between the levels of mean lower low tide (MLLT) and mean higher high tide (MHHT).

KEY FACILITIES. Basic facilities that are primarily planned for by local government but which also may be provided by private enterprise and are essential to the support of more intensive development, including public schools, transportation, water supply, sewage and solid waste disposal.

LCDC. Land Conservation and Development Commission of the State of Oregon. Seven lay citizens, non-salaried, appointed by the Governor, confirmed by the Oregon Senate; at least one commissioner from each Congressional District; no more than two from Multnomah County.

LITTORAL DRIFT. The material moved, such as sand or gravel, in the littoral (shallow water nearshore) zone under the influence of waves and currents.

MAINTAIN. Support, keep, and continue in an existing state or condition without decline.

MANAGEMENT UNIT. A discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited.

MINOR NAVIGATIONAL IMPROVEMENTS. Alterations necessary to provide water access to existing or permitted uses in conservation management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in-water navigational structures other than floating breakwaters or similar permeable wave barriers.

MITIGATION. The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, and species diversity, unique features and water quality (ORS 541.626).

NATURAL AREAS. Includes land and water that has substantially retained its natural character, which is an important habitat for plant, animal, or marine life. Such areas are not necessarily completely natural or undisturbed, but can be significant for the study of natural, historical, scientific, or paleontological features, or for the appreciation of natural features.

NATURAL RESOURCES. Air, land and water and the elements thereof which are valued for their existing and potential usefulness to man.

OCCDC. Oregon Coastal Conservation and Development Commission, created by ORS 191; existed from 1971 to 1975. Its work is continued by LCDC.

OCEAN FLOODING. The flooding of lowland areas by salt water owing to tidal action, storm surge, or tsunamis (seismic sea waves). Land forms subject to ocean flooding include beaches, marshes, coastal lowlands, and

lowlying interdune areas. Areas of ocean flooding are mapped by the Federal Emergency Management Agency (FEMA). Ocean flooding includes areas of velocity flooding and associated shallow marine flooding.

PLANNING AREA. The air, land and water resources within the jurisdiction of a governmental agency.

POLLUTION. The violation or threatened violation of applicable state or federal environmental quality statutes, rules and standards.

PRESERVE. To save from change or loss and reserve for a special purpose.

PROGRAM. Proposed or desired plan or course of proceedings and action.

PROTECT. Save or shield from loss, destruction, or injury or for future intended use.

PROVIDE. Prepare, plan for, and supply what is needed.

PUBLIC FACILITIES AND SERVICES. Projects, activities and facilities which the planning agency determines to be necessary for the public health, safety and welfare.

PUBLIC GAIN. The net gain from combined economic, social, and environmental effects which accrue to the public because of a use or activity and its subsequent resulting effects.

QUALITY. The degree of excellence or relative goodness.

RECREATION. Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction.

Coastal Recreation occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities, from swimming, scuba diving, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants.

Low-Intensity Recreation does not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low-intensity recreation.

High-Intensity Recreation uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high-intensity recreation.

RESTORE. Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, which have been diminished or lost by past alterations, activities, or catastrophic events. For the purposes of Goal 16 estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began.

Active Restoration involves the use of specific positive remedial actions, such as removing fills, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas.

Passive Restoration is the use of natural processes, sequences, and timing which occurs after the removal or reduction of adverse stresses without other specific positive remedial action.

RIPARIAN. Of, pertaining to, or situated on the edge of the bank of a river or other body of water.

RIPRAP. A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. In local usage, the similar use of other hard material, such as concrete rubble, is also frequently included as riprap.

RURAL LAND. Rural lands are those which are outside the urban growth boundary and are:

- Non-urban agricultural, forest or open space lands or,
- Other lands suitable for sparse settlement, small farms or acreage homesteads with no or hardly any public services, and which are not suitable, necessary or intended for urban use.

SEDENTARY. Attached firmly to the bottom, generally incapable of movement.

SHORELINE. The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary high-water mark.

SIGNIFICANT HABITAT AREAS. A land or water area where sustaining the natural resource characteristics is important or essential to the production and maintenance of aquatic life or wildlife populations.

SOCIAL CONSEQUENCES. The tangible and intangible effects upon people and their relationships with the community in which they live resulting from a particular action or decision.

STRUCTURE. Anything constructed or installed or portable, the use of which requires a location on a parcel of land.

SUBSTRATE. The medium upon which an organism lives and grows. The surface of the land or bottom of a water body.

SUBTIDAL. Below the level of mean lower low tide (MLLT).

TEMPORARY ALTERATION. Dredging, filling, or another estuarine alteration occurring over a specified short period of time which is needed to facilitate a use allowed by an acknowledged plan. Temporary alterations may not be for more than three years and the affected area must be restored to its previous condition. Temporary alterations include: (1) alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetty maintenance), (2) alterations to establish mitigation sites, alterations for bridge construction or repair and for drilling or other exploratory operations, and (3) minor structures (such as blinds) necessary for research and educational observation.

TERRITORIAL SEA. The ocean and seafloor area from mean low water seaward three nautical miles.

TIDAL MARSH. Wetlands from lower high water (LHW) inland to the line of non-aquatic vegetation.

URBAN LAND. Urban areas are those places which must have an incorporated city. Such areas may include lands adjacent to and outside the incorporated city and may also:

- Have concentrations of persons who generally reside and work in the area
- Have supporting public facilities and services.

URBANIZABLE LAND. Urbanizable lands are those lands within the urban growth boundary and which are identified and

- Determined to be necessary and suitable for future urban uses
- Can be served by urban services and facilities
- Are needed for the expansion of an urban area.

WATER-DEPENDENT. A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

WATER ORIENTED. A use whose attraction to the public is enhanced by a view of or access to coastal waters.

WATER-RELATED. Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

WETLANDS. Land areas where excess water is the dominant factor determining the nature of soil development and the types of plant and animal communities living at the soil surface. Wetland soils retain sufficient moisture to support aquatic or semi-aquatic plant life. In marine and estuarine areas, wetlands are bounded at the lower extreme by extreme low water; in freshwater areas, by a depth of six feet. The areas below wetlands are submerged lands.

OREGON ADMINISTRATIVE RULES
CHAPTER 660 - LAND CONSERVATION AND DEVELOPMENT COMMISSION
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OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 1 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

DIVISION 1

PROCEDURAL RULES

Notice of Proposed Rule

660-01-000 Prior to the adoption, amendment, or repeal of any rule or statewide planning goal, the Land Conservation and Development Commission shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least fifteen (15) days prior to the effective date.

(2) By purchasing legal notices (advertisements) in daily and weekly newspapers of general circulation throughout the state.

(3) By distributing copies of the legal notice to all media (newspapers, radio stations, television stations, and wire services) as a news release.

(4) In instances of regional application, e.g., the statewide planning goal for the Willamette River Greenway, by making a special effort to furnish copies of the legal notices to media outlets in the affected area.

(5) By mailing a copy of the notice to persons on the Department of Land Conservation and Development's mailing list established pursuant to ORS 183.335(6).

(6) By mailing a copy of the notice to the persons, groups of persons, organizations, and associations who are deemed to be affected by such adoption and are among those the Land Conservation and Development Commission deems should reasonably receive such notice.

Stat. Auth.: ORS Ch. 183
Hist.: LCD 7, f. & ef. 6-4-76

Procedure for Commission Review of Land Use Board Recommendations

660-01-003 [LCD 7-1979(Temp), f. & ef. 11-30-79]

Model Rules of Procedure

660-01-005 Pursuant to the provisions of ORS 183.341, the Land Conservation and Development Commission adopts the Attorney General's Model Rules and Uniform Rules of Procedure under the Administrative Procedure Act, dated January 27, 1986, except for OAR 137-03-007 "Requests by Agencies to Participate as a Party or an Interested Agency", and OAR 137-03-093 regarding the amount of time required to act on a stay request.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCD 3, f. 1-9-75, ef. 2-11-75; Renumbered from 660-10-005; LCD 5-1978, f. & ef. 3-24-78; LCD 11-1981, f. & ef. 12-15-81; LCDC 8-1983, f. & ef. 11-23-83; LCDC 2-1986, f. & ef. 4-25-86

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Land Conservation and Development Commission.]

Request For Stay-Agency Determination

660-01-007 (1) Unless otherwise agreed to by the agency and the parties, within a reasonable time following delivery or mailing to the agency of the Request for Stay, the agency shall:

(a) Conduct such further proceedings as the parties mutually agree upon; or

(b) Conduct a contested case hearing, which may be limited to hearing rebuttal testimony; or

(c) Allow the petitioner within a time certain to submit affidavits to answer any of the intervenor's evidence.

(2) Unless otherwise agreed to by the agency and the parties, within 75 days of the delivery or mailing to the agency of the Request for Stay, the agency shall:

(a) Grant the stay request in writing and impose reasonable conditions including but not limited to requirements of a bond or other undertaking and that the petitioner file all documents necessary to bring the matter to issue before the Court of Appeals within a specified reasonable period of time; or

(b) Deny the stay request in writing and explain that the petitioner failed to show irreparable injury or a colorable claim of error in the agency order; or

(c) Deny the stay request in writing and specifically state why, notwithstanding the petitioner's show of irreparable injury and a colorable claim of error in the agency order, to grant the stay would result in substantial public harm.

(3) Nothing in rules 137-03-090 to 137-03-091 prevents an agency from receiving evidence from agency staff concerning the public harm which may result if a stay request was granted. Such evidence shall be presented by affidavit.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 2-1985, f. & ef. 3-13-85

Rules Governing Review of Petitions**Scope of Rules**

660-01-010 [LCD 5, f. & ef. 12-5-75; Repealed by LCD 11(Temp), f. & ef. 9-16-77, thru 1-13-78; Repealed by LCD 1-1978, f. & ef. 1-19-78]

Scope of Rules

660-01-011 These rules repeal and replace the rules governing review of petitions earlier adopted by this agency as OAR 660-01-010 through 660-01-055. These rules are intended to supplement the Attorney General's Model Rules of Procedure applicable to contested cases and adopted by this agency as OAR 660-01-005, and any subsequent adoption of new model rules. In the case of a conflict between these rules and the Model Rules, these rules will apply. These rules apply to proceedings regarding petitions for review filed under ORS 197.300 from the effective date of these rules.

Stat. Auth.: ORS Ch. 197
Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Filing of Petitions

660-01-015 [LCD 5, f. & ef. 12-5-75; Repealed by LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; Repealed by LCD 1-1978, f. & ef. 1-19-78]

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 1 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

This shall include precise references by page and document number or tape footage to the locations in the record where evidence of the facts asserted will be found.

(16) A statement as to whether, to the best of petitioner's belief, all or part of the petition for review involves the same or substantially similar allegations of violations of any state-wide planning goal involving the same legal or factual issues currently pending in any court pursuant to an action brought by the petitioner.

(17) A statement that the information in the petition is true and accurate to the best knowledge of the petitioner(s) (followed by the signature of at least one petitioner and date signed).

(18) A copy of the certification required in OAR 660-01-036, *infra*.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Petitions Requiring Hearing on the Merits

660-01-035 [LCD 5, f. & ef. 12-5-75;
Repealed by LCD 11(Temp),
f. & ef. 9-16-77 thru 1-13-78;
Repealed by LCD 1-1978, f. & ef. 1-19-78]

Service by Petitioner of Copies of Petition

660-01-036 A petitioner shall serve by mail or hand delivery to the governmental agency named in the petition a copy of the petition at the time of filing and shall certify as follows:

I certify that on _____ (Date) _____, I served a true and correct copy of the foregoing _____ (Document) _____ on _____ (Respondent) _____ by _____ (a) certified mail
_____ (b) personal delivery.

Dated: _____

_____ (Signature) _____

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp) f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Extensions of Time

660-01-040 [LCD 5, f. & ef. 12-5-75;
Repealed by LCD 11(Temp),
f. & ef. 9-16-77 thru 1-13-78;
Repealed by LCD 1-1978, f. & ef. 1-19-78]

Department Actions Upon Receipt of Petition

660-01-041 (1) On the date of receipt of a petition, the Department shall file a petition to review and forward a copy of the petition to a hearings officer.

(2) The department shall cause each party to the review proceeding to be notified not later than five days after the filing of the petition. The form of notice and service of the notice shall meet the requirements of ORS 183.415(1) and (2) and shall include a copy of the petition, notice of the right to a hearing or the date and time of any scheduled hearings, and the name, address, and telephone number of the hearings officer assigned to the review proceeding.

(3) In the case of admission of an intervenor as a party to the review proceedings under OAR 660-01-051, *infra*, the Department shall provide the intervenor, upon admission to the proceedings, with a copy of the notice given to the original parties.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Informal Disposition of Proceedings

660-01-045 [LCD 5, f. & ef. 12-5-75;
Repealed by LCD 11(Temp),
f. & ef. 9-16-77 thru 1-13-78;
Repealed by LCD 1-1978, f. & ef. 1-19-78]

Parties

660-01-046 The parties to the proceeding shall include the petitioner(s), the governmental agency named by the petition, and such other persons or governmental agencies approved as intervenors under OAR 660-01-051, *infra*.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Expediting of Proceedings by Stipulation

660-01-050 [LCD 5, f. & ef. 12-5-75;
Repealed by LCD 11(Temp),
f. & ef. 9-16-77 thru 1-13-78;
Repealed by LCD 1-1978, f. & ef. 1-19-78]

Intervention

660-01-051 (1) The hearings officer shall review the petition to determine if any additional parties should be admitted to the proceedings at his request, pursuant to ORS 197.305(3).

(2) Pursuant to ORS 197.305(3), the hearings officer shall permit a city, county, state agency, special district, or any person or group of persons whose interests are substantially affected by the petition review proceeding to intervene and be made a party to the review:

- (a) at the request of the hearings officer; or
- (b) upon approval by the hearings officer of a request to intervene; or
- (c) with the approval of the Commission.

A request to intervene must be made by filing a motion to intervene with the hearings officer within 30 days of the filing of the petition, or prior to any hearing on the merits.

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 1 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

Purpose

660-01-016 The procedures established in these rules are intended to provide for the speediest practicable hearing and decision on ORS 197.300(1) controversies while affording all interested persons reasonable notice and opportunity to participate, reasonable time to prepare and submit their cases, and a full and fair hearing. These rules shall be interpreted to effectuate these policies and to promote justice. Technical violations of these rules which do not affect substantial rights of parties or of the public shall not interfere with the review of a petition.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp) f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Contents of Petitions for Review Filed Under ORS 197.300(1)

660-01-020 [LCD 5, f. & ef. 12-5-75;
Repealed by LCD 11(Temp),
f. & ef. 9-16-77 thru 1-13-78;
Repealed by LCD 1-1978, f. & ef. 1-19-78]

Requests for Information

660-01-021 All inquiries regarding petition for review proceedings shall be directed to the Director of the Department of Land Conservation and Development at 1175 Court Street, N.E., Salem, Oregon 97310.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Notice to Affected Governmental Agency by Department; Service by Petitioner of All Subsequent Documents Upon Affected Governmental Agency

660-01-025 [LCD 5, f. & ef. 12-5-75;
Repealed by LCD 11(Temp),
f. & ef. 9-16-77 thru 1-13-78;
Repealed by LCD 1-1978, f. & ef. 1-19-78]

Filing of Petitions

660-01-026 (1) Petitions may be filed under ORS 197.300(1)(a), (b), (c), or (d).

(2) Petitions must be filed within the 60-day time limit set forth in ORS 197.300(2).

(3) All petitions shall be filed with the office of the Director of the Department during normal working hours at the Department office located at 1175 Court Street, N.E., Salem, Oregon 97310.

(4) A petition shall be considered filed upon the date of receipt at the office of the Director of the Department.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Summary Disposition of Petition for Review

660-01-030 [LCD 5, f. & ef. 12-5-75;
Repealed by LCD 11(Temp),
f. & ef. 9-16-77 thru 1-13-78;
Repealed by LCD 1-1978, f. & ef. 1-19-78]

Contents of Petitions

660-01-031 Petitions filed under these rules shall contain the following in a form, as prescribed by the Department:

- (1) Name of petitioner(s);
- (2) Address;
- (3) Telephone Number;
- (4) The name and address of the person to receive delivery of documents from the Commission and other parties to the petition for review proceeding;
- (5) The name of the city, county, special district, state agency, or other governmental agency making the decision to be reviewed and the address and telephone number of that governmental agency;
- (6) A statement declaring whether the petition for review is brought before the Commission under ORS 197.300(1)(a), (b), (c), and/or (d);
- (7) A statement describing the governmental action or adoption of a comprehensive plan provision, ordinance, or other regulation sought to be reviewed, including dates and ordinance numbers or other specific formal designations;
- (8) A statement of the goals alleged to have been violated by the action described in section (7) of this rule or, in the case of an appeal brought under ORS 197.300(1)(c), whether ORS 197.190, 197.225, or 197.260 is alleged to have been exceeded;
- (9) A statement describing how the governmental action, plan, ordinance, or regulation adoption described in section (7) of this rule violated the goals or statutes set forth in section (8) of this rule;
- (10) In the case of an appeal brought under ORS 197.300(1)(d), a brief statement of facts showing how the interests of the petitioner(s) are substantially affected by the comprehensive plan provision or zoning, subdivision, or other ordinance or regulation alleged to be in violation of statewide planning goals;
- (11) A brief statement of what Commission action is sought by the petitioner(s);
- (12) Names and addresses of persons, private and governmental, that the petitioner(s) believe would be affected by the Commission action sought (including the applicant who requested or initiated the governmental action challenged by petitioner(s)).
- (13) A copy of the plan provision(s), ordinance(s), or regulation(s) to be reviewed.
- (14) A map, sketch, or diagram, on 8-1/2 x 11" paper, of the general area affected by the governmental action showing the specific location of that action.
- (15) Designation of the portions of the administrative record of the proceedings of the governmental agency whose decision is being reviewed which are relied upon by the petitioner to support the allegations set forth in the petition.

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 1 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Hearings Officer's Summary Review of Petition for Review and Designation of Record

660-01-075 (1) After the filing of the petition, or after receipt of any answers or motions to dismiss, or after conferences, the hearings officer shall undertake a summary review of the petition.

(2) Based on the petition, any answers, motions to dismiss, or his own examination of the administrative record, the hearings officer may consolidate all designations of record into an official designation of record order and deliver it to each party.

(3) The hearings officer shall provide the Commission, petitioner, and all other parties to the petition review proceedings with a written summary review order which sets forth, if any, his preliminary determination and any recommendations to the Commission.

(4) Upon receipt of the hearings officer's recommendation to the Commission, the Commission shall, as appropriate:

(a) Make a jurisdictional determination as required in ORS 197.300(2).

(b) Adopt, modify, or reject the hearings officer's recommendations and issue an order, as appropriate, or may order the hearings officer to proceed with the petition review with such instructions as the Commission may deem appropriate, or may request that additional intervenors be admitted as parties to the proceedings.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Standards and Procedures for Determination of Jurisdiction

660-01-080 (1) The Commission shall act on motions to dismiss filed pursuant to rule 660-01-056 *supra* within the time limits in ORS 197.310(1). Notice of the meeting at which the Commission intends to consider the motion to dismiss will be provided by the hearings officer.

(2) The Commission shall assume jurisdiction of all petitions for review absent a finding by the Commission that:

(a) The petition was not timely filed pursuant to ORS 197.300(2);

(b) The Commission has no jurisdiction pursuant to ORS 197.300(a), (b), (c), or (d) over the governmental decision appealed from; or

(c) The petitioner has filed under the wrong statutory provision provided in ORS 197.300(1) and the allegations of the petition, taken as a whole, do not support jurisdiction under any of the subsections of ORS 197.300(a) through (d).

(3) The Commission's action will be based on the contents of the petition, motions to dismiss, briefs in opposition to motions to dismiss, recommendations of the hearings officer filed under rule 660-01-075 *supra* and the advice of the Commission's legal counsel.

(4) Upon request by a party, the Commission may permit oral presentations before the Commission concerning

a motion to dismiss. The Commission may limit the time and subject matter of such presentations as it considers appropriate. Requests for oral presentation shall be made in writing to the Director of the Department of Land Conservation and Development not less than five days prior to the meeting at which the Commission intends to consider the motion to dismiss.

(5) The Commission may reconsider its assumptions of jurisdiction at any time.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 13(Temp), f. & ef. 10-14-77; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Conduct of Hearings

660-01-085 (1) The hearings officer shall schedule hearings as required.

(2) Notice of a hearing shall be provided each party in a manner required by ORS 183.415(1) and (2).

(3) The hearing shall be conducted by the hearings officer and shall comply with the requirements of ORS 183.415.

(4) Each party shall have the right to question or examine or cross-examine any witness.

(5) The hearing may be continued with recesses as determined by the hearings officer.

(6) The hearings officer may set reasonable time limits for all presentations, cross-examinations, and arguments.

(7) Evidence. In the absence of a showing of due process irregularities by the governmental agency whose decision is being reviewed and which substantially affected the rights of a party to the review proceeding, the review proceeding shall be based solely on the administrative record of the governmental agency which took the challenged land planning action.

(8) Briefs. The petitioner and all other parties, at the discretion and direction of the hearings officer, may brief specific issues. Failure to submit any brief shall not prevent a party from fully participating and appearing at any hearing. Briefs shall be in a form and length prescribed by the hearings officer.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Hearings Officer's Opinion and Recommendation

660-01-090 When the hearings officer has completed such of the above proceedings as are appropriate, he shall prepare an opinion and recommendation.

The hearings officer shall file the record of the petition review proceeding and his opinion and recommendation with the Department within 15 days following the conclusion of the hearings, or if no hearing has taken place, upon completion of the development of the record of the petition review proceeding.

The hearings officer shall serve each party to the petition review proceedings with a copy of his opinion and recommendation.

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 1 – LAND CONSERVATION AND DEVELOPMENT COMMISSION

The motion to intervene must contain a statement of why the review proceeding would substantially affect an interest of the governmental agency or persons who wish to intervene.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Hearings Officer's Authority

660-01-055 [LCD 5, f. & ef. 12-5-75; LCD 8(Temp), f. & ef. 6-3-76 thru 10-1-76; LCD 9, f. & ef. 10-13-76; Repealed by LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; Repealed by LCD 1-1978, f. & ef. 1-19-78]

Motions to Dismiss

660-01-056 (1) Any challenge to the jurisdiction of the Commission (including timely filing) must be raised by a motion to dismiss filed with the hearings officer within 10 days of receipt of notice of filing of the petition.

(2) Any party making a jurisdictional challenge by motion to dismiss must accompany the motion with a statement of points and authorities or a brief so that full argument is presented at that time.

(3) Petitioner shall have ten days after receipt of the motion to dismiss to file a brief in opposition.

(4) There will normally be no hearing on a jurisdictional challenge raised by motion to dismiss.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Answer to Petition

660-01-060 (1) Filing. Within 30 days following the receipt of notice of a petition for review, any party shall file an answer to the petition with the hearings officer, except that all challenges to the Commission's jurisdiction and the timeliness of the filing of the petition shall be filed as a separate motion to dismiss within 10 days of receipt of notice of the filing of the petition.

(2) Form of Answers. The answer shall, as to each paragraph of the petition, admit or deny the facts set out by petitioner. In addition, the answer, on the basis of petitioner's facts or new facts set out in the answer, may assert, each separately, any of the following grounds for dismissing or denying all or part of the petition:

(a) The petition for review does not set forth facts showing a violation of statewide goals.

(b) A petition for review brought under ORS 197.300(1)(d) does not set forth facts showing how an interest of the petitioner has been substantially affected.

(c) All or part of the petition for review involves the same or substantially similar allegations of violations of any statewide planning goal involving the same legal or factual

issues currently pending in any court and which should be stricken pursuant to ORS 197.300(3).

(d) Any other grounds that the answering party, in good faith, believes to be sufficient to warrant denial or relief.

(3) The answer shall designate as precisely as possible any portions of the administrative record of the governmental agency not designated by the petitioner on which the answering party relies and shall include a statement certifying that the information in the answer is true and accurate to the best knowledge of the respondent (followed by the signature of at least one respondent and the date signed).

(4) Notice to Parties. A copy of the answer shall be served on the petitioner and all other parties to the proceedings.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Copies of Motions, Answers, and Other Documents

660-01-065 (1) The original and two copies of all motions, answers, memoranda, briefs, etc. shall be filed with the hearings officer and shall be served on all parties.

(2) Service on the other parties and certification shall be in conformity with that in OAR 660-01-036, *supra*.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

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Hearings Officer's Conference

660-01-070 At his discretion, the hearings officer may hold one or more conferences. The hearings officer shall be the presiding officer at the conference and shall set its time, place, required parties, agenda, and procedures. All parties must attend the conference(s), unless specifically excused by the hearings officer. Notice shall be given to the parties of the time, place, and purpose of the conference. Notice will be in a form consistent with the provisions of ORS 183.415(1) and (2), and will also describe the purpose and procedures of the conference.

The conferences may consider the type, time, place, parties and issues of any hearings which will be held, the necessity of special procedures, simplification of the issues, the possibility of attaining admissions of fact and of documents, requirements for briefs, and the limitation of repetitious material, testimony, and any other matters which may aid in the disposition of the review proceeding, under ORS 183.415 and ORS Chapter 197.

At the conclusion of the conference, the hearings officer may issue a post-conference order or letter which shall recite any actions or agreements made at the conference. A copy of the post-conference order or letter shall be sent to all parties to the proceedings. An order shall be binding on all parties as to the matters therein.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

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Director shall review any exceptions to the Board's recommendation to determine whether to allow oral argument before the Commission. The Director's determination shall be made within five (5) days of the Commission's consideration of the Board's recommendation.

(5) Procedure for oral argument. At the time of argument, the petitioner shall be entitled to open and close. Unless the Commission otherwise orders, the petitioner shall have 20 minutes, and the respondent likewise shall have 20 minutes, provided the petitioner may use not more than five minutes of the time allowed in argument in which to reply.

(6) For the purposes of this rule, where there are two or more parties on one side, they shall divide their allotted time among themselves, unless the Commission orders otherwise.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 7-1979(Temp), f. & ef. 11-30-79; LDC 2-1980, f. & ef. 1-11-80

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

City Annexations – and Application of Goals Within Cities

Purpose

660-01-300 The purpose of this rule is to clarify existing goals and provide guidance to local governments and local government boundary commissions regarding annexations of land to cities under the goals. This rule specifies the satisfactory method of applying the Statewide Goals and Guidelines, OAR Chapter 660, Division 15, during annexation proceedings. This rule also specifies that the Land Conservation and Development Commission considers land already within city boundaries to be urban or urbanizable land.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 3-1978, f. & ef. 2-15-78

Lands Within City Boundaries

660-01-305 [LCD 3-1978, f. & ef. 2-15-78;
Repealed by LCD 9-1980, f. & ef.
12-17-80]

Annexations of Lands Subject to an Acknowledged Comprehensive Plan

660-01-310 A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) shall be considered by Land Conservation and Development Commission to have been made in accordance with the goals unless:

(1) The acknowledged comprehensive plan and implementing ordinances do not control the annexation; or

(2) Substantial changes in conditions have occurred which render the comprehensive plan inapplicable to the annexation.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 3-1978, f. & ef. 2-15-78

Annexations of Lands Not Subject to an Acknowledged Comprehensive Plan

660-01-315 (1) All appropriate goals must be applied during annexation by the city. If the annexation is subject to the jurisdiction of a local government boundary commission, the boundary commission may utilize the findings of the city. The boundary commission, however, remains responsible for ensuring that the annexation is in conformance with the statewide goals.

(2) For the annexation of lands not subject to an acknowledged plan, the requirements of Goal #3 (Agricultural Lands) and Goal #14 (Urbanization) OAR 660-15-000, shall be considered satisfied only if the city or local government boundary commission, after notice to the county and an opportunity for it to comment, finds that adequate public facilities and services can be reasonably made available; and:

(a) The lands are physically developed for urban uses or are within an area physically developed for urban uses; or

(b) The lands are clearly and demonstrably needed for an urban use prior to acknowledgment of the appropriate plan and circumstances exist which make it clear that the lands in question will be within an urban growth boundary when the boundary is adopted in accordance with the goals.

(3) Lands for which the findings in section (2) of this rule cannot be made shall not be annexed until acknowledgment of an urban growth boundary by Land Conservation and Development Commission as part of the appropriate comprehensive plan.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 3-1978, f. & ef. 2-15-78

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Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Exceptions

660-01-095 The parties shall have ten days from the date of receipt of the hearings officer's opinion and recommendations to file with the hearings officer written exceptions and arguments concerning the hearings officer's recommendation. The hearings officer shall promptly submit exceptions to the Department for transmittal to the Commission.

The Department, consistent with OAR 660-01-105 *infra*, may also submit to the Commission exceptions to the hearings officer's opinion and recommendations.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Commission Action on Hearings Officer's Proposed Order

660-01-100 In a manner consistent with the requirements of ORS 197.310, 197.315, 183.460, and 183.470, the Commission shall review the recommendation of the hearings officer and the record of the proceeding, including exceptions submitted under OAR 660-01-090, *supra*. The Commission may adopt, reject, or amend the recommendation of the hearings officer in any manner consistent with the record before it.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Hearings Officer's Authority and Responsibility

660-01-105 The hearings officer shall have the authority to enter such orders as are necessary to accomplish the intent of these rules as to any proceeding pending before him.

The hearings officer shall expedite the proceedings of the petition review in order to enable the Commission to comply with the requirements of ORS 197.310(1) and (3).

The hearings officer may recommend to the Commission and the Commission may order dismissal of any petition for review which petitioner has failed to prosecute with reasonable diligence. For the purpose of this rule, a failure to prosecute with reasonable diligence shall be deemed to have occurred whenever petitioner fails to file within time set by the hearings officer, including within any extension of time granted by the hearings officer, any pleading, brief, pre-trial order, or similar document, or fails without reasonable excuse to appear at any hearing or conference scheduled by the hearings officer.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Hearings Officer Contacts With Department Staff, Legal Counsel, and Commission

660-01-110 (1) The hearings officer may submit in writing to the Department or its counsel technical, factual, or legal questions pertaining to any review proceeding. Copies of any such requests shall be furnished to the parties. Copies of any written response shall also be furnished to the parties to the proceedings.

(2) If the hearings officer desires to orally consult with staff or counsel, the parties to the proceeding shall be notified sufficiently in advance so that they may attend if they desire.

(3) The hearings officer may informally consult with the Commission or other hearings officers at any time.

(4) The Department may submit written comments regarding the petition for review proceedings to the hearings officer or Commission at any time. Copies of any such comments shall be furnished to all parties.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 11(Temp), f. & ef. 9-16-77 thru 1-13-78; LCD 1-1978, f. & ef. 1-19-78

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Extensions Of Time

660-01-115 The Director shall grant an additional time, not to exceed 90 days, for consideration of a petition for review by the Commission where the Hearings Officer recommends that an extension of time be granted, based on one or more of the following grounds:

(1) The Hearings Officer is unable to complete a recommendation for Commission action due to excusable delay; or

(2) The parties to the review proceeding agree to a specified extension of time; or

(3) The Hearings Officer or one of the parties to the proceeding is unable to attend the Commission hearing.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 4-1979, f. & ef. 5-14-79

Commission Review of Board's Recommendations

660-01-200 (1) In a manner consistent with the requirements of 1979 Oregon Laws Chapter 772 (SB 435), the Commission shall review the recommendation of the Board, including exceptions filed to the Board's recommendation. The Commission may adopt, reject or amend the recommendation of the Board in any manner consistent with the record before it.

(2) Commission action after review. The Commission shall return its determination to the Board for inclusion in the Board's order within such time necessary to allow the Board to prepare and issue a final order in compliance with the requirements of 1979 Oregon Laws Chapter 772.

(3) Extensions of time. The Director shall grant an additional time for consideration of the Board's recommendation by the Commission where the parties have stipulated to the postponement.

(4) Oral argument. Where the Board recommends that oral argument not be allowed before the Commission, the

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DIVISION 2

DELEGATION OF AUTHORITY
TO DIRECTOR**Purpose**

660-02-005 This rule delegates to the Director of the Department of Land Conservation and Development (Director) certain duties and responsibilities in addition to those conferred upon him by ORS Chapter 197 and other administrative rules adopted by the Land Conservation and Development Commission (Commission). This rule further provides for review by the Commission of any action taken by the Director pursuant to this delegation of authority.

Stat. Auth.: ORS Ch. 197
Hist.: LCD 4-1978, f. & ef. 3-24-78

Authority To Director

660-02-010 In addition to the other duties and responsibilities conferred on him by ORS Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

(1) Assent to a modification of a planning extension or a compliance schedule of a city or county in accordance with ORS 197.251(2);

(2) Establish procedures by which each county shall annually review and report to the Commission on the status of comprehensive plans within each such county in accordance with ORS 197.360. Such procedures shall provide the opportunity for public comment and transmission of such comments to the Commission;

(3) Condition a compliance schedule in accordance with ORS 197.252;

(4) Approve a planning assistance grant agreement with a city or county, including modifications thereto; and

(5) Request that the Commission issue an order requiring a city, county, state agency, or special district to take action necessary to bring its comprehensive plan or zoning, subdivision or other ordinance, regulation, plan or program into conformity with the statewide planning goals if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(a) through (e).

(6) Execute any written order, on behalf of the Commission, which has been consented to in writing by the parties adversely affected thereby.

(7) May prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter.

(8) Establish procedures by which the Director shall periodically review and report to the Commission the status of comprehensive plans within each city and county, not on a compliance schedule. The Director may schedule show cause hearings before the Commission and recommend that the Commission issue an Enforcement Order requiring a city or county to take action necessary to bring its comprehensive plan or implementing ordinances into conformity with the Statewide Planning Goals, if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(1)(a) through (e).

(9)(a) The Director shall review and may respond to state and federal agencies concerning state and federal devel-

opment projects, licenses or permits and assistance grants which are subject to Oregon's Coastal Management Program.

(b) An action under this section which involves an environmental impact statement (EIS) or locally proposed or adopted Goal exception (as outlined in Goal 2, Part II), which has not been acknowledged shall be specially referred to the Commission members for review at least seven days prior to the proposed date of response by the Director. This referral shall include relevant information which the Director considered in making a decision, including local findings, background information and a brief explanation of any objections, department responses and the reasons for concluding that goal requirements have or have not been met.

(c) Upon written or verbal request by two or more Commission members or upon the Director's own motion, the Director shall defer making a final substantive response and schedule the matter for Commission review.

(d) Any subsequent response concerning a proposal reviewed as outlined above may be carried out by the Director without referral to the Commission when the subsequent action is consistent with the previous position taken by the Commission and the Director and provisions of the Oregon Coastal Management Program.

Stat. Auth.: ORS Ch. 197
Hist.: LCD 4-1978, f. & ef. 3-24-78; LCD 3-1979, f. & ef. 3-27-79; LCDC 7-1980(Temp), f. & ef. 12-17-80; LCD 1-1981, f. & ef. 2-23-81; LCD 4-1981, f. & ef. 4-3-81; LCDC 2-1983(Temp), f. & ef. 2-9-83; LCDC 3-1983, f. & ef. 5-5-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Notice of Director's Actions

660-02-015 (1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested members of the public and other units of government of his actions taken pursuant to rule 660-02-010.

(2) The Director shall provide the Commission with a monthly report summarizing actions taken by him during the preceding month pursuant to this rule and any written public comments received by the Department which pertain to those actions.

Stat. Auth.: ORS Ch. 197
Hist.: LCD 4-1978, f. & ef. 3-24-78

Commission Review of Director's Action Under Rule 660-02-005

660-02-020 (1) Any action of the Director pursuant to the authority vested in him pursuant to rule 660-02-010 shall be reviewed by the Commission upon petition filed by any "party" as defined in ORS 183.310(5) or upon its own motion.

(2) Any petition filed pursuant to this section shall:

(a) Contain the name, address, and telephone number of the petitioner and, if the petitioner is other than the governmental body directly affected by the action, a brief statement of the petitioner's interest in the outcome of the action sought to be reviewed or of the public interest represented by the petitioner;

(b) Specify the action of the Director to be reviewed, when that action was taken, the Commission action sought

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CHAPTER 660, DIVISION 3 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

DIVISION 3

PROCEDURE FOR REVIEW AND
APPROVAL OF COMPLIANCE
ACKNOWLEDGMENT REQUEST**Expedited Review Upon Reconsideration or Consideration of
a Subsequent Request for Acknowledgment**

660-03-000 [LCD 8-1978, f. 6-30-78, ef. 7-2-78;
LCD 2-1979, f. & ef. 3-19-79;
LCD 9-1981(Temp), f. & ef. 10-1-81;
Repealed by LCD 13-1981, f. & ef.
12-15-81]

Definitions

660-03-005 For purposes of this rule, the definitions contained in ORS 197.015 apply. In addition, the following definitions apply:

(1) "Acknowledgment of Compliance" is an order of the Commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan and land use regulation, land use regulations or plan or regulation amendment conforms with the Goals.

(2) "Affected Agencies and Districts" are state and federal agencies, special districts and other local governments having programs affecting land use.

(3) "Comments" are opinions, beliefs, or other information which a person, local coordinating body or local government wants the Commission to consider in reviewing an acknowledgment request.

(4) "Objections" are statements or positions by persons (including the local coordinating body, affected agencies or districts) opposing the granting of an Acknowledgment of Compliance.

(5) "Compliance Schedule" is a listing of the tasks which a local government must complete in order to bring its comprehensive plan, land use regulations and land use decisions into initial conformity with the goals, including a generalized time schedule showing when the tasks are estimated to be completed and when a comprehensive plan or land use regulations which comply with the goals are estimated to be adopted.

(6) "Urban Planning Area" is a geographical area within an urban growth boundary.

(7) "Continuance" is an order of the Commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan, land use regulations or both do not comply with one or more goals and certifies that section(s) of the plan or regulation or both comply with one or more of the goals. The Order specifies amendments or other action that the local government must complete within a specified time period for acknowledgment to occur. The Order is final for purposes of judicial review of the comprehensive plan, land use regulation or both as to the goals with which the plan, regulation or both the plan and regulation are in compliance.

(8) "Denial" is an order of the Commission issued pursuant to ORS 197.251(1) that certifies that a comprehensive plan, land use regulations or both do not comply with one or more goals. The Order specifies amendments or other actions that the local government must complete for

acknowledgment to occur. The Order is used when the amendments or other changes required in the comprehensive plan, land use regulation or both affect many goals and are likely to take a substantial period of time to complete.

(9) "Record of Proceedings before the local government", as used in ORS 197.251, means the materials submitted to the Director as part of an acknowledgment request in accordance with 660-03-010(2)(a), (b) and (c), supporting evidence and documents and any official minutes or tapes of meetings leading to the adoption of a comprehensive plan, land use regulations or amendments thereto. Supporting evidence and documents listed, but not submitted with the acknowledgment request as provided in OAR 660-03-010(2)(b) shall be considered part of the record of proceedings before the local government and part of the record of proceedings before the Commission. Notwithstanding the requirements of OAR 660-03-010(2)(b) the Director may require that such evidence or documents, or a copy, be provided to the Department for convenience or if required for judicial review. This definition applies to all acknowledgment requests, corrections submitted pursuant to a Commission's Continuance Order and new acknowledgment requests subsequent to a Commission's Denial Order submitted to the Director after the effective date of this rule.

(10) "Filing" or "submitted" for purposes of these rules shall mean that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon office.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCD 3-1985, f. & ef. 7-2-85

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Acknowledgment Procedures

660-03-010 (1) When a local government has adopted a comprehensive plan and land use regulations, as provided by ORS 197.175 and 197.250 prepared corrections pursuant to a Commission's Continuance Order, or prepares a new acknowledgment request subsequent to a Commission's Denial Order, it may request the Commission to grant an Acknowledgment of Compliance. An acknowledgment request shall be sent to the Director of the Department, Salem, Oregon 97310.

(2) The acknowledgment request shall include:

(a) A list by ordinance number and adoption date and six (6) copies of the plans and implementing ordinances or land use regulations, inventories and other factual information to be reviewed, provided that two (2) additional copies shall be required by the Director for counties and coastal jurisdictions;

(b) Six copies of a list of all supporting documents, including minutes and "record of proceedings" provided that two (2) additional copies shall be required by the Director for counties and coastal jurisdictions. The list of all supporting evidence and documents shall identify any items not included with each plan copy, briefly describe the contents of the items not included and identify where those items may be examined by the Commission, Department, affected agencies and districts and interested persons. The local govern-

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by the petitioner, and the reason why the Commission should so act in the matter;

(c) Be filed with the Director or his designee within fifteen days of the date of the taking of the action sought to be reviewed.

(3) The Commission shall, by order within 60 days of the filing of the request, or within a period of time not to exceed 120 days if good cause therefore is shown, either affirm, reverse, or modify the action of the Director. The Director shall provide reasonable notice to all parties of the

date, time, and place that the Commission will take action on the petition, and the manner in which such parties may express their views.

(4) Any petition under this rule which is a contested case as defined in ORS 183.310 shall be governed by the Attorney General's Model Rule of Procedure, OAR 660-01-005.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 1-1985(Temp), f. & ef. 3-13-85

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that such evidence could not have been presented as required by OAR 660-03-020(1).

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Acknowledgment Review

660-03-025 (1) When an acknowledgment request, corrections submitted pursuant to a Commission's Continuance Order or a new acknowledgement request subsequent to a Commission's Denial Order has been received by the Commission, the Director shall conduct an evaluation of the submitted plan, ordinances or land use regulations in order to advise the Commission whether or not they comply with the Statewide Planning Goals. The Director may investigate and resolve issues raised in the comments and objections or upon the Director's own review of the comprehensive plan and land use regulations. The Director may collect or develop evidence which rebuts any supporting documents, comments, objections or evidence submitted pursuant to OAR 660-03-010(2) or 660-03-020(1). The results of this evaluation including response to all objections timely submitted shall be set forth in a written report. However, the failure to respond to an objection which was timely filed shall not be grounds for invalidation of a Commission order issued under this rule. Copies of the Director's report shall be sent to the local government requesting acknowledgment, the local coordination body, any person who has in writing commented or objected to the acknowledgment request, within the time period required by OAR 660-03-020(1), and any other person requesting a copy in writing. The Department shall send out copies of the report on an acknowledgment request at least twenty-one (21) days before Commission review of the acknowledgment request. However, the Department shall send out copies of the report on corrections submitted pursuant to a Commission's Continuance Order at least fourteen (14) days before Commission review of such request.

(2) The local government, persons who have submitted written comments or objections under OAR 660-03-020(1) or persons who own property which is the subject of site specific objections received under OAR 660-03-020(1) shall have ten (10) calendar days from the date of mailing of the Director's report to file with the Director written exceptions to that report. Except as provided in section (3) of this rule, written exceptions shall not include additional evidence. Persons or local governments submitting exceptions are urged to file a copy with the affected local government or affected commentors or objectors. The Director shall promptly submit exceptions to the Commission.

(3) Written exceptions to the Director's report filed pursuant to section (2) of this rule may include evidence to rebut any additional evidence submitted pursuant to OAR 660-03-020(1) or developed by the Director pursuant to OAR 660-03-025(1). Written exceptions which include rebuttal evidence pursuant to this section, shall clearly identify the additional evidence being rebutted and shall be limited to rebuttal evidence. Final rebuttal evidence allowed under this section shall not create a right to submit addi-

tional evidence to the Commission under section (5) of this rule.

(4) The Director may submit a written or oral opinion to the Commission regarding any evidence, comments, objections, or exceptions submitted to the Commission concerning an acknowledgment request. Persons submitting comments, objections, or exceptions within the time periods set forth in OAR 660-03-020(1) or OAR 660-03-025(2) shall be permitted to submit evidence to rebut any new evidence submitted for the first time pursuant to section (4) of this rule.

(5) The Commission may allow any person who filed written comments or objections within the time period set forth in OAR 660-03-020(1) to appear before the Commission to present oral argument on their written comments, objections or exceptions. The Commission shall not allow any additional evidence and testimony, that could have been presented to the local government or to the Director in accordance with OAR 660-03-020(1) or 660-03-025(3), but was not. Any new evidence submitted during, or as part of, oral argument shall not be considered by the Commission unless the Commission determines that such evidence could not have been presented to the local government or to the Director in accordance with OAR 660-03-020(1) or 660-03-025(3).

(6) The Commission may allow any interested person who has not filed written comments or objections pursuant to OAR 660-03-020 to comment on evidence, testimony or the Director's report that has already been presented to the Commission. Such comments shall not be part of the record before the Commission and shall not be considered comments or objections submitted pursuant to OAR 197.251(2).

(7) At the time of consideration of the acknowledgment request, the Commission shall either grant, continue, postpone for extenuating circumstances or deny the acknowledgment request pursuant to 197.251(1).

(8) Commission orders for acknowledgment, continuance or denial shall be provided to the local government requesting acknowledgment, commentors, and objectors.

(9) When the Commission resumes its consideration of the acknowledgment request, submitted subsequent to a continuance order, it shall limit its review to a determination of whether the corrections submitted bring the acknowledgment submission into conformance with the Statewide Planning Goals found not to be complied with in the previous review, unless conformance with other Goals is affected by the corrections.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85

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Resolution of Objections

660-03-030 [LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; Repealed by LCD 13-1981, f. & ef. 12-15-81]

Expedited Review Upon Reconsideration or Consideration of a Subsequent Request for Acknowledgment

660-03-032 (1) When the Commission reconsiders an

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ment shall make such supporting evidence and documents available at the hearing before the Commission held pursuant to OAR 660-03-025.

(c) Six copies of a written statement setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban growth boundary may be modified (unless the same information is incorporated in other documents submitted in the acknowledgment request), provided that two (2) additional copies shall be required by the Director for counties and coastal jurisdictions.

(d) The name and address of the person representing the local government to receive notice of Commission consideration of the acknowledgment request and to receive a copy of the Director's report required under rule 660-03-025;

(e) A list of all affected agencies and districts, including addresses, identified in the local government's agency involvement program;

(f) A list of the names and addresses of the chairperson of the Committee for Citizen Involvement and other citizen advisory committees, if any; and

(3) The local government requesting acknowledgment shall send a single copy of the materials described in section (2) of this rule to the appropriate local coordination body as defined in ORS 197.190.

(4) Upon receipt of a compliance acknowledgment request, the Department shall review the request to determine whether the request for acknowledgment contains each of the documents and information required by section (2) of this rule. The Department may decline to accept an acknowledgment request submitted for only a portion of the area of a local government.

(5) If the request is complete, the Department shall commence its review of the request as required by rule 660-03-025 and shall provide the public notice required by rule 660-03-015.

(6) If the request is not complete, the Department, within fourteen (14) days of receipt of the acknowledgment request, shall in writing, notify the local government what specific requirements of section (2) of this rule have not been met. If, after 30 days from receipt of an acknowledgment request a city or county has not provided the Department with the required documents or information, the Department shall advise the local government that the request is not complete and shall in writing inform the local government and local coordinating body of such determination.

(7) For purposes of the 90 day period as used in ORS 197.251(1), "request" means an acknowledgment request determined by the Department to include all the necessary materials required by subsections (2)(a) through (f) of this rule, and thus be complete.

(8) Notwithstanding any of the provisions of section (1) of this rule, when the Director determines that a modification of any of the above rules is consistent with the applicable laws and in the best interests of the public, he may make exceptions to the application of section (2) of this rule. However, in waiving or modifying the above rules, the Director must assure a reasonable opportunity to review documents and prepare and submit comments and objections.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 6-1979(Temp), f. & ef. 9-6-79; LCD 1-1980, f. & ef. 1-14-80; LCD 9-1981(Temp), f. & ef.

10-1-81; LCD 13-1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Notice

660-03-015 The Director of the Department shall, in writing, provide notice of the procedures and time limits for making comments or objections and of the locations where the acknowledgment request documents can be inspected by the general public and specifically to the following (except as provided in OAR 660-13-030):

(1) Affected agencies and districts identified by the local government or the Department;

(2) The Local Officials Advisory Committee (LOAC) and the State Citizen Involvement Advisory Committee (CIAC);

(3) The county or regional planning agency acting as the local coordination body pursuant to ORS 197.190;

(4) The chairpersons of the local Committee(s) for Citizen Involvement and other citizen advisory committees identified in the acknowledgment request pursuant to subsection 660-03-010(2)(f);

(5) Any other person(s) who have in writing to the Department requested notice.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Comments and Objections

660-03-020 (1) After notice of receipt of the acknowledgment request has been mailed there shall be a 45 day period to submit written comments or objections together with any additional evidence to the Department. However, after notice of receipt of the acknowledgment request resubmitted subsequent to a continuance order has been mailed there shall be a time period determined by the Director of at least 20 days to submit written comments or objections together with any additional evidence to the Department.

(2) Any person(s) commenting or objecting to an acknowledgment request are urged to send written copy of their comments or objection(s) to the local government which has requested acknowledgment. When an objection is based upon site-specific goal requirements as applied to particular properties, the person objecting is urged to send a written copy of the objection to those persons owning the property which is the subject of the objection. State agency and special district comments or objections shall be subject to the requirements of ORS 197.254.

(3) The Commission shall consider only those comments and objections to an acknowledgment request in which the commentator or objecting person alleges that the local government's plan, ordinances or land use regulations do or do not conform with one or more of the goals.

(4) Any comments and objections or additional evidence which is not received by the Department within the time required by section (1) of this rule shall not be considered by the Commission unless the Commission determines

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(2) The Director's recommendations shall be sent out at least fourteen (14) days before the Commission's reconsideration of the acknowledgment request subject to the Court's remand or reversal. The Director's recommendations shall be sent to the applicable local government, local coordination body, parties on appeal and those persons who, according to the Department's records, were mailed a copy of the Commission's acknowledgment or continuance order subject to the Court's remand or reversal.

(3) The persons mailed a copy of the Director's recommendations under section (2) of this rule shall have ten (10) calendar days from the date of mailing of the Director's recommendations to file with the Director written exceptions to those recommendations.

(4) The Director may submit a written or oral opinion to the Commission regarding exceptions submitted to the Commission concerning the remand or reversal.

(5) The Commission may allow any person who received a copy of the Director's recommendation under section (1) of this rule or who filed written exceptions within the time period set forth in section (3) of this rule to appear before the Commission to present oral comments on the

Director's recommendation or their written exceptions. The Commission shall not allow additional evidence to be presented which was not part of the record of the Commission's initial acknowledgment review subject to the Court's remand or reversal.

(6) The Commission may allow any interested person who was not mailed a copy of the Director's recommendation or did not file a written exception pursuant to sections (1) and (3) of this rule to comment on the Director's recommendation or submitted written exceptions.

(7) Following review of the Director's recommendation and any exceptions, the Commission shall enter a continuance order for those parts of the comprehensive plan or land use regulations for which the court determined that goal compliance had not been demonstrated. The commission may also enter a limited acknowledgment order for parts of the comprehensive plan and land use regulations not affected by the continuance order.

(8) The Commission's review of corrections made pursuant to an order issued pursuant to OAR 660-03-050(7) will be conducted in accordance with the requirements of OAR 660-03-025 or OAR 660-03-033.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 6-1985, f. & ef. 11-15-85

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acknowledgment request pursuant to a continuance order, the Commission may expedite the acknowledgment procedure: By waiving, reducing or otherwise modifying the requirements of rules 660-03-010, 660-03-015, and 660-03-020; provided, however, that notice will be provided to the local government, the coordination body, those persons who have submitted comments or objections on this portion of the acknowledgment request in accordance with the requirement of OAR 660-03-020(1) and (2), those persons who request notice in writing, and a general newspaper notice. Upon resubmittal such notice shall state that there is at least a 20 day period to be determined by the Director for submission of written comments or objections from the mailing of the notice of the receipt of the acknowledgment request. However, in the judgment of the Director, where continuances involve relatively complex issues, the notice shall provide the maximum notice possible, up to 45 days.

(2) When the Commission reconsiders an acknowledgment request subsequent to a Continuance Order, the Commission shall expedite the acknowledgment procedure by relying on the previous record and limiting additional comments and objections, affected agency comments, and the Director's review to only those aspects of a city's or county's comprehensive plan or implementing ordinances previously identified by the Commission as not being in compliance.

(3) Upon receipt of corrections made pursuant to a Continuance Order submitted by a local government the Department shall notify all persons who are entitled to notice of the local government's acknowledgment request under subsection (1)(a) of this rule, of the time and place where the corrections may be inspected and the time within which objections or comments to the corrections must be submitted.

(4) Written comments or objections to the corrections made pursuant to a continuance order by the Commission shall be submitted to the Department in accordance with OAR 660-03-020.

(5) The Commission's review of corrections made pursuant to a continuance order or the Commission's review of a new acknowledgment request made subsequent to a denial by the Commission will be conducted in accordance with the requirements of OAR 660-03-025.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-15-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Expedited Notice Procedure for Acknowledgment

660-03-033 (1) When during an acknowledgment review, a city or county changes its plan or land use regulations after the comment period provided for in either 660-03-020(1) or 660-03-032(1), the Director may determine that additional notice to the public or persons who have submitted comments or objections is not necessary prior to consideration of the jurisdiction's acknowledgment request by the Commission. In making this determination, the Director shall carefully consider the complexity of the Goal compliance issues involved, the nature and number of comments and objections previously received, the opportunities provided by the jurisdiction for public review and comment on

recent amendments and the length of time between the adoption of the recent amendments and the date of Commission action on the jurisdiction's acknowledgment request. The Department shall work closely with persons who have previously submitted comments and objections and the jurisdiction to resolve any conflicts concerning the additional amendments prior to Commission action on the acknowledgment request.

(2) The Director may forego additional notice to the public and persons who have submitted comments or objections only if the jurisdiction provides general notice to the public and notifies previous commentors and objectors in writing of an opportunity to participate in the local hearing(s) regarding the adoption of the additional amendments. The jurisdiction shall send a copy of the written notice to all previous commentors and objectors and to the Department in Salem. If the jurisdiction fails to send a copy of the notice to all previous commentors and objectors, the Director shall provide notice in the manner established in 660-03-020(1) or 660-03-032(1).

(3) When the Commission considers the jurisdiction's request for acknowledgment, the Commission shall allow testimony from the public or persons who have submitted comments or objections which allege inadequate opportunity for review of the jurisdiction's amendment adopted after the comment deadline. If the Commission determines that further notice and opportunity for comment is needed, or if additional opportunity to file exceptions to the Director's report under ORS 197.251(3) is required, it shall instruct the Director to provide such notice and opportunity for comment before the Commission acts on the jurisdiction's acknowledgment request.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 6-1983, f. & ef. 7-20-83

Effective Date

660-03-035 [LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; Repealed by LCD 13-1981, f. & ef. 12-15-81]

Modification of Commission Order

660-03-036 [LCD 7-1982(Temp), f. & ef. 8-25-82]

Continuance

660-03-040 [LCD 1-1980, f. & ef. 1-14-80; LCD 9-1981(Temp), f. & ef. 10-1-81; Repealed by LCD 13-1981, f. & ef. 12-15-81]

Review Upon Remand or Reversal From Oregon Court of Appeals or Oregon Supreme Court

660-03-050 (1) The Commission shall reconsider an acknowledgment request as a result of a remand or reversal from the Oregon Court of Appeals or Oregon Supreme Court within 90 days of the date the decision becomes final. The Director shall review the Court's decision and make written recommendations to the Commission regarding any additional planning work that is required for acknowledgment of compliance with the goals as a result of the Court's decision.

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DIVISION 4

INTERPRETATION OF GOAL 2
EXCEPTION PROCESS**Purpose**

660-04-000 (1) The purpose of this rule is to explain the three types of exceptions set forth in Goal 2 "Land Use Planning, Part II, Exceptions". Except as provided for in OAR 660 Division 14, "Application of the Statewide Planning Goals to the Incorporation of New Cities" this Division interprets the exception process as it applies to statewide Goals 3 to 19.

(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons which explain why the proposed use not allowed by the applicable goal should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide Goal.

(4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84

Definitions

660-04-005 For the purpose of this Division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition the following definitions shall apply:

(1) An "Exception" is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with the provisions of this Division.

(2) "Resource land" is land subject to the statewide Goals listed in OAR 660-04-010(1)(a) through (f) except subsection (c).

(3) "Nonresource land" is land not subject to the statewide Goals listed in OAR 660-04-010(1)(a) through (f) except subsection (c). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to non-resource land.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

Application of the Goal 2 Exception Process to Certain Goals

660-04-010 (1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning". The exceptions process is generally applicable to all or part of those statewide goals which prescribe or restrict certain uses of resource land. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands", however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses permitted in an exclusive farm use (EFU) zone under ORS Chapter 215.

(b) Goal 4 "Forest Lands", however, an exception to Goal 4 "Forest Lands" is not required for farm uses allowed under ORS 215.203.

(c) Goal 14 "Urbanization" except as provided for in paragraphs (1)(c)(A) and (B) of this rule, and OAR 660-14-000 through 660-14-040.

(A) An exception is not required to an applicable goal(s) for the establishment of an urban growth boundary around or including portions of an incorporated city when resource lands are included within that boundary. Adequate findings on the seven Goal 14 factors, accompanied by an explanation of how they were considered and applied during boundary establishment, provide the same information as required by the exceptions process findings.

(B) When a local government changes an established urban growth boundary it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning", Part II, Exceptions. An established urban growth boundary is one which has been acknowledged by the Commission under ORS 197.251. Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

(iii) 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

(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

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Goal 2, Part II(c), Exception Requirements

660-04-020 (1) If a jurisdiction determines there are reasons consistent with OAR 660-04-022 to use resource lands for uses not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception.

(2) The four factors in Goal 2 Part II(c) required to be addressed when taking an exception to a Goal are:

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply": The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations including the amount of land for the use being planned and why the use requires a location on resource land.

(b) "Areas which do not require a new exception cannot reasonably accommodate the use":

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use, which do not require a new exception. The area for which the exception is taken shall be identified.

(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. Economic factors can be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under the alternative factor the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.

(c) 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 other areas requiring a Goal exception. The exception shall describe the characteristics of each alternative areas considered by the jurisdiction for which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative

consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site 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. Such reasons shall include but are not limited to, the facts used to determine which resource land is least productive; the ability to sustain resource uses near the proposed use; and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts.

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts". The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

Reasons Necessary to Justify an Exception under Goal 2, Part II(c)

660-04-022 An exception Under Goal 2, Part II(c) can be taken for any use not allowed by the applicable goal(s). The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule:

(1) For uses not specifically provided for in subsequent sections of this rule or OAR 660, Division 14, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:

(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Statewide Goals 3 to 19; and either

(b) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this subsection must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or

(c) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.

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- (d) Goal 16 "Estuarine Resources";
- (e) Goal 17 "Coastal Shorelands"; and
- (f) Goal 18 "Beaches and Dunes".

(2) The exceptions process is generally not applicable to those statewide goals which establish planning procedures and standards which do not prescribe or restrict certain uses of resource land because these goals contain general planning guidance or their own procedures for resolving conflicts between competing uses. However, exceptions to these Goals, although not required, are possible and exceptions taken to these Goals will be reviewed when submitted by a local jurisdiction. These statewide goals are:

- (a) Goal 5 "Natural Resources";
- (b) Goal 6 "Air, Water, and Land Resources Quality";
- (c) Goal 7 "Natural Disasters and Hazards";
- (d) Goal 8 "Recreational Needs";
- (e) Goal 9 "Economy of the State";
- (f) Goal 10 "Housing" except as provided for in section (4) of this rule;
- (g) Goal 11 "Public Facilities and Services", except as provided for in OAR 660, Division 14 for the provision of urban facilities and services to the incorporation of new cities or new urban development;
- (h) Goal 12 "Transportation";
- (i) Goal 13 "Energy Conservation";
- (j) Goal 15 "Willamette Greenway" except as provided for in OAR 660-04-022(4); and
- (k) Goal 19 "Ocean Resources".

(3) An exception to one goal or goal requirement does not assure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.

(4) Goal 10: The exception procedural requirements apply when a local government cannot provide for needed housing pursuant to ORS 197.303 through 197.307, OAR 660-07-000 and 660-08-000. A local government may satisfy the substantive standards for exceptions upon a demonstration in the local housing needs projection that:

- (a) The needed housing type is being provided for elsewhere in the region in sufficient numbers to meet regional needs.
- (b) Sufficient buildable land has been allocated within the local jurisdiction for other types of housing which can meet the need for shelter at the particular price ranges and rent levels that would have been met by the excluded housing type; and
- (c) The decision to substitute other housing types for the excluded needed housing type furthers the policies and objectives of the local comprehensive plan, and has been coordinated with other affected units of government.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84

Inclusion as Part of the Plan

660-04-015 (1) A local government approving a proposed exception shall adopt as part of its comprehensive plan findings of fact and a statement of reasons which demon-

strate that the standards for an exception have been met. The applicable standards are those in Goal 2, Part II(c), OAR 660-04-020(2) and 660-04-022. The reasons and facts shall be supported by substantial evidence that the standard has been met.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons which demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

Planning and Zoning for Exception Areas

660-04-018 (1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exception areas. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses or activities other than those recognized or justified by the applicable exception. Physically developed and irrevocably committed exceptions under OAR 660-04-025 and 660-04-028 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions which would allow changes in existing types of uses requires application of standards outlined in this rule.

(2) "Physically Developed" and "Irrevocably Committed" Exceptions to goals other than Goals 11 and 14. Plan and zone designations shall limit uses to:

(a) Uses which are the same as the existing types of land use on the exception site; or

(b) Rural uses which meet the following requirements:

(A) The rural uses are consistent with all other applicable Goal requirements; and

(B) The rural uses will not commit adjacent or nearby resource land to nonresource use as defined in OAR 660-04-028; and

(C) The rural uses are compatible with adjacent or nearby resource uses.

(c) Changes to plan or zone designations are allowed consistently with subsections (a) or (b) of this section, or where the uses or zones are identified and authorized by specific related policies contained in the acknowledged plan.

(d) Uses not meeting the above requirements may be approved only under provisions for a reasons exception as outlined in OAR 660-04-020 through 660-04-022.

(3) "Reasons" Exceptions:

(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-04-020 through 660-04-022, plan and zone designations must limit the uses and activities to only those uses and activities which are justified in the exception.

(b) When a local government changes the types or intensities of uses within an exception area approved as a "Reasons" exception, a new "Reasons" exception is required.

(4) Applicability of OAR 660-04-018. This rule applies only to plan and zoning designations and exceptions adopted by local government following the effective date of this rule.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1986, f. & ef. 3-20-86

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- (a) These Coastal Shoreland Areas include:
- (A) Major marshes, significant wildlife habitat, coastal headlands, exceptional aesthetic resources and historic and archaeological sites,
 - (B) Shorelands in urban and urbanizable areas especially suited for water dependent uses,
 - (C) Designated dredged material disposal sites,
 - (D) Designated mitigation sites.
- (b) To allow a use which is incompatible with Goal 17 requirements for coastal shoreland areas listed in subsection (7)(a) of this rule the exception must demonstrate:
- (A) A need, based on the factors in Goal 9, for additional land to accommodate the proposed use,
 - (B) Why the proposed use or activity needs to be located on the protected site considering the unique characteristics of the use or the site which require use of the protected site, and
 - (C) That the project cannot be reduced in size or redesigned to be consistent with protection of the site and where applicable consistent with protection of natural values.
- (c) Exceptions to convert a dredged material disposal site or mitigation site to another use must also either not reduce the inventory of designated and protected sites in the affected area below the level identified in the estuary plan or be replaced through designation and protection of a site with comparable capacity in the same area;
- (d) Uses which would convert a portion of a major marsh, coastal headland, significant wildlife habitat, exceptional aesthetic resource, or historic or archaeological site must use as little of the site as possible, be designed and located and, where appropriate, buffered to protect natural values of the remainder of the site.
- (8) Goal 18 - Foredune Breaching: A foredune may be breached when the exception demonstrates an existing dwelling located on the foredune is experiencing sand inundation and the grading or removal of sand is:
- (a) Only to the grade of the dwelling;
 - (b) Limited to the immediate area in which the dwelling is located;
 - (c) Sand is retained in the dune system by placement on the beach in front of the dwelling; and
 - (d) The provisions of Goal 18 Implementation Requirement 1 are met.
- (9) Goal 18 - Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", implementation requirement (2). Reasons which justify why this state policy embodied in Goal 18 should not apply shall demonstrate compliance with the following:
- (a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves, or is of minimal value; and
 - (b) The use is designed to minimize adverse environmental effects;
 - (c) The provisions of OAR 660-04-020 shall also be met.
- Stat. Auth.: ORS Ch. 197
Hist.: LCDC 9-1983, f. & ef. 12-30-83; LCDC 1-1984, f. & ef. 2-10-84; LCDC 3-1984, f. & ef. 3-21-84; LCDC 4-1985, f. & ef. 8-8-85

Exception Requirements for Land Physically Developed to Other Uses

660-04-025 (1) A local government may adopt an

exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal.

(2) Whether land has been physically developed with uses not allowed by an applicable Goal, will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

Exception Requirements for Land Irrevocably Committed to Other Uses

660-04-028 (1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(1)(b), Goal 2, Part II(b), and with the provisions of this rule.

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.

(c) An "applicable goal", as used in this section, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

(b) The characteristics of the adjacent lands;

(c) The relationship between the exception area and the lands adjacent to it; and

(d) The other relevant factors set forth in OAR 660-04-028(6).

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(1)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule. Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource-protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible".

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact which address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

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(2) Rural Residential Development: For rural residential development the reasons cannot be based on market demand for housing, except as provided for in this section of this rule, assumed continuation of past urban and rural population distributions, or housing types and cost characteristics. A county must show why, based on the economic analysis in the plan, there are reasons for the type and density of housing planned which require this particular location on resource lands. A jurisdiction could justify an exception to allow residential development on resource land outside an urban growth boundary by determining that the rural location of the proposed residential development is necessary to satisfy the market demand for housing generated by existing or planned rural industrial, commercial, or other economic activity in the area.

(3) Rural Industrial Development: For the siting of industrial development on resource land outside an urban growth boundary, appropriate reasons and facts include but are not limited to the following:

(a) The use is significantly dependent upon a unique resource located on agricultural or forest land. Examples of such resources and resource sites include geothermal wells, mineral or aggregate deposits, water reservoirs, natural features, or river or ocean ports; or

(b) The use cannot be located inside an urban growth boundary due to impacts that are hazardous or incompatible in densely populated areas or;

(c) The use would have a significant comparative advantage due to its location (e.g., near existing industrial activity, an energy facility, or products available from other rural activities), which would benefit the county economy and cause only minimal loss of productive resource lands. Reasons for such a decision should include a discussion of the lost resource productivity and values in relation to the county's gain from the industrial use, and the specific transportation and resource advantages which support the decision.

(4) Willamette Greenway: Within an urban area designated on the approved Willamette Greenway Boundary maps, the siting of uses which are neither water-dependent nor water-related within the setback line required by Section C.3.k of the Goal may be approved where reasons demonstrate the following:

(a) The use will not have a significant adverse effect on the greenway values of the site under consideration or on adjacent land or water areas;

(b) The use will not significantly reduce the sites available for water-dependent or water-related uses within the jurisdiction;

(c) The use will provide a significant public benefit; and

(d) The use is consistent with the Legislative findings and policy in ORS 390.314 and the Willamette Greenway Plan approved by LCDDC under ORS 390.322.

(5) Goal 16 - Water Dependent Development: To allow water dependent industrial, commercial, or recreational uses in development and conservation estuaries which require an exception an economic analysis must show that there is a reasonable probability that the proposed use will locate in the planning area during the planning period considering the following:

(a) Factors of Goal 9 or for recreational uses the factors of Goal 8;

(b) The generally predicted level of market demand for the proposed use;

(c) The siting and operational requirements of the proposed use including land needs, and as applicable, moorage, water frontage, draft, or similar requirements; and

(d) Whether the site and surrounding area are able to provide for the siting and operational requirements of the proposed use;

(e) The economic analysis must be based on Goal 9 element of the County Comprehensive Plan and consider and respond to all economic needs information available or supplied to the jurisdiction. The scope of this analysis will depend on the type of use proposed, the regional extent of the market and the ability of other areas to provide for the proposed use.

(6) Goal 16 - Other Alterations or Uses: An exception to the requirement limiting dredge and fill or other reductions or degradations of natural values to water dependent uses or to the natural and conservation management unit requirements limiting alterations and uses is justified, where consistent with ORS Chapter 541, in any of the following circumstances:

(a) Dredging to obtain fill for maintenance of an existing functioning dike where an analysis of alternatives demonstrates that other sources of fill material including adjacent upland soils or stockpiling of material from approved dredging projects can not reasonably be utilized for the proposed project or that land access by necessary construction machinery is not feasible;

(b) Dredging to maintain adequate depth to permit continuation of present level of navigation in the area to be dredged;

(c) Fill or other alteration for a new navigational structure where both the structure and the alteration are shown to be necessary for the continued functioning of an existing federally authorized navigation project such as a jetty or a channel;

(d) An exception to allow minor fill, dredging, or other minor alteration of a natural management unit for a boat ramp or to allow piling and shoreline stabilization for a public fishing pier;

(e) Dredge or fill or other alteration for expansion of an existing public nonwater-dependent use or a nonsubstantial fill for a private nonwater-dependent use (as provided for in ORS 541.625) where:

(A) A Countywide Economic Analysis based on the factors in Goal 9 demonstrates that additional land is required to accommodate the proposed use, and

(B) An analysis of the operational characteristics of the existing use and proposed expansion demonstrates that the entire operation or the proposed expansion cannot be reasonably relocated, and

(C) That the size and design of the proposed use and the extent of the proposed activity are the minimum amount necessary to provide for the use.

(f) In each of the situations set forth in subsections (6)(a) to (e) of this rule, the exception must demonstrate that proposed use and alteration (including, where applicable, disposal of dredged materials) will be carried out in a manner which minimizes adverse impacts upon the affected aquatic and shoreland areas and habitats.

(7) Goal 17: Incompatible Uses in Coastal Shoreland Areas: Exceptions are required to allow certain uses in Coastal Shoreland areas:

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DIVISION 5

INTERPRETATION OF GOAL 3
AGRICULTURAL LANDS**Purpose**

660-05-000 The purpose of this rule is to implement Goal 3, Agricultural Lands and the Agricultural Land Use Policy pursuant to ORS 215.243.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 4-1982, f. & ef. 7-21-82

Definitions

660-05-005 (1) "Agricultural land" as defined in Goal 3 includes:

(a) Lands classified by the U.S. Soil Conservation Service (SCS) as predominately Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;

(b) Other lands in different soil classes which are suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

(c) Land which is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.

(2) "Commercial agricultural enterprise" consists of farm operations which will:

(a) Contribute in a substantial way to the area's existing agricultural economy; and

(b) Help maintain agricultural processors and established farm markets;

(c) When determining whether a farm is part of the commercial agricultural enterprise, not only what is produced, but how much and how it is marketed shall be considered. These are important factors because of the intent of Goal 3 to maintain the agricultural economy of the state.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 4-1982, f. & ef. 7-21-82

Identifying Agricultural Land

660-05-010 (1) All land defined as "agricultural land" in section 660-05-005(1) shall be inventoried as agricultural land. Lands in other than capability classes I-IV/I-VI that are adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though these lands may not be cropped or grazed.

(2) When a jurisdiction is determining the predominant soil capability classifications of a tract of land it need only look to the land within the tract being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-05-005(1)(b). This inquiry requires the consideration of conditions existing outside the tract being inventoried. Even if a tract of land is not predominately class I-VI soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other

classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a tract of land is not agricultural land requires findings supported by substantial evidence which address each of the factors set forth in OAR 660-05-005(1).

(3) Goal 3 attaches no significance to the ownership of a tract of land when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership must be examined to the extent that a tract of land is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the tract of land.

(4) As used in sections (2) and (3) of this rule, "tract of land" means an area of land which is under review to determine whether it is agricultural land as defined in OAR 660-05-005(1). This area may be either proposed for partitioning or designation for uses not allowed by Goal 3.

(5) When inventoried lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

(6) Notwithstanding the definition of "farm use" in ORS 215.203(2)(a), profitability or gross farm income shall not be considered in determining whether land is agricultural land or whether Goal 3 "Agricultural Land" is applicable. However, profitability or gross farm income is a factor in determining whether a farm operation is part of the commercial agricultural enterprise, as stated in subsection 660-05-015(6)(b).

(7) More detailed data on soil capability than is contained in the U.S. Soil Conservation Service soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data must be related to the U.S. Soil Conservation Service land capability classification system.

(8) Land identified as "agricultural land" and subsequently zoned for exclusive farm use may be used for the nonfarm uses specified in ORS 215.213 or 215.283. OAR 660-04-000, the Goal 2 Exception Process, establishes how land identified as agricultural land may be zoned for other than exclusive farm use.

Stat. Auth.: ORS Ch. 197 & 215
Hist.: LCDC 4-1982, f. & ef. 7-21-82; LCDC 3-1986, f. & ef. 5-7-86

Minimum Lot Size Standard

660-05-015 (1) Goal 3 states, "such minimum lots sizes as are utilized for any farm use zones shall be appropriate for the continuation of the existing commercial agricultural enterprise within the area". This Goal phrase is the required minimum lot size standard to be used to determine appropriate lot sizes in EFU zones. It is applied when approving both the creation of new lots and farm dwellings on pre-existing lots.

(2) Goal 3 does not require a specific acre size (e.g., a 40-acre minimum lot size). Needs for agricultural acreage vary from large wheat ranches to small intensive farming operations. A specific minimum lot size adopted at the state level would be impractical.

(3) The Goal 3 minimum lot size standard can be applied in various ways, including but not limited to the following:

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(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands which are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:

(a) Existing adjacent uses;

(b) Existing public facilities and services (water and sewer lines, etc.);

(c) Parcel size and ownership patterns of the exception area and adjacent lands:

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the Goals were made at the time of partitioning or subdivision. Past land divisions made without application of the Goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors make unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for land adjoining those parcels.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations.

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area.

(f) Physical development according to OAR 660-04-025; and

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map, or aerial photograph which shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

(8) The requirement for a map or aerial photograph in section (7) of this rule only applies to the following committed exceptions:

(a) Those adopted or amended as required by a Continuance Order dated after the effective date of section (7) of this rule; and

(b) Those adopted or amended after the effective date of section (7) of this rule by a jurisdiction with an acknowledged comprehensive plan and land use regulations.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83; LCDC 5-1985, f. & ef. 11-15-85

Notice and Adoption of an Exception

660-04-030 (1) Goal 2 requires that each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.

(2) A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body. Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals, when a plan amendment is reviewed pursuant to OAR 660, Division 18, or when a periodic review is conducted pursuant to ORS 197.640.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

Appeal of an Exception

660-04-035 (1) Prior to acknowledgment, an exception, or the failure to take a required exception, may be appealed to the Land Use Board of Appeals, pursuant to ORS 197.830, or to the Commission as an objection to the local government's request for acknowledgment, pursuant to ORS 197.251 and OAR 660-03-000.

(2) After acknowledgment, an exception taken as part of a plan amendment, or the failure to take a required exception when amending a plan, may be appealed to the Board, pursuant to ORS 197.620 and OAR 660 Division 18.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1982, f. & ef. 7-21-82; LCDC 9-1983, f. & ef. 12-30-83

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sizes is applied to approval of farm dwellings on pre-existing lots to prevent increased development from interfering with neighboring farms. The minimum lot size standard requires that a distinction be made between farm and nonfarm parcels. If the pre-existing lot meets the minimum lot size standard, a new dwelling can be reviewed to determine if it is a dwelling customarily provided in conjunction with farm use as required by ORS 215.213(1)(g) or 215.283(1)(f). If the lot does not meet the standard, the new dwelling will be considered a nonfarm residence. Otherwise, a nonfarm residence must be approved subject to the conditions set forth in ORS 215.213(3) or 215.283(3). The minimum lot size standard applies to each successive dwelling proposed to be located on an existing lot, except dwellings approved pursuant to ORS 215.213(1)(e) or 215.283(1)(e).

(2) Except as provided by the lot of record provisions of Section 9 through 11, Chapter 884, Oregon Laws 1981, new nonfarm dwellings on pre-existing lots cannot be allowed outright. Such an act would render the local EFU zone less restrictive than the state statute. Such a zone would not meet the requirements of Goal 3 and ORS Chapter 215.

Stat. Auth.: ORS Ch. 197 & 215

Hist.: LCDC 4-1982, f. & ef. 7-21-82; LCDC 3-1986, f. & ef. 5-7-86

Dwellings Customarily Provided in Conjunction With Farm Use

660-05-030 (1) ORS Chapter 215 authorizes six types of dwellings within an exclusive farm use zone:

(a) Those for farm help (215.213(1)(e) and 215.283(1)(e));

(b) Those customarily provided in conjunction with farm use (215.213(1)(g) or 215.283(1)(f));

(c) Those for a mobile home in conjunction with an existing dwelling as a temporary use for the term of a hardship (215.213(1)(j) or (215.283(2)(L));

(d) Those inconjunction with farm use or the propogation or harvesting of a forest product (215.213(2)(a));

(e) Those not provided in conjunction with farm use (215.213(3) or 215.283(3)); and

(f) Those not provided in conjunction with farm use on a lot of record (215.213(4)).

(2) The Goal 3 standard for minimum lot sizes is used to distinguish between farm and nonfarm parcels as it is applied according to OAR 660-05-015. Dwellings customarily provided in conjunction with farm use are authorized on parcels which are large enough to satisfy the Goal 3 minimum lot size standard (i.e., appropriate for the continuation of the existing commercial agricultural enterprise within the area). Dwellings proposed for new or existing parcels which do not satisfy the Goal 3 minimum lot size standard under OAR 660-05-020 are considered nonfarm dwellings and can only be approved according to ORS 215.213(3) or 215.283(3).

(3) Dwellings proposed for parcels which satisfy the Goal 3 minimum lot size standard cannot be approved

within an exclusive farm use zone without the county governing body or its designate first determining whether the dwelling satisfies the additional statutory standard in ORS 215.213(1)(g) or 215.283(1)(f). This standard requires a determination that the dwelling is "customarily provided in conjunction with farm use".

(4) ORS 215.213(1)(g) and 215.283(1)(f) authorize a farm dwelling in an EFU zone only where it is shown that the dwelling will be situated on a parcel currently employed for farm use as defined in ORS 215.203. Land is not in farm use unless the day-to-day activities on the subject land are principally directed to the farm use of the land. Where land would be principally used for residential purposes rather than for farm use, a proposed dwelling would not be "customarily provided in conjunction with farm use" and could only be approved according to ORS 215.213(3) or 215.283(3). At a minimum, farm dwellings cannot be authorized before establishment of farm uses on the land (see *Matteo v. Polk County*, 11 Or LUBA 259 (1984) affirmed without opinion by the Oregon Court of Appeals September 12, 1984, and *Matteo v. Polk County LUBA No. 85-037*, September 3, 1985).

Stat. Auth.: ORS Ch. 183, 197 & 215

Hist.: LCDC 3-1986, f. & ef. 5-7-86

Dwellings Not Customarily Provided in Conjunction With Farm Use

660-05-040 (1) Dwellings on nonfarm parcels are allowed only if they meet the conditions set forth in either ORS 215.213(3) or 215.283(3) and 215.236 and 215.263(4) for nonfarm residences.

(2) Nonfarm parcels are considered to be acreage homesites. They are not outright permitted uses in an EFU zone because they do not preserve agricultural land for commercial farm uses. Instead, they allow the land to be taken out of the county's commercial agricultural enterprise and may threaten the continuation of the remaining commercial operations within the area. Therefore, when a nonfarm parcel is created, it should be of the minimum acreage needed to accommodate the nonfarm dwelling and be consistent with ORS 215.263(4).

(3) The creation of acreage homesites on agricultural land cannot be justified simply on the basis that they relate to farm use in some peripheral sense. The primary purpose of such sites is to provide a homesite, although livestock may be kept and crops raised as a secondary, but important activity of the homesite. ORS Chapter 215 provides that homesites may be permitted in the EFU zones under only very strict conditions, so as to ensure compatibility with the farm practices used in the exclusive farm use area and to keep the exclusive farm use area free from development.

(4) The Goal 3 standard on minimum lot sizes is to be applied in addition to the statutory review criteria for divisions of land in an EFU zone pursuant to ORS 215.263.

Stat. Auth.: ORS Ch. 183, 197 & 215

Hist.: LCDC 3-1986, f. & ef. 5-7-86

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(a) To determine one specific acre size, which is used for both farm and nonfarm uses, or for only farm uses, with the size for nonfarm uses decided case-by-case;

(b) To determine different acre sizes, which are used for farm and nonfarm uses, different types of farms (crops and practices), or different areas of the county; or

(c) To determine performance standards, which are used to decide appropriate lot sizes for farm and nonfarm uses on a case-by-case basis.

(4) Counties should apply the Goal 3 standard on minimum lot sizes in the way which best meets their local needs. The application may vary for different farm areas within the county. The standard shall be applied in a way adequate to maintain appropriate lot sizes for the continuation of the existing commercial agriculture in the area.

(5) While a certain minimum lot size may be appropriate for the continuation of commercial agriculture (as required by Goal 3), it may not be adequate to comply with Goal 5 requirements to protect wildlife resources. Counties should refer to Goal 5 and OAR 660-16-000 for application requirements.

(6)(a) The minimum lot size(s) needed to maintain the existing commercial agricultural enterprise shall be determined by identifying the types and sizes of commercial farms in the area. When identifying commercial farms, entire commercial farms shall be included, not portions devoted to a particular type of agriculture. The identification of commercial farms may be conducted on a countywide or sub-county basis.

(b) Commercial agricultural operations to be identified should be determined based on type of products produced, value of products sold, yields, farming practices, and marketing practices.

(c) Local governments which apply Goal 3's minimum lot size standard on a case-by-case basis may satisfy the commercial agricultural identification requirement in subsection (6)(a) of this rule by identifying the sizes and other characteristics of existing commercial farms in an area which is large enough to represent accurately the existing commercial agricultural enterprise within the area containing the applicant's parcel.

(7) The minimum lot size standard in Goal 3 refers to an entire farm unit and should not be confused with individual tax lots. A single farm unit may consist of any number of contiguous tax lots (including tax lots separated only by a road or highway), which are managed jointly as a single farm unit. Inventories of tax lots are inappropriate because tax lots have little or no relationship to the operation of a commercial farm.

(8) The type and value of products produced and how they are marketed are key factors in identifying the existing commercial agricultural enterprise. Owner characteristics, such as percent of income from farming and primary occupation, do not necessarily define a commercial farm. Commercial agriculture in Oregon is supported, in part, by less than full-time farmers.

Stat. Auth.: ORS Ch. 197 & 215

Hist.: LCDL 4-1982, f. & ef. 7-21-82; LCDL 3-1986, f. & ef. 5-7-86

Application of the Minimum Lot Size Standard to the Creation of New Lots

660-05-020 (1) The Goal 3 standard on minimum lot sizes is applied to the creation of new lots to prevent

agricultural land from being divided into parcels or lots which will not contribute to the local commercial agricultural enterprise.

(2) The minimum lot size standard requires the distinction between farm and nonfarm parcels. Newly created lots that are as large or larger than those allowed by the minimum lot size standard are considered farm parcels. Newly created lots that are smaller than those allowed by the minimum lot size standard are considered nonfarm parcels.

(3) The size of new farm parcels must be appropriate for the continuation of the existing commercial agricultural enterprise within an area. The creation of commercial farm parcels smaller than those allowed by a minimum lot size on a case-by-case basis which comply with the Goal 3 minimum lot size standard is permissible when:

(a) The parcels are appropriate for the continuation of existing commercial farm operations within the area; and if

(b) The area's commercial agricultural enterprise consists of farm units made up of noncontiguous parcels of diverse size rather than single, large tracts, the proposed parcels are of sufficient size to be profitably farmed as parts of larger farm operations.

(4) When applying section (3) of this rule, if there is credible evidence in such cases that the size of the proposed parcels is detrimental to the existing commercial agricultural enterprise in the area, the local jurisdiction must demonstrate that the benefits of the smaller parcel to the area's commercial agricultural economy outweigh the negative impacts to the larger commercial agricultural enterprises.

(5) For section (3) of this rule, it is not sufficient to find a small commercial agricultural enterprise as defined in OAR 660-05-005(2) within an area of both large and small commercial enterprises, and use the size of that enterprise as justification for allowing a major portion of a large holding to be divided into many small parcels. The goal requires maintenance of the existing commercial agricultural enterprise. Activities on the larger holdings must be considered as part of that enterprise. It is the activity on the larger holdings which must be maintained under Goal 3, together with those on the smaller parcels. The fact that other activities exist on smaller parcels does not mean that the commercial agricultural enterprise in the area is maintained by reducing all the parcels in the area to the size of the smallest common commercial agricultural denomination where other commercial agricultural enterprises are conducted on larger parcels. However, individual small parcels may be created under Goal 3 when consistent with section (3) of this rule.

(6) As used in this rule, "maintain" or "continue" do not mean that the new and remaining parcel sizes must have no adverse effects whatsoever on an area's commercial agricultural enterprise. Such an interpretation would probably halt most land divisions. "Maintain" and "continue" imply a balance. Land divisions often have both positive and negative effects on an area's commercial agricultural enterprise. Goal 3 requires that the new and remaining parcel sizes on balance, considering positive and negative effects, will keep the area's commercial agricultural enterprises successful, and not contribute to their decline.

Stat. Auth.: ORS Ch. 197

Hist.: LCDL 4-1982, f. & ef. 7-21-82; LCDL 3-1986, f. & ef. 5-7-86

Application of the Minimum Lot Size Standard to Pre-Existing Lots

660-05-025 (1) The Goal 3 standard on minimum lot

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DIVISION 6

GOAL 4 FOREST LANDS

Purpose

660-06-000 (1) The purpose of the Forest Lands Goal is "to conserve forest land for forest uses". Both "forest land" and "forest uses" are defined in the Goal. These definitions refer to a wide variety of forest uses, only one of which is commercial forest use. The Goal requires that all of these uses be considered in complying with the Goal. Identification of a primary forest use for forest land is not required.

(2) To accomplish the purpose of conserving forest lands for forest uses, the Goal requires:

(a) An inventory of lands suitable for forest uses and a determination and mapping of the productivity of these lands for commercial use;

(b) Designation of inventoried lands on the comprehensive plan map as forest lands; and

(c) Retention of forest uses on designated forest lands.

(3) This rule provides for a balance between the application of Goal 3 "Agricultural Lands" and Goal 4 "Forest Lands", because of the extent of lands that may be designated as either agricultural or forest land.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 8-1982, f. & ef. 9-1-82

Definitions

660-06-005 For the purpose of this rule, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 8-1982, f. & ef. 9-1-82

Inventory

660-06-010 The Forest Lands Goal requires an inventory of "lands suitable for forest uses". The inventory shall include land forested in commercial and noncommercial species and nonforested land suitable for forest uses, unless the nonforested land is inventoried as Goal 3 agricultural land or is planned for nonresource uses and an exception to Goal 4 is justified and taken. Outside urban growth boundaries, this inventory shall include a mapping of forest lands by cubic foot site class of the dominant commercial species in accordance with the U.S. Forest Service Manual "Field Instruction for Integrated Forest Survey and Timber Management Inventories — Oregon, Washington and California, 1974." Cubic foot site class, other productivity mapping or its equivalent is required for areas inside of urban growth boundaries, but not within city limits.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission]

Stat. Auth.: ORS Ch. 197

Hist: LCDC 8-1982, f. & ef. 9-1-82

Plan Designation Outside an Urban Growth Boundary

660-06-015 (1) Inventoried lands suitable for forest uses must be designated to retain forest uses, unless an exception is taken. The most common plan designation is "Forest" or "Forest Land". In areas of intermingled agricultural and forest lands, an "Agricultural/Forest Lands" designation may also be appropriate. If some other designation is used for forest or agricultural/forest land, it must nonetheless carry equivalent protection for forest uses. The plan shall define the designation in order to explain its purpose and where it is applied. When inventoried county lands suitable for forest uses are not designated so as to protect forest uses, an exception to Goal 4 is required, pursuant to Goal 2 "Land Use Planning", Part II, Exceptions, and OAR 660-04-000.

(2) In determining whether "lands suitable for forest uses" will be designated as forest lands, all forest uses identified in the Goal must be considered.

(3) When inventoried lands satisfy the definition requirements of both agricultural land and forest land, an exception is not required to show why one resource designation is chosen over another. The plan need only document the factors that were used to select an agricultural, forest, agricultural/forest, or other appropriate designation.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 8-1982, f. & ef. 9-1-82

Plan Designation Within an Urban Growth Boundary

660-06-020 Within urban growth boundaries the requirement of Goal 4 to retain forest land for forest uses is generally met through compliance with Goal 5 "Open Spaces, Scenic and Historic Areas and Natural Resources", Goal 6 "Air, Water and Land Resources Quality", Goal 7 "Areas Subject to Natural Disasters and Hazards", Goal 15 "Willamette River Greenway", Goal 17 "Coastal Shorelands", and Goal 18 "Beaches and Dunes", where applicable. Retention of commercial forest uses is not required within urban growth boundaries.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 8-1982, f. & ef. 9-1-82

Forest Regulation

660-06-030 The Forest Practices Act (ORS 527.620 to 527.990) as implemented through State Board of Forestry rules (OAR 629-24-101 to 629-24-648) regulates forest operations on forest lands. The relationship between the Act and land use planning is addressed in ORS 527.722 to 527.726.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 8-1982, f. & ef. 9-1-82

OREGON ADMINISTRATIVE RULES

CHAPTER 660, DIVISION 7 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

DIVISION 7

METROPOLITAN HOUSING

Statement of Purpose

660-07-000 The purpose of this rule is to assure opportunity for the provision of adequate numbers of needed housing units and the efficient use of land within the Metropolitan Portland (Metro) urban growth boundary, to provide greater certainty in the development process and so to reduce housing costs. OAR 660-07-030 through 660-07-037 are intended to establish by rule regional residential density and mix standards to measure Goal 10 Housing compliance for cities and counties within the Metro urban growth boundary, and to ensure the efficient use of residential land within the regional UGB consistent with Goal 14 Urbanization. OAR 660-07-035 implements the Commission's determination in the Metro UGB acknowledgment proceedings that region-wide, planned residential densities must be considerably in excess of the residential density assumed in Metro's "UGB Findings". The new construction density and mix standards and the criteria for varying from them in this rule take into consideration and also satisfy the price range and rent level criteria for needed housing as set forth in ORS 197.303.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

Definitions

660-07-005 For the purposes of this rule, the definitions in ORS 197.015 and 197.295 shall apply. In addition, the following definitions apply:

(1) "Housing Needs Projection" refers to a local determination, justified in the plan, as to the housing types and densities that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;

(b) Consistent with OAR 660-07-010 through 660-07-037 and any other adopted regional housing standards; and

(c) Consistent with Goal 14 requirements for the efficient provision of public facilities and services, and efficiency of land use.

(2) "Needed Housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels:

(a) On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:

(A) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy and manufactured homes; and

(B) Government assisted housing.

(b) Subsection (2)(a) of this rule shall not apply to:

(A) A city with a population of less than 2,500;

(B) A county with a population of less than 15,000.

(3) "Detached Single Family Housing" means a housing unit that is free standing and separate from other housing units.

(4) "Attached Single Family Housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

(5) "Multiple Family Housing" means attached housing where each dwelling unit is not located on a separate lot.

(6) "Manufactured Homes" means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. sections 5401 et. seq.), as amended on August 22, 1981.

(7) "Buildable Land" means residentially designated vacant and, at the option of the local jurisdiction, redevelopable land within the Metro urban growth boundary that is not severely constrained by natural hazards (Statewide Planning Goal 7) or subject to natural resource protection measures (Statewide Planning Goals 5 and 15). Publicly owned land is generally not considered available for residential use. Land with slopes of 25 percent or greater unless otherwise provided for at the time of acknowledgment and land within the 100-year floodplain is generally considered unbuildable for purposes of density calculations.

(8) A "Net Buildable Acre" consists of 43,560 square feet of residentially designated buildable land, after excluding present and future rights-of-way, restricted hazard areas, public open spaces and restricted resource protection areas.

(9) "Redevelopable Land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the likelihood that existing development will be converted to more intensive residential uses during the planning period.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

Allocations of Buildable Land

660-07-010 [LCD 10-1981, f. & ef. 12-11-81; Repealed by LCDC 1-1987, f. & ef. 2-18-87]

Clear and Objective Approval Standards Required

660-07-015 Local approval standards, special conditions and procedures regulating the development of needed housing must be clear and objective, and must not have the effect, either of themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 10-1981, f. & ef. 12-11-81

Specific Plan Designations Required

660-07-018 (1) Residential plan designations shall be assigned to all buildable land, and shall be specific so as to accommodate the varying housing types and densities identified in OAR 660-07-030 through 660-07-037.

(2) A local government may defer the assignment of specific residential plan designations only when the following conditions have been met:

(a) Uncertainties concerning the funding, location and timing of public facilities have been identified in the local comprehensive plan;

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OAR 660-07-030 support increases in the density of either detached single family or multiple family housing or both. If the evaluation supports increases in density, then necessary amendments to residential plan and zone designations must be made.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

Exceptions

660-07-040 [LCD 10-1981, f. & ef. 12-11-81;
Repealed by LCDC 1-1987,
f. & ef. 2-18-87]

Computation of Buildable Lands

660-07-045 (1) The local buildable lands inventory must document the amount of buildable land in each residential plan designation.

(2) The Buildable Land Inventory (BLI): The mix and density standards of OAR 660-07-030, 660-07-035 and 660-07-037 apply to land in a buildable land inventory required by OAR 660-07-010, as modified herein. Except as provided below, the buildable land inventory at each jurisdiction's choice shall either be based on land in a residential plan/zone designation within the jurisdiction at the time of periodic review or based on the jurisdiction BLI at the time of acknowledgment as updated. Each jurisdiction must include in its computations all plan and/or zone changes involving residential land which that jurisdiction made since acknowledgment. A jurisdiction need not include plan and/or zone changes made by another jurisdiction before annexation to a city. The adjustment of the BLI at the time of acknowledgment shall:

(a) Include changes in zoning ordinances or zoning designations on residential planned land if allowed densities are changed.

(b) Include changes in planning or zoning designations either to or from residential use. A city shall include changes to annexed or incorporated land if the city changed type or density or the plan/zone designation after annexation or incorporation.

(c) The county and one or more city(ies) affected by annexations or incorporations may consolidate buildable land inventories. A single calculation of mix and density may be prepared. Jurisdictions which consolidate their buildable lands inventories shall conduct their periodic review simultaneously.

(d) A new density standard shall be calculated when annexation, incorporation or consolidation results in mixing two or more density standards (OAR 660-07-035). The calculation shall be made as follows:

- (A)(i) $\text{BLI Acres} \times 6 \text{ Units/Acre} = \text{Num. of Units}$
(ii) $\text{BLI Acres} \times 8 \text{ Units/Acre} = \text{Num. of Units}$
(iii) $\text{BLI Acres} \times 10 \text{ Units/Acre} = \text{Num. of Units}$
(iv) $\text{Total Acres (TA)} \times \text{xxxxxxx} = \text{Total Units (TU)}$

(B) Total units divided by Total Acres = New Density Standard

(C) Example:

(i)(I) Cities A and B have 100 acres and a 6-unit-per-acre standard: $(100 \times 6 = 600 \text{ units})$

(II) City B has 300 acres and a 10-unit-per-acre standard: $(300 \times 10 = 3000 \text{ units})$

(III) County has 200 acres and an 8-unit-per-acre standard: $(200 \times 08 = 1600 \text{ units})$

(IV) Total acres = 600 Total Units = 5200

(ii) $5200 \text{ units divided by } 600 \text{ acres} = 8.66 \text{ units per acre standard.}$

(3) Mix and Density Calculation: The housing units allowed by the plan/zone designations at periodic review, except as modified by section (2) of this rule, shall be used to calculate the mix and density. The number of units allowed by the plan/zone designations at the time of development shall be used for developed residential land.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

Regional Coordination

660-07-050 (1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region's long-range population and housing projections.

(2) Metro shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

Applicability

660-07-060 (1) The new construction mix and minimum residential density standards of OAR 660-07-030 through 660-07-037 shall be applicable at each periodic review. During each periodic review local government shall prepare findings regarding the cumulative effects of all plan and zone changes affecting residential use. The jurisdiction's buildable lands inventory (updated pursuant to OAR 660-07-045) shall be a supporting document to the local jurisdiction's periodic review order.

(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:

(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

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(b) The decision not to assign specific residential plan designations is specifically related to identified public facilities constraints and is so justified in the plan; and

(c) The plan includes a time-specific strategy for resolution of identified public facilities uncertainties and a policy commitment to assign specific residential plan designations when identified public facilities uncertainties are resolved.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

The Rezoning Process

660-07-020 A local government may defer rezoning of land within the urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified:

(1) The plan must contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing.

(2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCD 10-1981, f. & ef. 12-11-81

Restrictions on Housing Tenure

660-07-022 Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall either justify such restriction by an analysis of housing need according to tenure or otherwise demonstrate that such restrictions comply with ORS 197.303(a) and 197.307(3).

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

Purpose

660-07-025 [LCD 10-1981, f. & ef. 12-11-81;
Repealed by LCDC 1-1987,
f. & ef. 2-18-87]

New Construction Mix

660-07-030 (1) Jurisdictions other than small developed cities must either designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing or justify an alternative percentage based on changing circumstances. Factors to be considered in justifying an alternate percentage shall include, but need not be limited to:

- (a) Metro forecasts of dwelling units by type;
- (b) Changes in household structure, size, or composition by age;
- (c) Changes in economic factors impacting demand for single family versus multiple family units; and
- (d) Changes in price ranges and rent levels relative to income levels.

(2) The considerations listed in section (1) of this rule refer to county-level data within the UGB and data on the specific jurisdiction.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

Consideration of Other Housing Types

660-07-033 Each local government shall consider the needs for manufactured housing and government assisted housing within the Portland Metropolitan UGB in arriving at an allocation of housing types.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 1-1987, f. & ef. 2-18-87

Minimum Residential Density Allocation for New Construction

660-07-035 The following standards shall apply to those jurisdictions which provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing:

(1) The Cities of Cornelius, Durham, Fairview, Happy Valley and Sherwood must provide for an overall density of six or more dwelling units per net buildable acre. These are relatively small cities with some growth potential (i.e. with a regionally coordinated population projection of less than 8,000 persons for the active planning area).

(2) Clackamas and Washington Counties, and the cities of Forest Grove, Gladstone, Milwaukie, Oregon City, Troutdale, Tualatin, West Linn and Wilsonville must provide for an overall density of eight or more dwelling units per net buildable acre.

(3) Multnomah County and the cities of Portland, Gresham, Beaverton, Hillsboro, Lake Oswego and Tigard must provide for an overall density of ten or more dwelling units per net buildable acre. These are larger urbanized jurisdictions with regionally coordinated population projections of 50,000 or more for their active planning areas, which encompass or are near major employment centers, and which are situated along regional transportation corridors.

(4) Regional housing density and mix standards as stated in OAR 660-07-030 and 660-07-035(1), (2), and (3) do not apply to small developed cities which had less than 50 acres of buildable land in 1977 as determined by criteria used in Metro's UGB Findings. These cities include King City, Rivergrove, Maywood Park, Johnson City and Wood Village.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCD 10-1981, f. & ef. 12-11-81; LCDC 1-1987, f. & ef. 2-18-87

Alternate Minimum Residential Density Allocation for New Construction

660-07-037 The density standards in OAR 660-07-035 shall not apply to a jurisdiction which justifies an alternative new construction mix under the provisions of OAR 660-07-030. The following standards shall apply to these jurisdictions:

(1) The jurisdiction must provide for the average density of detached single family housing to be equal to or greater than the density of detached single family housing provided for in the plan at the time of original LCDC acknowledgment.

(2) The jurisdiction must provide for the average density of multiple family housing to be equal to or greater than the density of multiple family housing provided for in the plan at the time of original LCDC acknowledgment.

(3) A jurisdiction which justifies an alternative new construction mix must also evaluate whether the factors in

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DIVISION 8

INTERPRETATION OF GOAL 10 HOUSING

Purpose

660-08-000 (1) The purpose of this rule is to assure opportunity for the provision of adequate numbers of needed housing units, the efficient use of buildable land within urban growth boundaries, and to provide greater certainty in the development process so as to reduce housing costs. This rule is intended to define standards for compliance with Goal 10 "Housing" and to implement ORS 197.303 through 197.307.

(2) OAR 660-07-000 et seq., Metropolitan Housing, are intended to complement and be consistent with OAR 660-08-000 et seq., Goal 10 Housing. Public facilities and services are planned for buildable land as defined in OAR 660-07-140 within the Metropolitan Portland urban growth boundary. Should differences in interpretation between OAR 660-08-000 and OAR 660-07-000 arise, the provisions of OAR 660-07-000 shall prevail for cities and counties within the Metro urban growth boundary.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

Definitions

660-08-005 For the purpose of this rule, the definitions in ORS 197.015, 197.295, and 197.303 shall apply. In addition, the following definitions shall apply:

(1) "Housing needs projection" refers to a local determination, justified in the plan, of the mix of housing types and densities that will be:

(a) Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period;

(b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative rules; and

(c) Consistent with Goal 14 requirements.

(2) "Needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means housing that includes, but is not limited to, attached and detached single family housing and multiple family housing for both owner and renter occupancy and manufactured homes, as defined in ORS 197.295, located in either mobile home parks or subdivisions.

(3) "Detached single family housing" means a housing unit that is free standing and separate from other housing units.

(4) "Attached single family housing" means common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot.

(5) "Multiple family housing" means attached housing where each dwelling unit is not located on a separate lot.

(6) "Manufactured homes" means structures with a Department of Housing and Urban Development (HUD) label certifying that the structure is constructed in accordance with National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. sections 5401 et seq.), as amended on August 22, 1981.

(7) "Buildable land" means land in urban and urbanizable areas that is suitable, available and necessary for residential use.

(8) "Suitable and available land" means residentially designated vacant and redevelopable land within an urban growth boundary that is not constrained by natural hazards, or subject to natural resource protection measures, and for which

public facilities are planned or to which public facilities can be made available. Publicly owned land generally is not considered available for residential use.

(9) "Redevelopable land" means land zoned for residential use on which development has already occurred but on which, due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive residential uses during the planning period.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

Allocation of Buildable Land

660-08-010 The mix and density of needed housing is determined in the housing needs projection. Sufficient buildable land shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection. The local buildable lands inventory must document the amount of buildable land in each residential plan designation.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

Clear and Objective Approval Standards Required

660-08-015 Local approval standards, special conditions and procedures regulating the development of needed housing must be clear and objective, and must not have the effect, either of themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

Specific Plan Designations Required

660-08-020 (1) Residential plan designations shall be assigned to all buildable land, and shall be specific so as to accommodate the varying housing types and densities identified in the local housing needs projection.

(2) A local government may defer the assignment of specific residential plan designations only when the following conditions have been met:

(a) Uncertainties concerning the funding, location and timing of public facilities have been identified in the local comprehensive plan;

(b) The decision not to assign specific residential plan designations is specifically related to identified public facilities constraints and is so justified in the plan; and

(c) The plan includes a time-specific strategy for resolution of identified public facilities uncertainties and a policy commitment to assign specific residential plan designations when identified public facilities uncertainties are resolved.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

The Rezoning Process

660-08-025 A local government may defer rezoning of land within an urban growth boundary to maximum planned residential density provided that the process for future rezoning is reasonably justified. If such is the case, then:

(1) The plan shall contain a justification for the rezoning process and policies which explain how this process will be used to provide for needed housing.

(2) Standards and procedures governing the process for future rezoning shall be based on the rezoning justification and policy statement, and must be clear and objective.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

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CHAPTER 660, DIVISION 9 - LAND CONSERVATION AND DEVELOPMENT COMMISSION

DIVISION 9

INDUSTRIAL AND COMMERCIAL DEVELOPMENT

Purpose

660-09-000 The purpose of this division is to aid in achieving the requirements of Goal 9, Economy of the State (OAR 660-15-000(9)), by implementing the requirements of ORS 197.712(2)(a) - (d). The rule responds to legislative direction to assure that comprehensive plans and land use regulations are updated to provide adequate opportunities for a variety of economic activities throughout the state (ORS 197.712(1)) and to assure that plans are based on available information about state and national economic trends. (ORS 197.717(2)).

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1986, f. & ef. 10-10-86

Definitions

660-09-005 (1) "Department": The Department of Land Conservation and Development.

(2) "Planning Area": The whole area within an urban growth boundary including unincorporated urban and urbanizable land, except for cities and counties within the Portland, Salem-Keizer and Eugene-Springfield metropolitan urban growth boundaries which shall address the urban areas governed by their respective plans as specified in the urban growth management agreement for the affected area.

(3) "Locational factors": Features which affect where a particular type of commercial or industrial operation will locate. Locational factors include but are not limited to: proximity to raw materials, supplies, and services; proximity to markets or educational institutions; access to transportation facilities; labor market factors (e.g., skill level, education, age distribution).

(4) "Site requirement": The physical attributes of a site without which a particular type or types of industrial or commercial use cannot reasonably operate. Site requirements may include: a minimum acreage or site configuration, specific types or levels of public facilities and services, or direct access to a particular type of transportation facility such as rail or deep water access).

(5) "Suitable": A site is suitable for industrial or commercial use if the site either provides for the site requirements of the proposed use or category of use or can be expected to provide for the site requirements of the proposed use within the planning period.

(6) "Serviceable": A site is serviceable if:

(a) Public facilities, as defined by OAR 660, Division 11 currently have adequate capacity to serve development planned for the service area where the site is located or can be upgraded to have adequate capacity within one year; and

(b) Public facilities either are currently extended to the site, or can be provided to the site within one year of a user's application for a building permit or request for service extension.

(7) "Short-Term Element of the Public Facility Plan": means the portion of the public facility plan covering year one through five of the facility plan per OAR 660-11-005(3).

(8) Other definitions: For purposes of this division the definitions in ORS 197.015 shall apply

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1986, f. & ef. 10-10-86

Application

660-09-010 (1) OAR 660, Division 9 applies only to comprehensive plans for areas within urban growth boundaries. Additional planning for industrial and commercial development outside urban growth boundaries is not required or restricted by this rule. Plan and ordinance amendments necessary to comply with this rule shall be adopted by affected jurisdictions.

(2) Comprehensive plans and land use regulations shall be reviewed and amended as necessary to comply with this rule at the time of each periodic review of the plan (ORS 197.712(3)). Jurisdictions which have received a periodic review notice from the Department (pursuant to OAR 660-19-050) prior to the effective date of this rule shall comply with this rule at their next periodic review unless otherwise directed by the Commission during their first periodic review.

(3) Jurisdictions may rely on their existing plans to meet the requirements of this rule if they:

(a) Review new information about state and national trends and conclude there are no significant changes in economic development opportunities (e.g., a need for sites not presently provided for by the plan); and

(b) Document how existing inventories, policies, and implementing measures meet the requirements in OAR 660-09-015 through 660-09-025.

(4) The effort necessary to comply with OAR 660-09-015 through 660-09-025 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on local, state and national trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this rule.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1986, f. & ef. 10-10-86

Economic Opportunities Analysis

660-09-015 Cities and counties shall review and, as necessary, amend comprehensive plans to provide the information described in sections (1) through (4) of this rule:

(1) Review of National and State and Local Trends. The economic opportunities analysis shall identify the major categories of industrial and commercial uses that could reasonably be expected to locate or expand in the planning area based on available information about national, state and local trends. A use or category of use could reasonably be expected to locate in the planning area if the area possesses the appropriate locational factors for the use or category of use;

(2) Site Requirements. The economic opportunities analysis shall identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area. Types of sites shall be identified based on the site requirements of expected uses. Local governments should survey existing firms in the planning area to identify the types of sites which may be needed

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Regional Coordination

660-08-030 (1) Each local government shall consider the needs of the relevant region in arriving at a fair allocation of housing types and densities.

(2) The local coordination body shall be responsible for ensuring that the regional housing impacts of restrictive or expansive local government programs are considered. The local coordination body shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

Substantive Standards for Taking a Goal 2, Part II Exception Pursuant to ORS 197.303(3)

660-08-035 (1) A local government may satisfy the substantive standards for exceptions contained in Goal 2, Part II, upon a demonstration in the local housing needs projection, supported by compelling reasons and facts, that:

(a) The needed housing type is being provided for elsewhere in the region in sufficient numbers to meet regional needs;

(b) Sufficient buildable land has been allocated within the local jurisdiction for other types of housing which can meet the

need for shelter at the particular price ranges and rent levels that would have been met by the excluded housing type; and

(c) The decision to substitute other housing types for the excluded needed housing type furthers the policies and objectives of the local comprehensive plan, and has been coordinated with other affected units of government.

(2) The substantive standards listed in section (1) of this rule shall apply to the ORS 197.303(3) exceptions process in lieu of the substantive standards in Goal 2, Part II. The standards listed in section (1) of this rule shall not apply to the exceptions process authorized by OAR 660-07-360.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

Restrictions on Housing Tenure

660-08-040 Any local government that restricts the construction of either rental or owner occupied housing on or after its first periodic review shall include a determination of housing need according to tenure as part of the local housing needs projection.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 3-1982, f. & ef. 7-21-82

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whether or not a site is "serviceable". Local governments should also consider whether or not extension of facilities is reasonably likely to occur considering the size and type of uses likely to occur and the cost or distance of facility extension;

(b) Estimate the amount of serviceable industrial and commercial land likely to be needed during the short-term element of the public facilities plan. Appropriate techniques for estimating land needs include but are not limited to the following:

(A) Projections or forecasts based on development trends in the area over previous years; and

(B) Deriving a proportionate share of the anticipated 20-year need specified in the comprehensive plan.

(c) Review and, if necessary, amend the comprehensive plan and the short-term element of the public facilities plan so that a three-year supply of serviceable sites is scheduled for each year, including the final year, of the short-term element of the public facilities plan. Amendments appropriate to implement this requirement include but are not limited to the following:

(A) Changes to the short-term element of the public facilities plan to add or reschedule projects which make more land serviceable;

(B) Amendments to the comprehensive plan which redesignate additional serviceable land for industrial or commercial use; and

(C) Reconsideration of the planning area's economic development objectives and amendment of plan policies based on public facility limitations.

(d) If the local government is unable to meet this requirement it shall identify the specific steps needed to provide expanded public facilities at the earliest possible time.

(4) Sites for Uses with Special Siting Requirements. Jurisdictions which adopt objectives or policies to provide for specific uses with special site requirements shall adopt policies and land use regulations to provide for the needs of those uses. Special site requirements include but need not be limited to large acreage sites, special site configurations, direct access to transportation facilities, or sensitivity to adjacent land uses, or coastal shoreland sites designated as especially suited for water-dependent use under Goal 17. Policies and land use regulations for these uses shall:

(a) Identify sites suitable for the proposed use;

(b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities to those which would not interfere with development of the site for the intended use; and

(c) Where necessary to protect a site for the intended industrial or commercial use include measures which either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1986, f. & ef. 10-10-86

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for expansion. Industrial and commercial uses with compatible site requirements should be grouped together into common site categories to simplify identification of site needs and subsequent planning;

(3) Inventory of Industrial and Commercial Lands. Comprehensive plans for all areas within urban growth boundaries shall include an inventory of vacant and significantly underutilized lands within the planning area which are designated for industrial or commercial use:

(a) Contiguous parcels of one to five acres within a discrete plan or zoning district may be inventoried together. If this is done the inventory shall:

(A) Indicate the total number of parcels of vacant or significantly underutilized parcels within each plan or zoning district; and

(B) Indicate the approximate total acreage and percentage of sites within each plan or zone district which are:

- (i) Serviceable, and
- (ii) Free from site constraints.

(b) For sites five acres and larger and parcels larger than one acre not inventoried in subsection (a) of this section, the plan shall provide the following information:

(A) Mapping showing the location of the site;

(B) Size of the site;

(C) Availability or proximity of public facilities as defined by OAR 660, Division 11 to the site;

(D) Site constraints which physically limit developing the site for designated uses. Site constraints include but are not limited to:

- (i) The site is not serviceable;
- (ii) Inadequate access to the site; and
- (iii) Environmental constraints (e.g., floodplain, steep slopes, weak foundation soils).

(4) Assessment of Community Economic Development Potential. The economic opportunities analysis shall estimate the types and amounts of industrial and commercial development likely to occur in the planning area. The estimate shall be based on information generated in response to sections (1) through (3) of this rule and shall consider the planning area's economic advantages and disadvantages of attracting new or expanded development in general as well as particular types of industrial and commercial uses. Relevant economic advantages and disadvantages to be considered should include but need not be limited to:

(a) Location relative to markets;

(b) Availability of key transportation facilities;

(c) Key public facilities as defined by OAR 660, Division 11 and public services;

(d) Labor market factors;

(e) Materials and energy availability and cost;

(f) Necessary support services;

(g) Pollution control requirements; or

(h) Educational and technical training programs.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1986, f. & ef. 10-10-86

Industrial and Commercial Development Policies

660-09-020 (1) Comprehensive plans for planning areas subject to this division shall include policies stating the economic development objectives for the planning area.

(2) For urban areas of over 2,500 in population policies shall be based on the analysis prepared in response to OAR

660-09-015 and shall provide conclusions about the following:

(a) Community Development Objectives. The plan shall state the overall objectives for economic development in the planning area and identify categories or particular types of industrial and commercial uses desired by the community. Plans may include policies to maintain existing categories, types or levels of industrial and commercial uses.

(b) Commitment to Provide Adequate Sites and Facilities. Consistent with policies adopted to meet subsection (a) with this section, the plan shall include policies committing the city or county to designate an adequate number of sites of suitable sizes, types and locations and ensure necessary public facilities through the public facilities plan for the planning area.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1986, f. & ef. 10-10-86

Designation of Lands for Industrial and Commercial Uses

660-09-025 Measures adequate to implement policies adopted pursuant to OAR 660-09-020 shall be adopted. Appropriate implementing measures include amendments to plan and zone map designations, land use regulations, and public facility plans:

(1) Identification of Needed Sites. The plan shall identify the approximate number and acreage of sites needed to accommodate industrial and commercial uses to implement plan policies. The need for sites should be specified in several broad "site categories", (e.g., light industrial, heavy industrial, commercial office, commercial retail, highway commercial, etc.) combining compatible uses with similar site requirements. It is not necessary to provide a different type of site for each industrial or commercial use which may locate in the planning area. Several broad site categories will provide for industrial and commercial uses likely to occur in most planning areas.

(2) Long-Term Supply of Land. Plans shall designate land suitable to meet the site needs identified in section (1) of this rule. The total acreage of land designated in each site category shall at least equal the projected land needs for each category during the 20-year planning period. Jurisdictions need not designate sites for neighborhood commercial uses in urbanizing areas if they have adopted plan policies which provide clear standards for redesignation of residential land to provide for such uses. Designation of industrial or commercial lands which involve an amendment to the urban growth boundary must meet the requirements of OAR 660-04-010(1)(c)(B) and OAR 660-04-018(3)(a).

(3) Short-Term Supply of Serviceable Sites. If the local government is required to prepare a public facility plan by OAR 660, Division 11 it shall complete subsections (a) through (c) of this section at the time of periodic review. Requirements of this rule apply only to local government decisions made at the time of periodic review. Subsequent implementation of or amendments to the comprehensive plan or the public facility plan which change the supply of serviceable industrial land are not subject to the requirements of this rule. Local governments shall:

(a) Identify serviceable industrial and commercial sites. Decisions about whether or not a site is serviceable shall be made by the affected local government. Local governments are encouraged to develop specific criteria for deciding

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DIVISION 10

CITIZEN INVOLVEMENT

660-10-005 [Renumbered to 660-01-005]

Goal

660-10-050 To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land use planning process.

The citizen involvement program shall be appropriate to the scale of the planning effort. The program shall provide for continuity of citizen participation and of information that enables citizens to identify and comprehend the issues.

Federal, state, and regional agencies, and special purpose districts shall coordinate their planning efforts with the affected governing bodies and make use of existing local citizen involvement programs established by counties and cities.

The citizen involvement program shall incorporate the following components:

(1) *Citizen Involvement* — To provide for widespread citizen involvement.

The citizen involvement program shall involve a cross-section of affected citizens in all phases of the planning process. As a component, the program for citizen involvement shall include an officially recognized citizen advisory committee or committees broadly representative of geographic areas and interests related to land use and land use decisions. Citizen advisory committee members shall be selected by an open, well-publicized public process.

The citizen advisory committee shall be responsible for: assisting the governing body with the development of a program that promotes and enhances citizen involvement in land use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement.

If the governing body wishes to assume the responsibility for development as well as adoption and implementation of the citizen involvement program or to assign such responsibilities to a planning commission, a letter shall be submitted to the Land Conservation and Development Commission for the State Citizen Involvement Advisory Committee's review and recommendation stating the rationale for selecting this option, as well as indicating the mechanism to be used for an evaluation of the citizen involvement program. If the planning commission is used, its members shall be selected by an open, well-publicized public process.

(2) *Communication* — To assure effective two-way communication with citizens.

Mechanisms shall be established which provide for effective communication between citizens and elected and appointed officials.

(3) *Citizen Influence* — To provide the opportunity for citizens to be involved in all phases of the planning process. Citizens shall have the opportunity to be involved in the phases of the planning process as set forth and defined in the goal and guidelines for Land Use Planning, including Preparation of Plans and Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major Revisions in the Plan and Implementation Measures.

(4) *Technical Information* — To assure that technical information is available in an understandable form.

Information necessary to reach policy decisions shall be available in a simplified, understandable form. Assistance shall be provided to interpret and effectively use technical information. A copy of all technical information shall be available at a local public library or other location open to the public.

(5) *Feedback Mechanisms* — To assure that citizens will receive a response from policymakers.

Recommendations resulting from the citizen involvement program shall be retained and made available for public assessment. Citizens who have participated in this program shall receive a response from policymakers. The rationale used to reach land use policy decisions shall be available in the form of a written record.

(6) *Financial Support* — To insure funding for the citizen involvement program.

Adequate human, financial, and informational resources shall be allocated for the citizen involvement program. These allocations shall be an integral component of the planning budget. The governing body shall be responsible for obtaining and providing these resources.

Stat. Auth.: ORS Ch.

Hist.: LCD 2, f. 12-31-74, ef. 1-25-75

**Guidelines For Citizen
Involvement Goals**

[ED. NOTE: Rule 660-10-055 of this chapter of the Oregon Administrative Rules Compilation, although set forth along with the administrative rule contained in rule 660-10-050 and filed as a portion of Administrative Order LCD 2, is not adopted as an administrative rule. However, planning agencies, if they so desire, may utilize these guidelines as suggested ways or means on how to achieve the goal set out in rule 660-10-050.]

Guidelines for Citizen Involvement Goals

660-10-055 (1) Citizen Involvement:

(a) A program for stimulating citizen involvement should be developed using a range of available media (including television, radio, newspapers, mailings, and meetings).

(b) Universities, colleges, community colleges, secondary and primary educational institutions, and other agencies and institutions with interests in land use planning should provide information on land use education to citizens, as well as develop and offer courses in land use education which provide for a diversity of educational backgrounds in land use planning.

(c) In the selection of members for the Citizen Advisory Committee, the following selection process should be observed: citizens should receive notice they can understand of the opportunity to serve on citizen advisory committees; citizen advisory committee appointees should receive official notification of their selection; and citizen advisory committee appointments should be well publicized.

(2) *Communication*: Newsletters, mailings, posters, mail-back questionnaires, and other available media should be used in the citizen involvement program.

(3) *Citizen Influence*:

(a) *Data Collection* — The general public through the local citizen involvement programs should have the opportunity to be involved in inventorying, recording, mapping, describing, analyzing, and evaluating the elements necessary for the development of the plans.

(b) *Plan Preparation* — The general public, through the local citizen involvement programs, should have the opportunity to participate in developing a body of sound information to identify public goals, develop policy guidelines, and evaluate alternative land conservation and development plans for the preparation of the comprehensive land use plans.

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DIVISION 11

PUBLIC FACILITIES PLANNING

Purpose

660-11-000 The purpose of this division is to aid in achieving the requirements of Goal 11, Public Facilities and Services, OAR 660-15-000(11), by implementing ORS 197.712(2)(e), which requires that a city or county shall develop and adopt a public facility plan for areas within an urban growth boundary containing a population greater than 2,500 persons. The purpose of the plan is to help assure that urban development in such urban growth boundaries is guided and supported by types and levels of urban facilities and services appropriate for the needs and requirements of the urban areas to be serviced, and that those facilities and services are provided in a timely, orderly and efficient arrangement, as required by Goal 11. The division contains definitions relating to a public facility plan, procedures and standards for developing, adopting and amending such a plan, the date for submittal of the plan to the Commission and standards for Department review of the plan.

Stat. Auth.: ORS Ch. 183 & 197
 Hist.: LCDC 4-1984, f. & cf. 10-18-84

Definitions

660-11-005 (1) "Public Facilities Plan": A public facility plan is a support document or documents to a comprehensive plan. The facility plan describes the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plans within an urban growth boundary containing a population greater than 2,500. Certain elements of the public facility plan also shall be adopted as part of the comprehensive plan, as specified in OAR 660-11-045.

(2) "Rough Cost Estimates": Rough cost estimates are approximate costs expressed in current-year (year closest to the period of public facility plan development) dollars. It is not intended that project cost estimates be as exact as is required for budgeting purposes.

(3) "Short Term": The short term is the period from year one through year five of the facility plan.

(4) "Long Term": The long term is the period from year six through the remainder of the planning period.

(5) "Public Facility": A public facility includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities.

(6) "Public Facility Project": A public facility project is the construction or reconstruction of a water, sewer, or transportation facility within a public facility system that is funded or utilized by members of the general public.

(7) "Public Facility Systems": Public facility systems are those facilities of a particular type that combine to provide water, sewer or transportation services.

For purposes of this division, public facility systems are limited to the following:

- (a) Water:
 - (A) Sources of water;
 - (B) Treatment system;

- (C) Storage system;
- (D) Pumping system;
- (E) Primary distribution system.
- (b) Sanitary sewer:
 - (A) Treatment facilities system;
 - (B) Primary collection system.
 - (c) Storm sewer:
 - (A) Major drainageways (major trunk lines, streams, ditches, pump stations and retention basins);
 - (B) Outfall locations.
 - (d) Transportation:
 - (A) Freeway system, if planned for in the acknowledged comprehensive plan;
 - (B) Arterial system;
 - (C) Significant collector system;
 - (D) Bridge system (those on the Federal Bridge Inventory);
 - (E) Mass transit facilities if planned for in the acknowledged comprehensive plan, including purchase of new buses if total fleet is less than 200 buses, rail lines or transit stations associated with providing transit service to major transportation corridors and park and ride station;
 - F) Airport facilities as identified in the current airport master plans;
 - (G) Bicycle paths if planned for in the acknowledged comprehensive plan.

(8) "Land Use Decisions": In accordance with ORS 197.712(2)(e), project timing and financing provisions of public facility plans shall not be considered land use decisions as specified under ORS 197.015(10).

(9) "Urban Growth Management Agreement": In accordance with OAR 660-03-010(2)(c), and urban growth management agreement is a written statement, agreement or set of agreements setting forth the means by which a plan for management of the unincorporated area within the urban growth boundary will be completed and by which the urban growth boundary may be modified (unless the same information is incorporated in other acknowledged documents).

(10) Other Definitions: For the purposes of this division, the definitions in ORS 197.015 shall apply except as provided in section (8) of this rule regarding the definition in ORS 197.015(10).

Stat. Auth.: ORS Ch. 183 & 197
 Hist.: LCDC 4-1984, f. & cf. 10-18-84

The Public Facility Plan

660-11-010 (1) The public facility plan shall contain the following items:

(a) An inventory and general assessment of the condition of all the significant public facility systems which support the land uses designated in the acknowledged comprehensive plan;

(b) A list of the significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. Public facility project descriptions or specifications of these projects as necessary;

(c) Rough cost estimates of each public facility project;

(d) A map or written description of each public facility project's general location or service area;

(e) Policy statement(s) or urban growth management agreement identifying the provider of each public facility system. If there is more than one provider with the authority

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(c) **Adoption Process** — The general public, through the local citizen involvement programs, should have the opportunity to review and recommend change to the proposed comprehensive land use plans prior to the public hearing process to adopt comprehensive land use plans.

(d) **Implementation** — The general public, through the local citizen involvement programs, should have the opportunity to participate in the development, adoption, and application of legislation that is needed to carry out a comprehensive land use plan.

The general public, through the local citizen involvement programs, should have the opportunity to review each proposal and application for a land conservation and development action prior to the formal consideration of such proposal and application.

(e) **Evaluation** — The general public, through the local citizen involvement programs, should have the opportunity to be involved in the evaluation of the comprehensive land use plans.

(f) **Revision** — The general public, through the local citizen involvement programs, should have the opportunity to review and make recommendations on proposed changes in comprehensive land use plans prior to the public hearing process to formally consider the proposed changes.

(4) Technical Information.

(a) Agencies that either evaluate or implement public projects or programs (such as, but not limited to, road, sewer, water construction, transportation, subdivision studies, and

zone changes) should provide assistance to the citizen involvement program. The roles, responsibilities, and time-line in the planning process of these agencies should be clearly defined and publicized.

(b) Technical information should include, but not be limited to: energy, natural environment, political, legal, economic, and social data and places of cultural significance, as well as those maps and photos necessary for effective planning.

(5) Feed Back Mechanism:

(a) At the onset of the citizen involvement program, the governing body should clearly state the mechanism through which the citizens will receive a response from the policymakers.

(b) A process for quantifying and synthesizing citizen's attitudes should be developed and reported to the general public.

(6) **Financial Support:** The level of funding and human resources allocated to the citizen involvement program should be sufficient to make citizen involvement an integral part of the planning process.

Stat. Auth.: ORS Ch.

Hist.: LCD 2, f. 12-31-74

660-10-060 [Renumbered to 660-15-000]

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service level standards, etc. Timing provisions for public facility projects shall be consistent with the acknowledged comprehensive plan's projected growth estimates. The public facility plan shall consider the relationships between facilities in providing for development.

(3) Anticipated timing provisions for public facilities are not considered land use decisions as specified in ORS 197.712(2)(e), and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or ORS 197.835(4).

Stat. Auth.: ORS Ch. 183 & 197
 Hist.: LCDC 4-1984, f. & ef. 10-18-84

Location of Public Facility Projects

660-11-030 (1) The public facility plan shall identify the general location of the public facility project in specificity appropriate for the facility. Locations of projects anticipated to be carried out in the short term can be specified more precisely than the locations of projects anticipated for development in the long term.

(2) Anticipated locations for public facilities may require modifications based on subsequent environmental impact studies, design studies, facility master plans, capital improvement programs, or land availability. The public facility plan should anticipate those changes as specified in OAR 660-11-045.

Stat. Auth.: ORS Ch. 183 & 197
 Hist.: LCDC 4-1984, f. & ef. 10-18-84

Determination of Rough Cost Estimates for Public Facility Projects and Local Review of Funding Mechanisms for Public Facility Systems

660-11-035 (1) The public facility plan shall include rough cost estimates for those sewer, water, and transportation public facility projects identified in the facility plan. The intent of these rough cost estimates is to:

(a) provide an estimate of the fiscal requirements to support the land use designations in the acknowledged comprehensive plan; and

(b) for use by the facility provider in reviewing the provider's existing funding mechanisms (e.g., general funds, general obligation and revenue bonds, local improvement district, system development charges, etc.) and possible alternative funding mechanisms. In addition to including rough cost estimates for each project, the facility plan shall include a discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system. These funding mechanisms may also be described in terms of general guidelines or local policies.

(2) Anticipated financing provisions are not considered land use decisions as specified in ORS 197.712(2)(e) and, therefore, cannot be the basis of appeal under ORS 197.610(1) and (2) or ORS 197.835(4).

Stat. Auth.: ORS Ch. 183 & 197
 Hist.: LCDC 4-1984, f. & ef. 10-18-84

Date of Submittal of Public Facility Plans

660-11-040 The public facility plan shall be completed, adopted, and submitted by the time of the responsible jurisdiction's periodic review. The public facility plan shall be reviewed under OAR 660, Division 25, "Periodic

Review" with the jurisdiction's comprehensive plan and land use regulations. Portions of public facility plans adopted as part of comprehensive plans prior to the responsible jurisdiction's periodic review will be reviewed pursuant to OAR 660, Division 18, "Post Acknowledgment Procedures".

Stat. Auth.: ORS Ch. 183 & 197
 Hist.: LCDC 4-1984, f. & ef. 10-18-84

Adoption and Amendment Procedures for Public Facility Plans

660-11-045 (1) The governing body of the city or county responsible for development of the public facility plan shall adopt the plan as a supporting document to the jurisdiction's comprehensive plan and shall also adopt as part of the comprehensive plan:

(a) The list of public facility project titles, excluding (if the jurisdiction so chooses) the descriptions or specifications of those projects;

(b) A map or written description of the public facility projects' locations or service areas as specified in OAR 660-11-045(2) and (3); and

(c) The policy(ies) or urban growth management agreement designating the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated.

(2) Certain public facility project descriptions, location or service area designations will necessarily change as a result of subsequent design studies, capital improvement programs, environmental impact studies, and changes in potential sources of funding. It is not the intent of this division to:

(a) Either prohibit projects not included in the public facility plans for which unanticipated funding has been obtained;

(b) Preclude project specification and location decisions made according to the National Environmental Policy Act; or

(c) Subject administrative and technical changes to the facility plan to ORS 197.610(1) and (2) or ORS 197.835(4).

(3) The public facility plan may allow for the following modifications to projects without amendment to the public facility plan:

(a) Administrative changes are those modifications to a public facility project which are minor in nature and do not significantly impact the project's general description, location, sizing, capacity, or other general characteristic of the project.

(b) Technical and environmental changes are those modifications to a public facility project which are made pursuant to "final engineering" on a project or those that result from the findings of an Environmental Assessment or Environmental Impact Statement conducted under regulations implementing the procedural provisions of the National Environmental Policy Act of 1969 (40 CFR Parts 1500-1508) or any federal or State of Oregon agency project development regulations consistent with that Act and its regulations.

(c) Public facility project changes made pursuant to subsection 660-11-045(3)(b) are subject to the administrative procedures and review and appeal provisions of the regulations controlling the study (40 CFR Parts 1500-1508 or

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to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated;

(f) An estimate of when each facility project will be needed; and

(g) A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system.

(2) Those public facilities to be addressed in the plan shall include, but need not be limited to those specified in OAR 660-11-005(5). Facilities included in the public facility plan other than those included in OAR 660-11-005(5) will not be reviewed for compliance with this rule.

(3) It is not the purpose of this division to cause duplication of or to supplant existing applicable facility plans and programs. Where all or part of an acknowledged comprehensive plan, facility master plan either of the local jurisdiction or appropriate special district, capital improvement program, regional functional plan, similar plan or any combination of such plans meets all or some of the requirements of this division, those plans, or programs may be incorporated by reference into the public facility plan required by this division. Only those referenced portions of such documents shall be considered to be a part of the public facility plan and shall be subject to the administrative procedures of this division and ORS Chapter 197.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1984, f. & ef. 10-18-84

Responsibility for Public Facility Plan Preparation

660-11-015 (1) Responsibility for the preparation, adoption and amendment of the public facility plan shall be specified within the urban growth management agreement. If the urban growth management agreement does not make provision for this responsibility, the agreement shall be amended to do so prior to the preparation of the public facility plan. In the case where an unincorporated area exists within the Portland Metropolitan Urban Growth Boundary which is not contained within the boundary of an approved urban planning area agreement with the County, the County shall be the responsible agency for preparation of the facility plan for that unincorporated area. The urban growth management agreement shall be submitted with the public facility plan as specified in OAR 660-11-040.

(2) The jurisdiction responsible for the preparation of the public facility plan shall provide for the coordination of such preparation with the city, county, special districts and, as necessary, state and federal agencies and private providers of public facilities. The Metropolitan Service District is responsible for public facility plans coordination within the District consistent with ORS 197.190 and ORS 268.390.

(3) Special districts, including port districts, shall assist in the development of the public facility plan for those facilities they provide. Special districts may object to that portion of the facilities plan adopted as part of the comprehensive plan during review by the Commission only if they have completed a special district agreement as specified under ORS 197.185 and 197.254(3) and (4) and participated in the development of such portion of the public facility plan.

(4) Those state agencies providing funding for or making expenditures on public facility systems shall participate in

the development of the public facility plan in accordance with their state agency coordination agreement under ORS 197.180 and 197.712(2)(f).

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1984, f. & ef. 10-18-84

Public Facility Inventory and Determination of Future Facility Projects

660-11-020 (1) The public facility plan shall include an inventory of significant public facility systems. Where the acknowledged comprehensive plan, background document or one or more of the plans or programs listed in OAR 660-11-010(3) contains such an inventory, that inventory may be incorporated by reference. The inventory shall include:

- (a) Mapped location of the facility or service area;
- (b) Facility capacity or size; and
- (c) General assessment of condition of the facility (e.g., very good, good, fair, poor, very poor).

(2) The public facility plan shall identify significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. The public facility plan shall list the title of the project and describe each public facility project in terms of the type of facility, service area, and facility capacity.

(3) Project descriptions within the facility plan may require modifications based on subsequent environmental impact studies, design studies, facility master plans, capital improvement programs, or site availability. The public facility plan should anticipate these changes as specified in OAR 660-11-045.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 4-1984, f. & ef. 10-18-84

Timing of Required Public Facilities

660-11-025 (1) The public facilities plan shall include a general estimate of the timing for the planned public facility projects. This timing component of the public facilities plan can be met in several ways depending on whether the project is anticipated in the short term or long term. The timing of projects may be related directly to population growth, e.g., the expansion or new construction of water treatment facilities. Other facility projects can be related to a measure of the facility's service level being met or exceeded, e.g., a major arterial or intersection reaching a maximum vehicle-per-day standard. Development of other projects may be more long term and tied neither to specific population levels nor measures of service levels, e.g., sewer projects to correct infiltration and inflow problems. These projects can take place over a long period of time and may be tied to the availability of long-term funding. The timing of projects may also be tied to specific years.

(2) Given the different methods used to estimate the timing of public facilities, the public facility plan shall identify projects as occurring in either the short term or long term, based on those factors which are related to project development. For those projects designated for development in the short term, the public facility plan shall identify an approximate year for development. For those projects designated for development over the long term, the public facility plan shall provide a general estimate as to when the need for project development would exist, e.g., population level,

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DIVISION 14

ADMINISTRATIVE RULE
FOR APPLICATION OF THE
STATEWIDE PLANNING GOALS TO THE
INCORPORATION OF NEW CITIES

Purpose

660-14-000 ORS 197.175 requires cities and counties to exercise their planning and zoning responsibilities in compliance with the Statewide Planning Goals. This includes, but is not limited to, a city or special district boundary change including the incorporation or annexation of unincorporated territory. The purpose of this rule is to clarify the requirements of Goal 14 and to provide guidance to cities, counties and local government boundary commissions regarding incorporation of new cities under the Goals. This rule specifies the satisfactory method of applying Statewide Planning Goals 2, 3, 4, 11 and 14 to the incorporation of new cities.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Application of the Statewide Planning Goals to Incorporation of New Cities

660-14-010 (1) When a county authorizes an incorporation election for an area outside of an acknowledged urban growth boundary, it shall take an exception to Goals 11 and 14 to allow urban uses to be established on rural lands. If the land proposed for incorporation is also agricultural land or forest land, the County's exception to Goal 11 and Goal 14 will also be considered an exception to Goals 3 and 4. Incorporation of a new city within an acknowledged urban growth boundary does not require an exception to Goals 3, 4, 11 or 14. Incorporation of a new city within an acknowledged urban growth boundary must be consistent with relevant provisions of acknowledged city and county plans and land use regulations for the area to be incorporated.

(2) The following are land use decisions which must comply with applicable Statewide Planning Goals or the acknowledged comprehensive plan:

(a) A decision by a county court or board of commissioners to authorize an incorporation election pursuant to ORS 221.040;

(b) A resolution adopted by a city approving an incorporation within three miles of its city limits pursuant to ORS 221.031(4);

(c) An order adopted by a local government boundary commission authorizing incorporation of a new city pursuant to ORS 199.461. Incorporation decisions under this section include consolidations which include unincorporated lands.

(3) A city or county decision listed in subsection (2)(a) and (b) of this rule may also require a plan amendment. If the area proposed for incorporation is subject to an acknowledged comprehensive plan, the amendments shall be reviewed through the post acknowledgment plan amendment review process specified in ORS 197.610 to 197.650. If the area proposed for incorporation is not subject to an acknowledged plan, a plan amendment is subject to review upon appeal as a "land use decision" as defined in ORS 197.015(10).

(4) Comprehensive plans prepared and adopted by newly incorporated cities shall be reviewed either through the plan acknowledgment review process set forth in OAR 660-03-000, or the post acknowledgment plan amendment review process:

(a) Comprehensive plans for new cities outside of acknowledged urban growth boundaries shall be reviewed for compliance against all applicable Statewide Planning Goals through the plan acknowledgment review process set forth in OAR 660-03-000;

(b) Review of comprehensive plans for new cities within acknowledged urban growth boundaries shall occur through the post acknowledgment plan amendment review procedures established pursuant to ORS Chapter 197. The review shall be limited to portions of the city or county's comprehensive plan policies, designations, and land use regulation which vary from the provisions previously acknowledged by the Commission.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Incorporation of New Cities Within Acknowledged Urban Growth Boundaries

660-14-020 (1) Cities and counties shall ensure that decisions on incorporation of new cities within acknowledged urban growth boundaries are consistent with the provisions of acknowledged city and county comprehensive plans and land use regulations applicable to the area proposed for incorporation.

(2) A city or county may use findings made in other land use decisions on the proposed incorporation. However, the use of such findings does not remove the city or county's responsibility to ensure that the incorporation is consistent with the applicable comprehensive plan and land use regulations.

(3) In its review and decision on a proposed incorporation, an affected city or county shall adopt findings of fact which demonstrate that the proposed incorporation is consistent with relevant provisions of acknowledged comprehensive plans and land use regulations. This includes adopted plans of special districts for providing public facilities or services in the area proposed for incorporation which have been coordinated and are consistent with the acknowledged plan and implementing measures under ORS 197.185. To approve the proposed incorporation, these findings of fact shall demonstrate that:

(a) The types and levels of public facilities proposed for the new city are consistent with those set forth in the acknowledged plan and adequate to serve urban development planned for the area in the acknowledged comprehensive plan; and

(b) The extent and location of the area proposed for incorporation will not interfere with implementation of acknowledged plan provisions for the timely, orderly and efficient provision of public facilities and services to other areas within the urban growth boundary.

(4) An order of a local government boundary commission adopted in compliance with ORS 199.410, 199.461 and 199.462 is equivalent to the application of standards listed in section (3) of this rule.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Incorporation of New Cities on Rural Lands Irrevocably Committed to Urban Levels of Development

660-14-030 (1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement

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similar regulations) and are not subject to the administrative procedures or review or appeal provisions of ORS Chapter 197, or OAR 660 Division 18.

(4) Land use amendments are those modifications or amendments to the list, location or provider of, public facility projects, which significantly impact a public facility project identified in the comprehensive plan and which do not qualify under 660-11-045 (3)(a) or (b). Amendments made pursuant to this subsection are subject to the administrative procedures and review and appeal provisions accorded "land use decisions" in ORS Chapter 197 and those set forth in OAR 660 Division 18.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1984, f. & ef. 10-18-84

Standards for Review by the Department

660-11-050 The Department of Land Conservation and Development shall evaluate the following, as further defined in this division, when reviewing public facility plans submitted under this division:

- (1) Those items as specified in OAR 660-11-010(1);
- (2) Whether the plan contains a copy of all agreements required under OAR 660-11-010 and 660-11-015; and
- (3) Whether the public facility plan is consistent with the acknowledged comprehensive plan.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 4-1984, f. & ef. 10-18-84

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DIVISION 15

**STATE-WIDE PLANNING GOALS
AND GUIDELINES**

State-Wide Planning Goals and Guidelines #1 Through #14

- 660-15-000 (1) #1 — Citizen Involvement;**
(2) #2 — Land Use Planning;
(3) #3 — Agricultural Lands;
(4) #4 — Forest Lands;
(5) #5 — Open Spaces, Scenic and Historic Areas, and Natural Resources;
(6) #6 — Air, Water, and Land Resources Quality;
(7) #7 — Areas Subject to Natural Disasters and Hazards;
(8) #8 — Recreational Needs;
(9) #9 — Economy of the State;
(10) #10 — Housing;
(11) #11 — Public Facilities and Services;
(12) #12 — Transportation;
(13) #13 — Energy Conservation; and
(14) #14 — Urbanization.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch.

Hist: LCDC 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-10-060; LCDC 6-1980, f. & ef. 9-15-80; LCDC 10-1983, f. & ef. 12-30-83

State-Wide Planning Goal and Guideline #15
660-15-005 #15 — Willamette Greenway.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch.

Hist: LCDC 6, f. & ef. 12-24-75; LCDC 8-1980, f. & ef. 12-17-80

State-Wide Planning Goals and Guidelines #16 Through #19

660-15-010 Coastal State-Wide Planning Goals:

- (1) #16 — Estuarine Resources;**
(2) #17 — Coastal Shorelands;
(3) #18 — Beaches and Dunes; and
(4) #19 — Ocean Resources.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 197

Hist: LCDC 10, f. & ef. 6-7-77

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prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-04-020(2) need not be addressed.

(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site proposed for incorporation. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed for incorporation must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

- (a) Size and extent of commercial and industrial uses;
- (b) Location, number and density of residential dwellings;
- (c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and
- (d) Parcel sizes and ownership patterns.

(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

(5) Larger parcels or ownerships on the periphery of an area committed to urban densities may only be considered committed to urban development and included in the area proposed for incorporation if findings of fact demonstrate:

- (a) Urban levels of facilities are currently provided to the parcel; and
- (b) The parcel is irrevocably committed to nonresource use or is not resource land; and
- (c) The parcel can reasonably be developed for urban density uses considering topography, natural hazards or other constraints on site development.

(6) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be if the land is currently built upon at urban densities. Land which cannot be shown to be built to urban densities or committed to urban development may not be included within the area proposed for incorporation, except as provided for in OAR 660-14-040.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Incorporation of New Cities on Undeveloped Rural Lands

660-14-040 (1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4, but *not* developed at urban density or committed to urban level development.

(2) A county can justify an exception to Goal 14 to allow incorporation of a new city or establishment of new urban development on undeveloped rural land. Reasons which can justify why the policies in Goals 3, 4, 11, and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity which is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under this rule, a county must also show:

(a) That Goal 2, Part II(c)(1) and (c)(2) are met by showing the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development at existing rural centers;

(b) That Goal 2, Part II(c)(3) is met by showing the long-term environmental, economic, social and energy consequences resulting from urban development 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 on other undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II(c)(4) is met by showing the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services, and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner;

(e) That incorporation of a new city or establishment or new urban development of undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for incorporation.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 5-1983(Temp), f. & ef. 7-20-83; LCDC 11-1983, f. & ef. 12-30-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Application of OAR 660-14-010 to OAR 660-14-040

660-14-050 [LCDC 5-1983(Temp), f. & ef. 7-20-83; Repealed by LCDC 11-1983, f. & ef. 12-30-83]

OREGON ADMINISTRATIVE RULES
CHAPTER 660, DIVISION 16 — LAND CONSERVATION AND DEVELOPMENT COMMISSION

DIVISION 16

**REQUIREMENTS AND APPLICATION
 PROCEDURES FOR COMPLYING WITH
 STATEWIDE GOAL 5**

Inventory Goal 5 Resources

660-16-000 (1) The inventory process for Statewide Planning Goal 5 begins with the collection of available data from as many sources as possible including experts in the field, local citizens and landowners. The local government then analyzes and refines the data and determines whether there is sufficient information on the location, quality and quantity of each resource site to properly complete the Goal 5 process. This analysis also includes whether a particular natural area is "ecologically and scientifically significant", or an open space area is "needed", or a scenic area is "outstanding", as outlined in the Goal. Based on the evidence and local government's analysis of those data, the local government then determines which resource sites are of significance and includes those sites on the final plan inventory.

(2) A "valid" inventory of a Goal 5 resource under subsection (5)(c) of this rule must include a determination of the location, quality, and quantity of each of the resource sites. Some Goal 5 resources (e.g., natural areas, historic sites, mineral and aggregate sites, scenic waterways) are more site-specific than others (e.g., groundwater, energy sources). For site-specific resources, determination of *location* must include a description or map of the boundaries of the resource site and of the impact area to be affected, if different. For non-site-specific resources, determination must be as specific as possible.

(3) The determination of *quality* requires some consideration of the resource site's relative value, as compared to other examples of the same resource in at least the jurisdiction itself. A determination of *quantity* requires consideration of the relative abundance of the resource (of any given quality). The level of detail that is provided will depend on how much information is available or "obtainable".

(4) The inventory completed at the local level, including options (5)(a), (b), and (c) of this rule, will be adequate for Goal compliance unless it can be shown to be based on inaccurate data, or does not adequately address location, quality or quantity. The issue of adequacy may be raised by the Department or objectors, but final determination is made by the Commission.

(5) Based on data collected, analyzed and refined by the local government, as outlined above, a jurisdiction has three basic options:

(a) **Do Not Include on Inventory:** Based on information that is available on location, quality and quantity, the local government might determine that a particular resource site is not important enough to warrant inclusion on the plan inventory, or is not required to be included in the inventory based on the specific Goal standards. No further action need be taken with regard to these sites. The local government is not required to justify in its comprehensive plan a decision not to include a particular site in the plan inventory unless challenged by the Department, objectors or the Commission based upon contradictory information.

(b) **Delay Goal 5 Process:** When some information is available, indicating the possible existence of a resource site, but that information is not adequate to identify with particularity the location, quality and quantity of the resource site, the local government should only include the site on the comprehensive plan inventory as a special category. The local government must express its intent relative to the resource site through a plan policy to address that resource site and proceed

through the Goal 5 process in the future. The plan should include a time-frame for this review. Special implementing measures are not appropriate or required for Goal 5 compliance purposes until adequate information is available to enable further review and adoption of such measures. The statement in the plan commits the local government to address the resource site through the Goal 5 process in the post-acknowledgment period. Such future actions could require a plan amendment.

(c) **Include on Plan Inventory:** When information is available on location, quality and quantity, and the local government has determined a site to be significant or important as a result of the data collection and analysis process, the local government must include the site on its plan inventory and indicate the location, quality and quantity of the resource site (see above). Items included on this inventory must proceed through the remainder of the Goal 5 process.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Identify Conflicting Uses

660-16-005 It is the responsibility of local government to identify conflicts with inventoried Goal 5 resource sites. This is done primarily by examining the uses allowed in broad zoning districts established by the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:

(1) **Preserve the Resource Site:** If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which insure preservation of the resource site.

(2) **Determine the Economic, Social, Environmental, and Energy Consequences:** If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. A determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Develop Program to Achieve the Goal

660-16-010 Based on the determination of the economic, social, environmental and energy consequences, a jurisdiction must "develop a program to achieve the Goal". Assuming there is adequate information on the location, quality, and quantity of the resource site as well as on the nature of the conflicting use and ESEE consequences, a jurisdiction is expected to "resolve" conflicts with specific sites in any of the following three ways listed below. Compliance with Goal 5 shall also be based on the plan's overall ability to protect and

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standards as they existed prior to adoption of OAR 660-16-000 through 660-16-025.

(3) Jurisdictions which receive acknowledgment of compliance (as outlined in ORS 197.251) at the April 30/May 1, 1981 Commission meeting will not be subject to review procedures outlined above, but will be treated as other previously acknowledged jurisdictions.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

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conserve each Goal 5 resource. The issue of adequacy of the overall program adopted or of decisions made under sections (1), (2) and (3) of this rule may be raised by the Department or objectors, but final determination is made by the Commission, pursuant to usual procedures:

(1) **Protect the Resource Site:** Based on the analysis of the ESEE consequences, a jurisdiction may determine that the resource site is of such importance, relative to the conflicting uses, and the ESEE consequences of allowing conflicting uses are so great that the resource site should be protected and all conflicting uses prohibited on the site and possibly within the impact area identified in OAR 660-16-000(5)(c). Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(2) **Allow Conflicting Uses Fully:** Based on the analysis of ESEE consequences and other Statewide Goals, a jurisdiction may determine that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. This approach may be used when the conflicting use for a particular site is of sufficient importance, relative to the resource site. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

(3) **Limit Conflicting Uses:** Based on the analysis of ESEE consequences, a jurisdiction may determine that both the resource site and the conflicting use are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting use but in a limited way so as to protect the resource site to some desired extent. To implement this decision, the jurisdiction must designate with certainty what uses and activities are allowed fully, what uses and activities are not allowed at all and which uses are allowed conditionally, and what specific standards or limitations are placed on the permitted and conditional uses and activities for each resource site. Whatever mechanisms are used, they must be specific enough so that affected property owners are able to determine what uses and activities are allowed, not allowed, or allowed conditionally and under what clear and objective conditions or standards. Reasons which support this decision must be presented in the comprehensive plan, and plan and zone designations must be consistent with this decision.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Post-Acknowledgment Period

660-16-015 All data, findings, and decisions made by a local government prior to acknowledgment may be reviewed by that local government in its periodic update process. This includes decisions made as a result of OAR 660-16-000(5)(a), 660-16-005(1), and 660-16-010. Any changes, additions, or deletions would be made as a plan amendment, again following all Goal 5 steps.

If the local government has included in its plan items under OAR 660-16-000(5)(b), the local government has committed itself to take certain actions within a certain time frame in the post-acknowledgment period. Within those stated time frames, the local government must address the issue as stated in its plan, and treat the action as a plan amendment.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the

Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Landowner Involvement

660-16-020 (1) The development of inventory data, identification of conflicting uses and adoption of implementing measures must, under Statewide Planning Goals 1 and 2, provide opportunities for citizen involvement and agency coordination. In addition, the adoption of regulations or plan provisions carries with it basic legal notice requirements. (County or city legal counsel can advise the planning department and governing body of these requirements.) Depending upon the type of action involved, the form and method of landowner notification will vary. State statutes and local charter provisions contain basic notice requirements. Because of the nature of the Goal 5 process as outlined in this paper it is important to provide for notification and involvement of landowners, including public agencies, at the earliest possible opportunity. This will likely avoid problems or disagreements later in the process and improve the local decision-making process in the development of the plan and implementing measures.

(2) As the Goal 5 process progresses and more specificity about the nature of resources, identified conflicting uses, ESEE consequences and implementing measures is known, notice and involvement of affected parties will become more meaningful. Such notice and landowner involvement, although not identified as a Goal 5 requirement is in the opinion of the Commission, imperative.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 5-1981(Temp), f. & ef. 5-8-81; LCD 7-1981, f. & ef. 6-29-81

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Policy Application

660-16-025 OAR 660-16-000 through 660-16-025 are applicable to jurisdictions as specified below:

(1) **Category 1:** Compliance with OAR 660-16-000 through 660-16-025 is required prior to granting acknowledgment of compliance under ORS 197.251 and OAR 660-03-000 through 660-03-040 for those jurisdictions which:

(a) Have not submitted their comprehensive plan for acknowledgment as of the date of adoption of this rule;

(b) Are under denial orders as of the date of adoption of this rule;

(c) Are not scheduled for review prior to or at the June 1981 Commission meeting.

(2) **Category 2:**

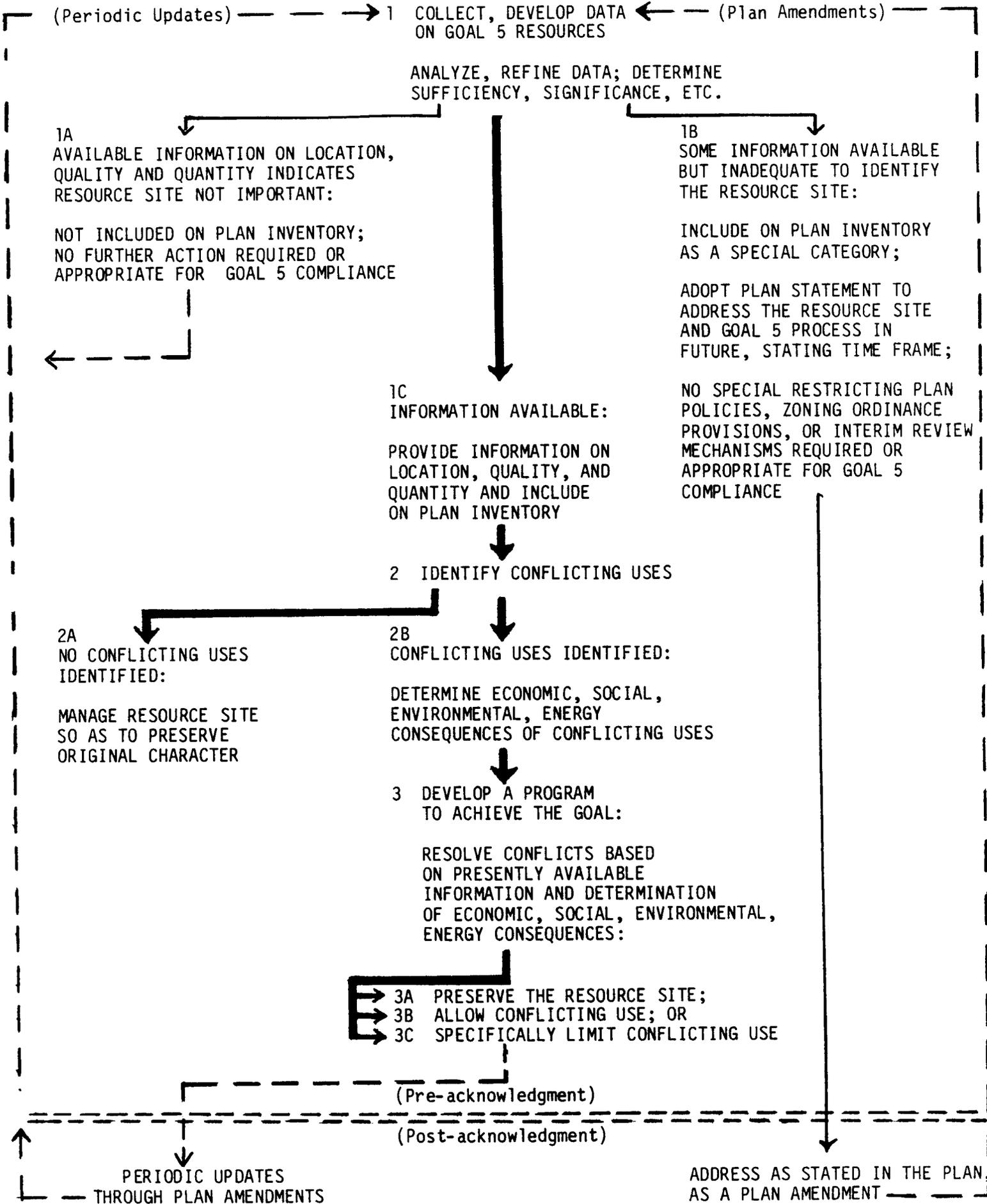
(a) Compliance with OAR 660-16-000 through 660-16-025 is required as outlined below for those jurisdictions which:

(A) Are under continuance orders adopted pursuant to OAR 660-03-040;

(B) Are scheduled for review at the April 30/May 1, May 29 or June 1981 Commission meetings.

(b) For these jurisdictions a notice will be given to all parties on the original notice list providing a 45-day period to object to the plan based on OAR 660-16-000 through 660-16-025.

(c) OAR 660-16-000 will be applied based on objections alleging violations of specific provisions of the rule on specific resource sites. Objections must be filed following requirements outlined in OAR 660-03-000 through 660-03-040 (Acknowledgment of Compliance Rule). Where no objections are filed or objections are not specific as to which elements of OAR 660-16-000 through 660-16-025 have been violated, and on what resource sites, the plan will be reviewed against Goal 5



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DIVISION 17

CLASSIFYING OREGON ESTUARIES

Purpose

660-17-000 (1) This rule carries out requirements of the Estuarine Resources Goal (State-Wide Planning Goal and Guideline #16). To assure diversity among the estuaries of the state, the Estuarine Resources Goal requires in part that LCDC, with the cooperation and participation of local governments, special districts, and state and federal agencies shall classify the Oregon estuaries to specify the most intensive level of development or alteration allowable within each estuary. This rule is adopted pursuant to ORS 197.040(1)(b). (See Appendix A.)

(2) The estuarine classification system adopted by this rule:

- (a) Specifies the most intensive level of development or alteration allowable within each estuary;
- (b) Directs the kinds of management units appropriate and allowable in each estuary;
- (c) Affects the extent of detail required and items inventoried for each estuary;
- (d) Affects the issuance of and conditions attached to permits by state and federal agencies;
- (e) Provides guidance for the dispersal of state and federal public works funds; and
- (f) Indirectly affects decisions concerning private investment in and around estuaries.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 197
Hist: LCD 12, f. & ef. 10-14-77

Definitions

660-17-005 As used in this rule, unless the context requires otherwise:

- (1) "Alteration" means any man-caused change in the environment, including physical, topographic, hydraulic, biological, or other similar environmental changes, or changes which affect water quality.
- (2) "Altered shorelines" include shorelines with bulkheads, seawalls, riprap, or other physical structures, but do not include earthen, vegetated dikes.
- (3) "Commission" means the Oregon Land Conservation and Development Commission.
- (4) "Design Depth" means the channel depth authorized by Congress and maintained by the U.S. Army Corps of Engineers. The actual maintained depth of a channel may exceed the design or authorized depth because of:
 - (a) The limits of dredging precision which causes "over-depth", and
 - (b) The practice, where approved by the Corps of Engineers, of "advanced maintenance" overdredging which designates the amount of extra depth to be dredged to insure clear project depths for the time period between maintenance operations.
- (5) "Entrance Channel" means that portion of the waterway exposed to wave surge from the open sea and which provides protected access or opening to the main channel, as authorized by the Corps of Engineers.
- (6) "Estuary" means a body of water semi-enclosed by land, connected with the open ocean, and within which salt water is usually diluted by freshwater derived from land. The estuary includes estuarine water, tidelands, tidal marshes, and submerged lands. Estuaries extend upstream to the head of tidewater, except for the Columbia River estuary, which, by

definition, is considered to extend to the western edge of Puget Island.

(7) "Jetty" means a structure extending seaward from the mouth of a river designed to stabilize the river mouth by preventing the build up of material at the river's mouth, and to direct or confine the stream or tidal flow.

(8) "Main Channel" means that part of a waterway which extends upstream from the entrance channel into the estuary proper (also called "inner channel"). All or segments of the main channel may be maintained by dredging. The main channel does not include auxiliary channels or waterways.

(9) "Maintained Channels and Jetties" are only those channels or jetties authorized by Congress and which are periodically rehabilitated to deepen or stabilize the watercourse.

Stat. Auth.: ORS Ch. 197
Hist: LCD 12, f. & ef. 10-14-77

Classification System

660-17-010 There are four different types of estuaries. These are defined as:

(1) "Natural estuaries": Estuaries lacking maintained jetties or channels, and which are usually little developed for residential, commercial, or industrial uses. They may have altered shorelines, provided that these altered shorelines are not adjacent to an urban area. Shorelands around natural estuaries are generally used for agricultural, forest, recreation, and other rural uses.

(2) "Conservation estuaries": Estuaries lacking maintained jetties or channels, but which are within or adjacent to urban areas which have altered shorelines adjacent to the estuary.

(3) "Shallow-draft development estuaries": Estuaries with maintained jetties and a main channel (not entrance channel) maintained by dredging at 22 feet or less, except Nehalem Bay, which now has only authorized jetties and no authorized or maintained channel.

(4) "Deep-draft development estuaries": Estuaries with maintained jetties and a main channel maintained by dredging at deeper than 22 feet.

Stat. Auth.: ORS Ch. 197
Hist: LCD 12, f. & ef. 10-14-77; LCD 3-1981, f. & ef. 3-4-81

Major Estuary Classification

660-17-015 Twenty-one of the twenty-two major Oregon estuaries are classed in the following manner:

(1) Natural Estuaries include Sand Lake, Salmon River, Elk River (Curry County), Sixes River, and Pistol River.

(2) Conservation Estuaries include Necanicum River, Netarts Bay, Nestucca River, Siletz Bay, Alsea Bay, and Winchuck River.

(3) Shallow-draft Development Estuaries include Tillamook Bay, Nehalem Bay, Depoe Bay, Siuslaw River, Umpqua River, Coquille River, Rogue River, and Chetco River.

(4) Deep-draft Development Estuaries include Columbia River, Yaquina Bay, and Coos Bay.

Stat. Auth.: ORS Ch. 197
Hist: LCD 12, f. & ef. 10-14-77; LCD 3-1981, f. & ef. 3-4-81

Minor Estuary Classification

660-17-020 Minor estuaries, including tidal streams which have estuarine features, are not classified at this time. Minor estuaries shall be identified and classed as either natural estuaries or conservation estuaries during the development of local comprehensive plans.

Stat. Auth.: ORS Ch. 197
Hist: LCD 12, f. & ef. 10-14-77

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DIVISION 18

**PLAN AND LAND USE REGULATION
 AMENDMENT REVIEW RULE**

Purpose

660-18-005 This administrative rule is intended to implement provisions of ORS 197.610 through 197.625. The overall purpose is to carry out the state policy outlined in ORS 197.010.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Definitions

660-18-010 For the purpose of this rule, the definitions contained in ORS 197.015 shall apply. In addition, the following definitions apply:

(1) "Acknowledgement" means a Commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the Goals.

(2) "Filing" or "Submitted" shall mean that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon office.

(3) "Final Decision" as described in OAR 660-18-040 and 660-18-050 shall be the approval or approval as modified, by the local government, of a proposed amendment to or adoption of a comprehensive plan or land use regulation. A denial of a proposed amendment by the local government shall not be considered a "Final Decision" and therefore is not subject to review under this administrative rule. The date of the "Final Decision" as described in OAR 660-18-040 shall be the date on which the local government takes final action on the amendment to or adoption of a comprehensive plan or land use regulation. In order to be deemed final, the local government action must include the adoption of all supplementary findings and data. In addition, the date of final action shall be the day following exhaustion of all appeal rights before local government.

(4) "Final Hearing on Adoption" as described in OAR 660-18-020 and 660-18-030 shall be the last hearing where all interested persons are allowed to present evidence and rebut testimony on the proposal to adopt or amend a comprehensive plan or land use regulation. "Final Hearing on Adoption" shall not include a hearing held solely on the record of a previous hearing held by the governing body or its designated hearing body. If a final hearing on adoption is continued or delayed, following proper procedures, the local government is not required to submit a new notice under OAR 660-18-020.

(5) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing 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 the 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.

(6) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan. "Land use regulation" does not include small tract zoning map amendments, conditional use permits, individual subdivision, partitioning or planned unit development approvals or denials, annexations, variances, building permits and similar administrative-type decisions.

(7) "New land use regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land use regulations acknowledged under ORS 197.251.

(8) "Substantially Amended" as used in OAR 660-18-045 shall mean any change in text which differs from the proposal submitted under OAR 660-18-020 to such a degree that the notice under OAR 660-18-020 did not reasonably describe the nature of the local government final action.

(9) "Commission" means the Land Conservation and Development Commission.

(10) "Department" means the Department of Land Conservation and Development.

(11) "Director" means the Director of the Department of Land Conservation and Development or the designee thereof.

(12) "Goals" mean the mandatory state-wide planning standards adopted by the Commission pursuant to ORS 197.005 to 197.430 and 197.610 to 197.650.

(13) "Local government" means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(14) "Computation of time", means unless otherwise provided in this rule, the time within which an act is to be done is computed by excluding the first day and including the last unless the last day falls upon any legal holiday or on Saturday, in which case the last day is also excluded.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Filing of a Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation with the Director

660-18-020 A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be submitted to the Director at least 45 days before the final hearing on adoption. The proposal submitted shall be accompanied by appropriate forms provided by the Department and shall contain three copies of the text and any supplemental information the local government believes is necessary to inform the Director as to the effect of the proposal. The submittal shall indicate the date of the final hearing on adoption. The Commission urges the local government to submit information that explains the relationship of the proposal to the acknowledged plan and the Goals, where applicable.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Exemptions to Filing Requirements Under OAR 660-18-020

660-18-022 (1) A local government is not required to submit a proposed amendment to the Director under OAR 660-18-020 when the local government determines that the Goals do not apply to a particular proposed amendment or new regulation.

(2) A local government may provide less than 45 days notice as required in OAR 660-18-020 when the local govern-

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Level of Development or Alteration

660-17-025 No development or alteration shall be more intensive than that specified in the Estuarine Resources Goal as permissible uses for comparable management units:

(1)(a) Natural estuaries shall be managed to preserve the natural resources and the dynamic natural processes. Those uses which would change, alter, or destroy the natural resources and natural processes are not permitted. Natural estuaries shall only be used for undeveloped, low intensity, water-dependent recreation; and navigation aids such as beacons and buoys; protection of habitat, nutrient, fish, wildlife, and aesthetic resources; passive restoration measures, and where consistent with the resource capabilities of the area and the purposes of maintaining natural estuaries, aquaculture; communication facilities; placement of low water bridges and active restoration measures. Existing man-made features may be retained, maintained, and protected where they occur in a natural estuary. Activities and uses, such as waste discharge and structural changes, are prohibited. Riprap is not an allowable use, except that it may be allowed to a very limited extent where necessary for erosion control to protect:

(A) Uses existing as of October 7, 1977;

(B) Unique natural resource and historical and archeological values, or;

(C) Public facilities; and where consistent with the natural management unit description in Goal #16 (and as deemed appropriate by the permitting agency).

(b) Natural estuaries shall contain only natural management units, as provided in the Estuarine Resource Goal.

(2) Conservation estuaries shall be managed for long-term uses of renewable resources that do not require major alterations of the estuary. Permissible uses in conservation management units shall be those allowed in section (1) of this rule; active restoration measures; aquaculture; and communication facilities. Where consistent with resource capabilities of the management unit and the purposes of maintaining conservation management units, high-intensity water-dependent recreation; maintenance dredging of existing facilities; minor navigational improvements; mining and mineral extraction; water dependent uses requiring occupation of water surface area by means other than fill; bridge crossings; and riprap shall also be appropriate. Conservation estuaries may have shorelines within urban or developed areas. Dredged marinas and boat basins without jetties or channels are appropriate in conserva-

tion estuaries. Waste discharge meeting state and federal water quality standards would be acceptable. Maintained jetties and channels shall not be allowed. Conservation estuaries shall have both conservation and natural management units, as provided in the Estuarine Resource Goal.

(3)(a) Both shallow and deep draft development estuaries shall be managed to provide for navigation and other identified needs for public, commercial, and industrial water-dependent uses consistent with overall Estuarine Resources Goal requirements. Where consistent with the development management unit requirements of the Estuarine Resources Goal, other appropriate uses include riprap and those uses listed as permissible uses in development management units in the Estuarine Resources Goal. Minor and major navigational improvements are allowed in both shallow-draft and deep-draft estuaries, consistent with the requirements of the Goal. However, in shallow-draft estuaries, extension or improvements in main channels shall not be designed to exceed 22 feet in depth. Information about the location, extent, and depth of channels and jetties including planned extensions, shall be developed during the local planning process and described in the comprehensive plan.

(b) Shallow and deep-draft development estuaries shall have natural, conservation, and development management units as provided in the Estuarine Resources Goal.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 12, f. & ef. 10-14-77; LCD 5-1979, f. & ef. 8-8-79

Revisions and Changes

660-17-030 (1) The Commission shall review the overall Oregon Estuary Classification at the request of any coastal jurisdiction after the inventories and initial planning efforts are completed for all estuaries. Initial planning efforts include the identification of needs, and of potential conflicts among needs and goals.

(2) Any change in the Oregon Estuary Classification must retain diversity among Oregon Estuaries.

(3) Requests for change should be addressed to the Director of the Department of Land Conservation and Development.

Stat. Auth.: ORS Ch. 197

Hist.: LCD 12, f. & ef. 10-14-77

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comprehensive plan or land use regulation or a new land use regulation to the Land Use Board of Appeals under ORS 197.830 to 197.845 when the local government does not provide the notice required by OAR 660-18-020 under exemptions contained in OAR 660-18-022.

NOTE: A decision not to adopt a legislative amendment or new land use regulation is not appealable.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Objections by Non-participating Parties

660-18-065 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Appeal by Director

660-18-070 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Appeal of Local Government Action Where Adopted Provision Differs from a Proposed Provision

660-18-075 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Dismissal of Appeal or Objection Where the Action is Consistent with the Acknowledged Plan

660-18-080 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Action Where No Appeal or Objection is Timely Filed

660-18-085 Upon receipt of an affidavit from the Land Use Board of Appeals certifying that no timely appeal has been filed or that a local decision has been affirmed, the Director shall certify that an action taken subject to this rule is acknowledged. If LUBA sustains a local government action, or no appeal is timely filed, a local action under this Division is considered acknowledged.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Notice Where an Appeal or Objection is Timely Filed

660-18-090 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Submittal of the Record

660-18-095 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Form and Content of the Record

660-18-100 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Notice to Objectors

660-18-105 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Referral to the Commission

660-18-110 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Director's Report

660-18-115 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Exceptions

660-18-120 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Commission Hearing

660-18-125 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Commission Review and Final Order

660-18-0130 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Director Communication With the Commission

660-18-132 [LCDC 4-1983(Temp), f. & ef. 6-23-83;
LCDC 7-1983, f. & ef. 7-20-83;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Disposition of Deposit

660-18-135 [LCDC 14-1981, f. & ef. 12-15-81;
Repealed by LCDC 12-1983, f. & ef. 12-29-83]

Fee for Notice

660-18-140 (1) An annual fee of \$50 to defray the costs of notice provided under OAR 660-18-025 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1982. The fee is payable in advance of any notice being provided under OAR 660-18-025. For each subsequent fiscal year, the Department shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-18-025.

(2) An annual fee of \$150 to defray the costs of notice provided under OAR 660-18-055 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1982. The fee is payable in advance of any notice being provided under OAR 660-18-055. For each subsequent fiscal year, the Department shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-18-055.

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

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ment determines there are emergency circumstances requiring expedited review.

Stat. Auth.: ORS Ch. 197
Hist: LCDC 12-1983, f. & ef. 12-29-83

Notice of Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation Sent to Those Requesting

660-18-025 Persons requesting notice of proposed amendments to acknowledged comprehensive plans or land use regulations or adoptions of new land use regulations who have paid the fee established under the provisions of OAR 660-18-140 shall be mailed a notice by the Department of the proposed action within 15 days of the receipt of notice from local government required by OAR 660-18-020.

Stat. Auth.: ORS Ch. 183 & 197
Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Report to Commission

660-18-030 The Director shall report the Department position on proposed comprehensive plan or land use regulation adoption or amendments to the Commission at least 20 days prior to the final hearing on adoption. This report shall indicate whether the Department will participate in local government proceedings and whether the Director believes the proposal violates the Goals.

Stat. Auth.: ORS Ch. 183 & 197
Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Department Participation

660-18-035 If the Department is participating in a local government proceeding for which notice was received under OAR 660-18-020, the Department shall notify the local government. The Department notification shall occur at least 15 days prior to the final hearing on adoption as specified in notice received under OAR 660-18-020 and shall indicate any concerns with the proposal and recommendations considered necessary to address the concerns including, but not limited to, suggested corrections to achieve compliance with the Goals.

Stat. Auth.: ORS Ch. 183 & 197
Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Submittal of Adopted Material

660-18-040 (1) Amendments to acknowledged comprehensive plans or land use regulations, new land use regulations adopted by local government and findings to support the adoption shall be mailed or otherwise submitted to the Director within five working days after the final decision by the governing body and shall be accompanied by appropriate forms provided by the Department. The date of the "Final Decision" as described in this rule shall be the date on which the local government takes final action on the amendment to or adoption of a comprehensive plan or land use regulation and must include the adoption of all supplementary findings and data. In addition, the date of final action shall be the day following exhaustion of all appeal rights before the local government.

(2) The local government shall clearly indicate in its transmittal which provisions of OAR 660-18-022 are applicable where the adopted amendment was not submitted for review 45 days prior to the final hearing on adoption.

(NOTE: ORS 197.610 clearly requires all adopted plan and land use regulation amendments and new land use regulations to be submitted to the Director even though they were not required to be submitted for review prior to adoption.)

(3) Where amendments, including supplementary materials exceed 100 pages, a summary of the amendment briefly

describing its purpose and requirements shall be submitted to the Director.

Stat. Auth.: ORS Ch. 183 & 197
Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Changes in Proposals

660-18-045 If comprehensive plan or land use regulation amendments or new land use regulations which are adopted by local government have been substantially amended the local government shall specify the changes that have been made in the notice to the Director provided in OAR 660-18-040.

Stat. Auth.: ORS Ch. 183 & 197
Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Notice to Other Parties

660-18-050 In addition to notice requirements in OAR 660-18-040, within five working days of the final decision by the governing body, local government shall send notice of the action to persons who participated in the proceedings leading to adoption and requested notice in writing. The notice required by these rules shall describe the action, state the date of the decision, indicate the time and place where the acknowledged comprehensive plan or land use regulation amendment or new land use regulation and findings can be reviewed. In addition, the notice shall indicate the requirements for appealing the local government action to the Land Use Board of Appeals.

Stat. Auth.: ORS Ch. 183 & 197
Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Notice of Local Government Action by the Director

660-18-055 (1) Within five working days of the receipt of notice under OAR 660-18-040, the Director shall provide notice by mail or other submittal to those who have requested notice under OAR 660-18-055 and have paid the fee established under the provisions of OAR 660-18-140. This notice shall explain the requirements for appealing the local government action to the Land Use Board of Appeals and indicate the locations where the adopted documents may be reviewed.

(2) Notwithstanding section (1) of this rule, the Director shall provide notice by mail or other submittal to persons described in section (1) of this rule within five calendar days of the receipt of notice under OAR 660-18-040 of amendments made pursuant to OAR 660-18-022.

Stat. Auth.: ORS Ch. 183 & 197
Hist: LCDC 14-1981, f. & ef. 12-15-81; LCDC 12-1983, f. & ef. 12-29-83

Who May Appeal

660-18-060 (1) Persons who participated either orally or in writing in the local government proceedings leading to adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845.

(2) The director or any other person may file an appeal of the local government's decision to the Land Use Board of Appeals under ORS 197.830 to 197.845 if an amendment to a comprehensive plan or land use regulation or a new land use regulation differs from the proposal and notice submitted under OAR 660-18-020 to such a degree that the notice did not reasonably describe the nature of the local government final action.

(3) The director or any person may appeal a local government decision to adopt an amendment to an acknowledged

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DIVISION 19

PERIODIC REVIEW

Purpose

660-19-000 The overall purpose of this division is to carry out the state policy outlined in ORS 197.010. This division is intended to implement provisions of ORS 197.640 through 197.649. The purpose for the Commission's periodic review of each local government's comprehensive plan and land use regulations is to insure that they are in compliance with the Statewide Planning Goals and are coordinated with the plans and programs of state agencies.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1982, f. & ef. 10-20-82; LCDC 7-1984, f. & ef. 11-30-84

Definitions

660-19-005 For the purposes of this division, the definitions contained in ORS 197.015 and the following definitions, shall apply:

(1) "Acknowledgment" means a Commission order that certifies that a comprehensive plan and land use regulations or plan or regulation amendment complies with the Goals.

(2) "Filed" or "Submitted" means that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon, office.

(3) "Final Decision" as described in OAR 660-19-070 and 660-19-080 means the approval or approval as modified, by the local government, of its final local periodic review order, including supporting findings and any amendments to the comprehensive plan or land use regulations. A "Final Decision" occurs when the local government's decision has been reduced to writing bearing the signatures of the governing body or its designee. The date of the "Final Decision" shall be the day following exhaustion of all appeal rights before the local government.

(4) "Final Hearing on Adoption" as described in OAR 660-19-060, 660-19-065 and 660-19-070 means the last hearing where all interested persons are allowed to present evidence and rebut testimony on the local government's proposed review order, including the proposed adoption of supporting findings and any amendments to the comprehensive plan or land use regulations. "Final Hearing" shall not include a hearing held solely on the record of a previous hearing held by the governing body or its designated hearing body. If a final hearing on adoption is continued or delayed, following proper procedures, the local government is not required to submit a new proposed review order under OAR 660-19-060.

(5) "Land Use Regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan. "Land Use Regulation" does not include small tract zoning map amendments, conditional use permits, individual subdivision, partitioning or planned unit development approvals or denials, annexations, variances, building permits and similar administrative-type decisions.

(6) "New Land Use Regulation" means a land use regulation other than an amendment to an acknowledged

land use regulation adopted by a local government that already has a comprehensive plan and land use regulations acknowledged under ORS 197.251.

(7) "Substantially Amended" as used in OAR 660-19-080 means any change in text which differs from the proposal submitted under OAR 660-19-060 and 660-19-065 and which did not reasonably describe the local government's final decision.

(8) "Commission" means the State Land Conservation and Development Commission.

(9) "Department" means the Department of Land Conservation and Development.

(10) "Director" means the Director of the Department of Land Conservation and Development.

(11) "Goals" means the mandatory statewide planning standards adopted by the Commission pursuant to ORS 197.005 to 197.850.

(12) "Local Government" means any city, county, or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(13) "Periodic Review Schedule" as described in OAR 660-19-045 and 660-19-050 is an overall schedule approved by the Commission listing the date when each local government shall submit its proposed local review order to the Department.

(14) "Periodic Review Notice" as described in OAR 660-19-050 is the notice sent by the Director to each local government which informs the jurisdiction of its obligation to conduct periodic review, the date for submittal of its proposed review order, and the items to be addressed under the periodic review factors.

(15) "Periodic Review Factors" as described in OAR 660-19-055 and 660-19-060 are the four standards from ORS 197.640(3) utilized by local government and other persons to determine if the local plan and land use regulations remain in compliance with the Goals and coordinated with state agency plans and programs.

(16) "Proposed Local Review Order" as described in OAR 660-19-060 and 660-19-065 is a draft order, findings, and any suggested plan and land use regulation amendments prepared by local government based upon its preliminary determination of the applicability of each of the periodic review factors.

(17) "Final Local Review Order" as described in OAR 660-19-070, 660-19-075, 660-19-080, 660-19-085, and 660-19-090 is the local government's final determination on the applicability of each of the periodic review factors, including adopted findings and any adopted amendments to the plan and land use regulations.

(18) "Director Termination Order" as described in OAR 660-19-085 is an order issued by the Director finding that the local government's final local review order has adequately addressed the periodic review factors and the Director has determined the following for each factor:

(a) The factor does not apply; or
 (b) The factor applies, and the adopted amendment of the local government's plan or land use regulation satisfies the applicable factor.

(19) "Commission Review Order" as described in OAR 660-19-090 is an order issued by the Commission adopting findings for each periodic review factor which:

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is reasonable and logical and avoids serious conflicts with the annual planning work programs of local governments.

(5) The Director shall mail the schedule to each local government and affected state agency and provide copies to other persons upon request. The Director shall ensure the timely distribution and availability of the periodic review schedule to provide maximum notice of when periodic reviews will occur.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 7-1984, f. & ef. 11-30-84

Periodic Review Notice

660-19-050 (1) Not later than 180 days before the date established by the Commission in the periodic review schedule explained in OAR 660-19-045, the Director shall prepare and send to each local government its periodic review notice. The purpose of this notice is to inform each local government of its responsibility to conduct a periodic review of its comprehensive plan and land use regulations, the date the jurisdiction's proposed local review order must be submitted to the Director and the listing of items the local periodic review must address under the periodic review factors pursuant to OAR 660-19-055.

(2) The periodic review notice sent to each local government shall contain the following information:

(a) A description or copies of the required items to be addressed by the jurisdiction as listed in OAR 660-19-055(3) - (7); and

(b) A copy of the Periodic Review Administrative Rule (OAR Chapter 660, Division 19).

(3) In addition to the items in subsections (2)(a) and (b) of this rule, the Director may also make available copies of the following:

(a) Procedures or instructions developed to assist local officials, staffs and citizens on how to conduct the local periodic review; and

(b) Sample formats, examples of local findings and orders, or other technical materials produced by the Director to aid local governments.

(4) Prior to issuance of the notice, the Director shall consult with affected local governments and state agencies to afford them an opportunity to review and comment on the required items listed in subsection (2)(a) of this rule.

(5) The Director, consistent with the periodic review schedule under 660-19-045, shall, when possible, issue the local government's periodic review notice in advance of the 180-day period to afford the jurisdiction maximum opportunity to address the items referenced in subsections (2)(a) and (b) of this rule.

(6) Once the 180-day period has begun, the periodic review notice shall be final and cannot be modified or supplemented by the Director without prior notice to the local government and any affected state agencies. If the notice is so modified, the date on the periodic review schedule for submittal of the local government's proposed local review order shall be adjusted accordingly by the Director.

(7) The Director shall provide copies of the periodic review notices to interested persons upon written request. Such request shall specify what local government notices are desired.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84

Periodic Review Factors

660-19-055 (1) Each local government, pursuant to ORS 197.640(3) and the periodic review notice issued under OAR 660-19-050(1) and (2), shall adopt findings stating whether any of the four periodic review factors apply and take steps as are necessary to bring the local plan and land use regulations into compliance with the Goals or make them consistent with state agency plans and programs.

(2) The four factors cited in ORS 197.640(3)(a) - (d) are as follows:

(a) There has been a substantial change in circumstances, including, but not limited to, the conditions, findings, or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the Goals;

(b) Previously acknowledged provisions of the comprehensive plan or land use regulations do not comply with the Goals because of Goals subsequently adopted or statewide land use policies adopted as rules interpreting Goals under ORS 197.040;

(c) The comprehensive plan or land use regulations are inconsistent with a state agency plan or program relating to land use that was not in effect at the time the local government's comprehensive plan was acknowledged, and the agency has demonstrated that the plan or program:

(A) Is mandated by state statute or federal law;

(B) Is consistent with the Goals; and

(C) Has objectives that cannot be achieved in a manner consistent with the comprehensive plan or land use regulations; or

(d) The city or county has not performed additional planning that:

(A) Was required in the comprehensive plan or land use regulations at the time of initial acknowledgment or that was agreed to by the city or county in the receipt of state grant funds for review and update; and

(B) Is necessary to make the comprehensive plan or land use regulations comply with the Goals.

(3) To determine whether the "substantial change in circumstances" factor set forth in subsection (2)(a) of this rule does or does not apply, each local government's periodic review order must contain findings on the following:

(a) Major developments or events which have occurred that the acknowledged plan did not assume or anticipate or major developments or events which have not occurred that the acknowledged plan did assume or anticipate. Local periodic review findings must describe any occurrences such as the construction of or decision not to build a large project like a major reservoir, a regional shopping center, a major energy or transportation facility; a significant change in the local government's natural resources or economic base; significant unexpected population growth; significant consecutive decline in population growth rate; failure or inability to provide public facilities and services in accordance with the plan, etc.

(b) Cumulative effects resulting from plan and land use regulation amendments and implementation actions on the acknowledged plan's factual base, map designations, and policies which relate to statewide Goal requirements:

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(a) Supports the local government's determination in its final local review order that the factor does not apply; or

(b) Supports the local government's determination in its final local review order that the factor does apply, that any amendments to the plan or land use regulation satisfy the applicable factor and that the plan and land use regulations remain in compliance with the Statewide Goals and coordinated with the state agency plans and programs; or

(c) Does not support the local government's final local review order's findings and conclusions on the factor and requires that the plan or land use regulations be amended to satisfy the applicable factor to remain in compliance with the Statewide Goals and coordinated with state agency plans and programs.

(20) "Plan or Program Mandated by State Statute or Federal Law" as described in OAR 660-19-055 means a plan or program relating to land use which a state agency is required by state statute or federal law to adopt or carry out. The statute or law mandating a plan or program may be specific or general in its terms and the alternatives available to the agency under the statute or law to pursue the plan or program may be narrowly or broadly stated.

(21) "Implementation Actions" as described in OAR 660-19-055 refers to land use actions taken by the local government to implement and administer the comprehensive plan and land use regulations and which do not require the adoption of an amendment to the plan or land use regulations.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1982, f. & ef. 10-20-82; LCDC 7-1984, f. & ef. 11-30-84

660-19-010 [Renumbered to 660-19-060]

Review Criteria for Commission Periodic Review

660-19-015 [LCDC 9-1982, f. & ef. 10-20-82;
Repealed by LCDC 7-1984, f. & ef.
11-30-84]

Notice of Commission Periodic Review

660-19-020 [LCDC 9-1982, f. & ef. 10-20-82;
Repealed by LCDC 7-1984, f. & ef.
11-30-84]

Comments and Objections

660-19-025 [LCDC 9-1982, f. & ef. 10-20-82;
Repealed by LCDC 7-1984, f. & ef.
11-30-84]

Director's Report

660-19-030 [LCDC 9-1982, f. & ef. 10-20-82;
Repealed by LCDC 7-1984, f. & ef.
11-30-84]

Exceptions to the Director's Report

660-19-035 [LCDC 9-1982, f. & ef. 10-20-82;
Repealed by LCDC 7-1984, f. & ef.
11-30-84]

Commission Periodic Review Order

660-19-040 [LCDC 9-1982, f. & ef. 10-20-82;
Repealed by LCDC 7-1984, f. & ef.
11-30-84]

Periodic Review Schedule

660-19-045 (1) The Director shall prepare for Commission approval an overall schedule which lists the date when each local government's proposed review order is to be submitted to the Director. The schedule shall be developed in consultation with the affected local governments and state agencies. The Director may modify or adjust the schedule upon request by a local government, a state agency, or an interested person only if the Director believes such a change is necessary to avoid significant hardship or cost to the public. Appeal of the Director's decision on a request to modify the schedule shall be heard by the Commission.

(2) The review schedule shall provide, unless requested at an earlier date by local government, that:

(a) No comprehensive plan and land use regulations shall be reviewed sooner than two years after the plan and regulations are acknowledged under ORS 197.191;

(b) The first periodic review shall be two to five years after acknowledgment;

(c) All subsequent reviews shall be three to five years after the previous review;

(d) To the maximum extent practical, by the second periodic review cycle, the schedule shall provide for reviews to be conducted on a common geographic basis, and when possible, in accordance with the update dates in local plans; and

(e) Periodic reviews shall be scheduled at the maximum five-year interval except where regional proximity, local plan update cycles or other appropriate reasons cause a local government to be reviewed sooner.

(3) The schedule shall indicate which local governments are eligible for the expedited periodic review procedure as provided in OAR 660-19-095.

(4) In preparing the review schedule, those local governments which have been acknowledged for more than five years at the time of adoption of this division shall generally be the first to undergo periodic review. Other scheduling considerations to be followed by the Commission and Director in order of priority are:

(a) Local governments which have been acknowledged or which have undergone periodic review prior to the adoption of new Goals, Goal amendments, or Commission administrative rules interpreting the Goals, including rules adopted pursuant to ORS 197.712;

(b) Local government which were acknowledged or which have undergone periodic review after the adoption of new or amended Goals and rules in subsection (a) of this section are not in the expedited review category as provided in OAR 660-19-095; and

(c) Local governments in the expedited review category described in OAR 660-19-095, but which were acknowledged or have undergone periodic review against the new or amended Goals or rules in subsection (a) of this section, or for whom such new or amended Goals or rules do not apply.

(d) Notwithstanding the scheduling considerations in subsections (a) - (c) of this section, the Director and Commission shall prepare and maintain the review schedule so that it

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notice apply along with the proposed amendments to the plan or land use regulations that the local government believes are necessary to continue to maintain its compliance with the Goals and coordination with state agency plans and programs.

Stat. Auth.: ORS Ch. 197
 Hist.: LCDC 9-1982, f. & ef. 10-20-82; LCDC 7-1984, f. & ef. 11-30-84;
 Renumbered from 660-19-010

Director Notice of Proposed Local Review Order

660-19-065 (1) Upon receipt of the local government's proposed local review order or notice received pursuant to OAR 660-19-095(3), the Director within 20 days shall mail or otherwise submit notice to persons who have requested notice pursuant to OAR 660-19-100(1) that the jurisdiction's proposed local review order is pending, of their opportunity to participate in the local government's proceedings, and of the times and places where the jurisdiction's proposed order and accompanying documents may be reviewed.

(2) Not later than 30 days before the local government's final hearing on the proposed local review order, the Director shall notify the local government in writing of:

(a) Any concerns the Director has about the adequacy of the proposed local order's compliance with the periodic review factors including the items listed in the local government's periodic review notice; and

(b) Any advisory recommendations the Director considers to be needed to properly address its concerns identified in subsection (2)(a) of this rule;

(c) The Director may also provide other suggestions to improve the quality or organization of the local plan and land use regulations.

(3) In conjunction with their participation in the proceedings leading to the adoption of the final local review order pursuant to OAR 660-19-070, state agencies and other interested persons are urged to submit their comments and any recommendations to the local government on the proposed local review order by the date established by the local government.

(4) At any time before the local government adopts its final local review order described in OAR 660-19-070, it may submit to the Director a revised proposed review order as provided in OAR 660-19-060. The new proposed local review order shall supersede the previous proposed local order and shall be subject to all the requirements of OAR Chapter 660, Division 19.

Stat. Auth.: ORS Ch. 197
 Hist.: LCDC 7-1984, f. & ef. 11-30-84

Adoption of Final Local Review Order

660-19-070 (1) Following the final hearing on the proposed review order, the local government shall adopt a final local review order. The local government shall mail or otherwise submit to the Director four (4) copies of the final local review order including the adopted text of any plan provision or land use regulation, the findings adopted by the jurisdiction and any other supplemental information the local government believes necessary to inform the Director of the effect of the jurisdiction's final order. The local government's order, text, and findings shall be provided to the Director not later than five (5) days after the final decision by the local governing body.

(2) The local government shall specify in its submittal to the Director the changes that have been made in those cases where there have been substantial amendments between the proposed local review order and the final local review order.

(3) The local government shall also provide, not later than five (5) days after the final decision, notice to persons who participated orally or in writing in the proceedings leading to adoption of the final local review order and who had requested the local government in writing that they receive such notice. The notice provided to persons requesting notice shall:

(a) Briefly describe the action taken by local government;

(b) Indicate the date of the decision;

(c) State the location and time when the final local review order, findings, and text may be reviewed; and

(d) Explain the requirements for submittal of written objections to the Director as described in OAR 660-19-080.

Stat. Auth.: ORS Ch. 197
 Hist.: LCDC 7-1984, f. & ef. 11-30-84

Director Notice of Final Local Review Order

660-19-075 (1) Not later than five (5) days after receipt of the final local review order, the Director shall provide notice to any persons who have requested notice pursuant to OAR 660-19-100(2).

(2) The notice shall explain the requirements for the submittal of written objections, the date by which objections must be received by the Director and local government, and the locations where the final local review order, findings, and text may be reviewed.

Stat. Auth.: ORS Ch. 197
 Hist.: LCDC 7-1984, f. & ef. 11-30-84

Objections to Final Local Review Order

660-19-080 (1) Except as provided in section (2) of this rule, only those persons who participated orally or in writing in the local government proceedings leading to the adoption of the final local review order may file an objection with the Director and the local government.

(2) Any person may file an objection to the final local review order if it has been substantially amended from the proposed local review order so that the notice required by OAR 660-19-070(3) did not reasonably describe the local government's final decision.

(3) An objection filed against a final local review order shall:

(a) Be in writing;

(b) Be mailed or otherwise submitted to the Director and the local government not later than 30 days after the date of the final decision by the local government;

(c) Be limited to those issues raised by the objector in the proceedings before the local government unless the final local review order has been substantially amended from the proposed local review order so that the notice provided under OAR 660-19-070(3) did not describe the nature of the local government's final decision; and

(d) Specify the alleged grounds upon which the final local review order does not meet the periodic review factors pursuant to OAR 660-19-055 and as further specified in the local government's periodic review notice.

Stat. Auth.: ORS Ch. 197

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(A) For local governments responsible for plans inside urban growth boundaries, periodic review findings must describe the cumulative effects of plan and land use regulation amendments and implementation actions on the overall urban land supply for the plan's chosen (usually 20 years) time frame; on the amount of vacant buildable land remaining for needed housing and economic development; on the provision of public facilities and services to meet development needs identified in the plan; on the protection of Willamette Greenway values and resources; on the amount of vacant especially suited, water-dependent coastal shoreland areas; and on other specific Statewide Planning Goal matters that the Director includes on the local government's periodic review notice.

(B) For local governments responsible for plans outside urban growth boundaries, periodic review findings must describe the cumulative effects of plan and land use regulation amendments, including Goal exceptions, and implementation actions resulting in the conversion of agricultural and forest lands to non-resource use; on the protection of Goal 5 and Willamette Greenway resources; on the protection of coastal resources including dredge material disposal and estuarine mitigation sites; on significant increases in densities in rural residential exception areas; and on other specific Statewide Planning Goal matters that the Director includes on the local government's periodic review notice.

(c) Oversight or a decision by the local government to delay or not carry out plan policies which relate to a statewide Goal requirement. Local periodic review findings must describe why, for example, policies in the plan requiring a citizen involvement program evaluation, a revised inventory of natural hazards, or a date-specific, overall revision of the plan, etc., have not been completed.

(d) Incorporation into the plan of new inventory material which relates to a statewide Goal made available to the jurisdiction after acknowledgment. Local periodic review findings must list what applicable published state or federal reports have been made available to the jurisdiction after acknowledgment containing new inventory material, for example, on groundwater availability, air quality, big game habitat, census information, soil surveys, natural hazards, etc., and describe what steps, including any amendments to the plan's factual base, policies, map designations and land use regulations, have been taken in response to this information.

(4) Nothing in subsections (3)(a) - (d) of this rule is meant to limit or prevent any person from raising other issues or objections involving the "substantial change in circumstances" factor set forth in subsections (2)(a) of this rule as long as such concerns are submitted consistent with the requirements of OAR 660-19-065.

(5) In its periodic review notice issued pursuant to OAR 660-19-050, the Director shall inform the local government about any subsequently adopted Goals, Goal amendments, or new rules which the jurisdiction must address.

(6) In the periodic review notice issued pursuant to OAR 660-19-050, the Director, following consultation with the affected state agencies or as may be specified in the agencies' coordination agreements developed and certified pursuant to ORS 197.180, shall inform the local government about any state agency plans or programs relating to land use not in effect at the time of acknowledgment that are mandated by state statute or federal law and are consistent with the Goals.

It will be the responsibility of the affected state agency to demonstrate that their new or updated plans cannot be achieved in a manner consistent with the local government's plan or land use regulations. Any state agency seeking a Commission order requiring amendment of a local plan or land use regulation to comply with the agency's plan or program pursuant to OAR 660-19-080 must first request the amendment from the local government during the local periodic review proceeding provided for in OAR 660-19-060 and have its request denied.

(7) In its periodic review notice issued pursuant to OAR 660-19-050, the Director shall inform the local government about any additional planning tasks or requirements required at the time of acknowledgment or which were agreed to by the jurisdiction to receive review and update funds and are necessary to make the plan or land use regulations comply with the Goals.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 7-1984, f. & ef. 11-30-84

Local Periodic Review

660-19-060 (1) The local government shall conduct a review of its plan and land use regulations based on the periodic review factors, including those items identified in its periodic review notice issued pursuant to OAR 660-19-050.

(2) Following receipt of the periodic review notice, the local government shall, as appropriate, undertake technical studies, analyses, and surveys in reaching its preliminary decisions about the applicability of the periodic review factors under OAR 660-19-055, the preparation of its periodic review findings and the need, if any, for plan or land use regulation amendments. The local government may contact the Director and other affected state agencies for assistance and information in undertaking the tasks in this section.

(3) The local government shall use its Commission-approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government shall also issue a specific public notice consistent with the local citizen involvement program informing citizens in the community and other persons requesting such notice in writing about the initiation of the local periodic review.

(4) On or before the date set by the Commission in the periodic review schedule as set forth in OAR 660-19-045, the local government shall submit four (4) copies of its proposed local review order to the Director.

(5) As part of its submittal, the local government shall notify the Director of the date of the final local hearing on the proposed local review order. The date of this hearing shall be at least 90 but not longer than 120 days after the date the proposed review order is submitted to the Director unless the Director specifically grants a longer period upon written request of the local government.

(6) The local government's proposed local review order submitted to the Director shall be accompanied by either:

(a) Proposed findings that none of the periodic review factors including those items described in the local government's periodic review notice pursuant to OAR 660-19-050 apply; or

(b) Proposed findings that one or more of the periodic review factors including those items in the periodic review

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(2) The Director shall utilize current census information including information from the Center for Population Research at Portland State University and consult as necessary with the applicable jurisdictions in identifying the affected local governments eligible for the expedited procedure. In case of conflicts over population figures, the Director's decision will be final.

(3) A local government classified by the Director to be eligible for expedited review shall not be required to comply with all the provisions of OAR 660-19-060(4) - (6) except that it shall notify the Director at least 90 days in advance of the date of its final hearing on its proposed review order. Upon receipt of the notice from the local government, the Director shall within 20 days provide notice to persons who have requested notice pursuant to OAR 660-19-100(1). Following its local review under OAR 660-19-060(1), a local government eligible for expedited review will be required to make only one submittal to the Director as provided under OAR 660-19-070.

(4) To further assist local governments eligible for expedited review, the Director may develop more simplified report formats, suggested orders, and sample findings.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 7-1984, f. & ef. 11-30-84

Fee for Notice

660-19-100 (1) An annual fee of \$50 to defray the costs of notice provided under OAR 660-19-065 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1985. The fee is payable in advance of any notice being provided under OAR 660-19-065. For each subsequent fiscal year, the Director shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-19-065.

(2) An annual fee of \$50 to defray the costs of notice provided under OAR 660-19-075 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1985. The fee is payable in advance of any notice being provided under OAR 660-19-075. For each subsequent fiscal year, the Director shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-19-075.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 7-1984, f. & ef. 11-30-84

Computation of Time

660-19-105 (1) For the purposes of this Division the time to complete required tasks shall be computed as follows. The first day of the designated period to complete the task shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of Oregon. In that event the period shall run until the end of the next day which is not a Saturday, Sunday or state legal holiday.

(2) When the period of time to complete the task is less than seven (7) days, intervening Saturdays, Sundays or state legal holidays shall not be counted.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 7-1984, f. & ef. 11-30-84

Annual Review

660-19-110 The Commission shall, within one year from the date of adoption, review the implementation of OAR Chapter 660, Division 19 and amend Division 19 as may be necessary. The Director shall provide notice of such annual review.

Stat. Auth.: ORS Ch. 197
Hist.: LCDC 7-1984, f. & ef. 11-30-84

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Hist.: LCDC 7-1984, f. & cf. 11-30-84

Director Review of Final Local Review Order

660-19-085 (1) Not later than 60 days after receipt of the final local review order, the Director shall review the local government's final order including any objections received pursuant to OAR 660-19-080 and complete either subsection (a) or (b) of this section:

(a) Issue a Director termination order based on findings that the jurisdiction has met the requirements of the periodic review factors including the items in the periodic review notice under OAR 660-19-050 or that the factors do not apply; or

(b) Based on the size or location of the local government, the number and complexity of any objections or any significant policy issues raised by the local periodic review order, submit to the Commission a report which addresses the requirements of the periodic review factors including the items in the local government's periodic review notice, the local government's final review order and findings and any objections filed with the Director. The Director shall recommend to the Commission either approval of the local government's final local review order or issuance of an order requiring amendments to the plan or land use regulations and shall give reasons therefore.

(2) The Director shall notify in writing the local government and any objectors of the decision under subsection (1)(a) or (b) of this rule and shall give reasons therefore.

(3) An objector may file an appeal to the Commission of the Director's decision to issue a Director termination order. Objections to the Director's decision must be filed with the Director not later than 30 days of the mailing of the Director's action. In response to an appeal of the termination order, the Director shall prepare and submit a report to the Commission in the same manner as provided under subsection (1)(b) of this rule.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 7-1984, f. & cf. 11-30-84

Commission Review of Director's Review Report

660-19-090 (1) Unless a different time is stipulated by all the parties, the Commission shall issue a final order within 60 days following submittal of a report filed either under OAR 660-19-085(1)(b) or (3).

(2) Upon completion of the Director's report, the Director shall mail a copy of the report to the local government and all persons who submitted objections at least 20 days before the Commission meeting at which review of the Director's report and the jurisdiction's final local review order are to be considered. As part of the mailing of this report, the Director shall inform the local government and the objectors of the date and location of the Commission meeting and the final date to file written exceptions to the report and to the objections. Exceptions to the report and to the objections shall be submitted to the Director not later than 10 days after the mailing of the Director's report.

(3) The Commission shall provide for oral argument from the Director, the local government, and objectors in the conduct of its review of the Director's report and the final local review order.

(4) The Commission's record for the review of the Director's report and the final local review order shall consist of:

(a) Any objections filed with the Director pursuant to OAR 660-19-080;

(b) The local government's final local review order, including findings, text of any amendments or new regulations, and other materials submitted by the local government;

(c) The acknowledged comprehensive plan and land use regulations of the local government; and

(d) The Director's report, the written exceptions filed to the Director's report, and the oral arguments;

(5) Following its review, the Commission shall adopt a Commission review order which either:

(a) Sustains the local government's final local review order and finds that it has adequately addressed the applicable periodic review factors including the items in the local government's periodic review notice as described in OAR 660-19-050 and therefore remains in compliance with the Goals and coordinated with state agency plans and programs; or

(b) Requires the local government to amend its acknowledged comprehensive plan and land use regulations to respond to requirements of the periodic review factors including the items listed in the jurisdiction's periodic review notice in order to remain in compliance with the Goals and coordinated with state agency plans and programs.

(6) An order issued by the Commission pursuant to OAR 660-19-090(5)(b) shall specify a reasonable length of time for the local government to complete its plan and land use regulation amendments to comply with the Commission's order.

(7) The Director shall notify the Real Estate Division, the local government, and all persons who filed comments or objections to the Director's report and the jurisdiction's final review order.

(8) Appeal of the Commission's order under section (5) of this rule shall follow the procedure established by ORS 197.650(1)(b).

(9) Plan and land use regulation amendments completed in response to a Commission order pursuant to subsection (5)(b) of this rule shall be submitted to the Director for review and approval in the same manner as provided in OAR 660-19-075 through 660-19-090.

(10) The local government shall file a complete copy of its comprehensive plan and land use regulations with the Director within 30 days after the expiration of the appeal period described in OAR 660-19-085(3) or section (8) of this rule, whichever applies.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 7-1984, f. & cf. 11-30-84

Expedited Periodic Review Procedure

660-19-095 (1) Local governments who satisfy one or more of the following are eligible for the expedited periodic review procedure. The expedited review process applies to:

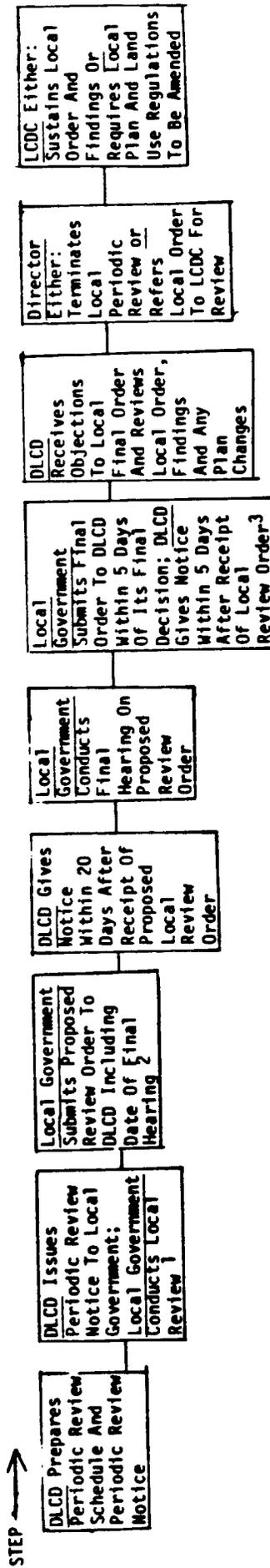
(a) Cities with a population under 2,500 within the urban growth boundary;

(b) Counties with a total population under 5,000; and

(c) Counties within which there are no cities with a population over 2,500 within the urban growth boundary.

PERIODIC REVIEW PROCESS

(Note: Chart depicts only key steps in a review cycle. Actual time to complete all tasks will usually take longer than shown.)



1 In Most Cases, Notice Will Be Issued Well In Advance Of 180 Day Period.

2 No Submittal Of Proposed Order Required Of Expedited Jurisdictions, Only Notification Of Final Hearing Date (see 660-19-095)

3 Time Period Between Final Local Hearing And Final Decision By Governing Body (Including Exhaustion Of Local Appeal Rights) Will Vary By Jurisdiction

RULE SECTION	660-19-045	660-19-050	660-19-060	660-19-065	660-19-070	660-19-075	660-19-080	660-19-085	660-19-090
TASK TIME	Est. 90-120 days for initial process start-up	- NOT LESS THAN 180 DAYS	- NOT LESS THAN 90 DAYS	- NOT MORE THAN 60 DAYS	- NOT MORE THAN 60 DAYS	- NOT MORE THAN 60 DAYS UNLESS STIPULATED			
TOTAL ELAPSED TIME IN CYCLE	0	6mo.	10mo. (est.)	12mo.	14mo.				

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DIVISION 20

WILLAMETTE RIVER GREENWAY PLAN

Definitions

660-20-005 For the purposes of this order, the following terms are defined as follows:

(1) "Change of Use" means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water, or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975, and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building.

Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for purposes of this order.

(2) "Development" means the act, process, or result of developing. (The definitions of "develop" and "development" should be read in harmony with the definitions of "intensification" and "change of use", since it is not the intention of the Commission to include in the definitions of "develop" and "development" any of the items excluded specifically from the meanings of "intensification" or "change of use".)

(3) "Develop" means to bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access.

(4) "Farm Use" means:

(a) "The current employment of land including that portion of such lands under buildings supporting accepted farming practices for the purpose of obtaining a profit in money by raising, harvesting, and selling crops or by the feeding, breeding, management, and sale of, or the produce of, livestock, poultry, fur-bearing animals, or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. Farm use includes the preparation and storage of the products raised on such land for man's use and animal use and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS Chapter 321.

"It includes, for this purpose, the installation of irrigation pumps, and the use of existing pumps on the banks of the Willamette River, and the construction and use of dwellings customarily provided in conjunction with farm use when such dwellings are located 150 feet or more from the ordinary low-water line of the Willamette River. It also includes the construction and use of buildings other than dwellings customarily provided in conjunction with farm use whether or not within 150 feet of the ordinary low-water line. If a dwelling is destroyed or torn down, it may be replaced in kind with another dwelling even though it is within 150 feet of the ordinary low-water line.

(b) "Current employment of land for farm use includes:

(A) "Land subject to the soilbank provisions of the Federal Agricultural Act of 1956, as amended (P.S. 84-540, 70 Stat. 188);

(B) "Land lying fallow for one year as a normal and regular requirement of good agriculture husbandry;

(C) "Land planted in orchards or other perennials prior to maturity; and

(D) "Any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land especially assessed at true cash value for farm use even if the land constituting the woodlot is not utilized in conjunction with farm use.

(c) "As used in this subsection, 'accepted farming practice' means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." (The definition of farm use is taken from ORS 215.203(2). The addition to the paragraph relating to farm dwellings is to incorporate the permitted non-farm uses for customary farm dwellings provided in ORS 215.213(1)(e) but modified so as to permit only new farm dwellings which will be 150 feet or more from ordinary low water.)

(5) "Intensification" means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the completion of a structure for which a valid permit has been issued as of December 6, 1975, and under which permit substantial construction has been undertaken by July 1, 1976. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or protection of property are not an intensification of use. Residential use of land within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures, or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this order. Seasonal increases in gravel operations shall not be considered an intensification of use.

(6) "Rural Areas" are all areas outside of urban areas defined by section (7) of this rule.

(7) "Urban Areas" are all areas designated as urban on the November 1, 1974 photo-mosaics, Exhibit 2 to this order. These areas include all areas of the Greenway within incorporated cities and adjacent urban areas.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

Preliminary Willamette River Greenway Plan

660-20-010 The plan submitted by DOT to LCDC in June 1975, is hereby revised to be the same as the Willamette River Greenway Plan dated October 4, 1974, which is annexed as Exhibit 1 to this order; however, it is approved only for the purposes of establishing boundaries. These boundaries, together with this order, constitute the Preliminary Willamette River Greenway Plan which is hereby adopted. Such Greenway Plan shall be deemed a Willamette River Greenway Plan for the purposes of ORS 390.310 to 390.368. The balance of the October 4, 1974, Greenway publication material may be used as resource information.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

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(a) That the land had been committed to an urban use before December 6, 1975. In determining whether the land was committed to a commercial, recreational, industrial, port, residential, or other similar urban use, the economic, developmental, and locational factors shall be considered including such factors as the Lower Willamette River Management Plan, the Comprehensive Plan, zoning, and similar plans or policies. In determining whether a commitment to an urban use has occurred on particular lands, the nature and character of other urban uses in the vicinity of the property in question shall be considered, as well as the capability of the land to fulfill the purpose of the Greenway Statute. In any case, such commitment will be deemed to have occurred if a permit for the change of use was granted as of December 6, 1975, and under which permit substantial construction has been undertaken by July 1, 1976. Other lands which are in a natural, scenic, historical, or recreational condition on December 6, 1975, shall not be deemed committed to urban use.

Upon finding that land has been committed to an urban use, then the intensification, change of use or development shall, as far as this rule is concerned, be permitted when findings in paragraphs (2)(a)(A) and (B) of this rule have also been satisfied:

(A) That to the greatest possible degree, the intensification, change of use, or development will provide maximum practicable landscaping, aesthetic enhancement, open space, or vegetation between the activity and the river; and

(B) That to the greatest possible degree, public access will be provided by appropriate legal means to and along the river.

(b) On land within urban areas not committed to urban uses as determined under subsection (2)(a) of this rule, and on land within rural areas, that:

(A) To the greatest possible degree the intensification, change of use, or development is compatible with the scenic, natural, historical, recreational character of the Greenway;

(B) To the greatest possible degree the intensification, change of use, or development will provide the maximum practicable landscaping, aesthetic enhancement, open space, or vegetation between the activity and the river; and

(C) Where necessary, reasonable public access will be provided by appropriate legal means to and along the river.

(3) Establishment of Procedures: Each city and county shall adopt provisions by ordinance requiring a Greenway Conditional Use Permit for any intensification, change of use, or development within the Greenway. Such ordinance will be designed to:

(a) Require that the findings set forth in section (2) of this rule be made;

(b) Provide for at least one public hearing on each application which will allow any interested person an opportunity to speak;

(c) Provide for the giving of a notice of such hearing to at least owners of record of contiguous property and to any individual or group requesting such notice; and

(d) Allow the imposing of conditions on the permit to carry out the purpose and intent of the Willamette River Greenway.

(4) Notice of Greenway Conditional Use Procedures: Each city and county shall notify LCDC of the procedures established under section (3) of this rule.

(5) Notice to DOT:

(a) No city or county shall permit an intensification, change of use, or development on lands within the boundaries of the Willamette River Greenway without first giving immediate notice by "certified mail — return receipt requested" to the DOT of an application for a Greenway Conditional Use Permit.

(b) Notice of the action taken by the city or county on an application shall be furnished to DOT.

(6) Interim Conditional Use Procedures: In the absence of an existing conditional use procedure in a county or city on December 6, 1975, the county or city shall utilize existing comparable procedures to implement this rule until the conditional use procedures required by this section are established.

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

Rural Area Greenway Extraordinary Exception

660-20-030 (1) The Rural Area Greenway Extraordinary Exception is to be used sparingly for unusual cases only and within the limits prescribed in this order so as not to adversely affect the Greenway.

(2) The county governing body may authorize any Greenway Extraordinary Exception to rule 660-20-017 of this order in rural areas and issue a permit when, using the same procedures provided in section 660-20-025(3), the county governing body finds from record:

(a) That there is an extraordinary, unnecessary and unreasonable hardship caused by strict enforcement of this order which can be relieved only by authorizing an Exception to this order;

(b) That there are extraordinary circumstances and conditions applying to the land, building, or use which do not apply generally to other such lands, buildings, or uses in the Willamette River Greenway;

(c) That the granting of the Exception will not be materially detrimental to the Willamette River Greenway in the area affected by the proposed Exception;

(d) That the granting of the Exception will be in general harmony with the intent and purpose of this order and will be consistent with the adopted Comprehensive Plan;

(e) That a copy of any application has been sent and processed in the same manner as is provided in section 660-20-025(5); and

(f) That the county makes the same findings as those required in paragraphs 660-20-025(2)(b) (A), (B), and (C).

(3) In authorizing a Greenway Extraordinary Exception, the governing body may impose such conditions as it determines to be necessary to insure that the purposes and intent of the Willamette River Greenway are realized.

(4) The governing body authorizing an Extraordinary Exception, shall file a copy with the recording office in which the lands subject to the exception are located for inclusion in the Willamette River Greenway Plan and Program.

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

DOT Scenic Easements

660-20-035 Nothing in this order is intended to alter the authority of DOT to acquire scenic easements as set forth in ORS 390.310 to 390.368.

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

Trespass by Public

660-20-040 Nothing in this rule is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in accordance with law to authorize such use.

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

Information to Property Owners

660-20-045 Within 60 days after receiving a copy of this Preliminary Willamette River Greenway Plan, as provided in ORS Chapter 390.322(2), the County governing body of each

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Boundaries

660-20-015 The Willamette River Greenway shall have the temporary and preliminary boundaries as shown more particularly in the book of 1:1000 aerial photo-mosaics, dated November 1, 1974, which is annexed as Exhibit 2 to this order. These boundaries refine the Greenway boundaries shown in the October 4, 1974, Greenway document, Exhibit 1 to this order. (In rural areas these temporary Greenway boundaries will include lands zoned for Exclusive Farm Use (EFU) with a flood plain overlay; in no case, however, will the temporary and preliminary boundaries extend beyond the boundaries of the aerial photo-mosaic book dated November 1, 1974.)

[**Publications:** The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 183 & 197

Hist: LCD 6, f. & ef. 12-24-75; LCD 6-1978(Temp), f. & ef. 4-10-78; LCD 7-1978, f. & ef. 5-12-78; LCD 2-1981, f. & ef. 2-23-81; LCD 6-1981(Temp), f. & ef. 5-8-81; LCD 8-1981, f. & ef. 7-1-81; LCDC 10-1982, f. & ef. 12-13-82

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Permitted Uses

660-20-017 Farm, residential, commercial, recreational, industrial, and other uses of lands within the temporary Greenway Boundaries existing on December 6, 1975, shall be permitted to continue unless otherwise provided by law. However, until the LCDC has determined by order that the Greenway goal has been implemented by the responsible cities, counties, or other governmental agencies, no intensification, change of use, or development shall be permitted by any city, county, special district, state, or federal agency, within the temporary and preliminary boundaries of the Willamette River Greenway in rural areas or within 150 feet of the ordinary low-water line in urban areas, except as provided below:

(1) Rural Areas: No intensification, change of use, or development shall be permitted in rural areas within 150 feet of the ordinary low-water line nor for commercial, manufacturing, industrial, or subdivision purposes within the Greenway boundaries except in such cases as may be authorized by a county under the rural area Greenway Extraordinary Exception procedures set forth in rule 660-20-030. Intensification, change of use, or development for other than commercial, manufacturing, industrial, or subdivision purposes beyond 150 feet of the ordinary low-water line may be permitted by a county in a rural area when authorized under the Greenway Conditional Use Procedure set forth in rule 660-20-025. Changes, modifications, and other practices customarily related to farm use, including the propagation of timber or the cutting of timber for public safety or personal use or the cutting of timber in accordance with the Forest Practices Act from a farm woodlot of less than 20 acres as described in the definition of "farm use" in ORS 215.203, shall not be considered an intensification, change of use, or development for the purpose of this order. The partial cutting of timber for sale from other than farm woodlots under 20 acres may be permitted subject to the approval of either the county governing body under the Greenway Conditional Use Procedures provided in rule 660-20-025 or as provided in a plan approved under the Forest Practices Act. The intensification or enlargement of gravel operations existing as of December 6, 1975, may be permitted subject to the approval of the county governing body under the Greenway Conditional Use Procedures provided in rule 660-20-025.

(2) Urban Areas: No intensification, change of use, or development shall be permitted by a city or county in an urban

area except as may be authorized under the Greenway Conditional Use Procedure set forth in rule 660-20-025.

(3) Intensification, Change of Use, or Development Exception. Intensification, change of use, or development in urban and rural areas do not include:

(a) Gravel removal from the bed of the Willamette River conducted under a permit from the State of Oregon;

(b) Customary dredging and channel maintenance;

(c) The placing, by a public agency, of signs, markers, aids, etc. to serve the public;

(d) Activities to protect, conserve, enhance, and maintain public recreational, scenic, historical, and natural uses on public lands;

(e) On scenic easements acquired under ORS 390.332(2)(a) the maintenance authorized by the statute and ORS 390.368;

(f) The use of small cluster of logs for erosion control.

Any public body intending an action regarding the above which might reasonably be expected to materially affect the functions of another public body shall notify DOT and the appropriate city or county.

(4) Permits Issued or In Process: Permitted uses include intensifications, changes of use, or developments for which a permit was granted as of December 6, 1975, and under which permit substantial construction has been undertaken by July 1, 1976.

A permit to make an intensification, change of use, or development for which an application is pending on December 6, 1975, shall not be subject to this order if the agency procedures necessary to issue the permit are substantially completed and the agency is prepared to grant the permit prior to January 1, 1976.

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

Agency Jurisdiction

660-20-020 Nothing in this order is intended to interfere with the duties, powers, and responsibilities vested by statute in agencies to control or regulate activities on lands or waters within the boundaries of the Greenway so long as the exercise of the authority is consistent with the Preliminary Greenway Plan and the Greenway Statute set forth in ORS 390.310 to 390.368 and also consistent with the applicable statewide planning goals, the interim goals listed in ORS 215.515(1) and the statewide planning goal for the Willamette River Greenway, as the case may be. An agency receiving an application for a permit pertaining to lands or waters within the boundaries of the Greenway shall immediately furnish notice of such application to DOT.

Stat. Auth.: ORS Ch.

Hist: LCD 6, f. & ef. 12-24-75

Greenway Conditional Use

660-20-025 (1) Purpose: A Greenway Conditional Use Procedure is a means to permit the intensification, change of use, or development of properties in rural areas as provided in this order and in urban areas within 150 feet of the ordinary low-water line, in a manner to assure compatibility, to the greatest possible degree, with the Greenway. Greenway Conditional Use applications are to be carefully reviewed to assure that such conditions as are adopted will promote, to the greatest possible degree, scenic landscaping, aesthetic enhancement, open space, or vegetation between the activity and the river, and will provide reasonable public access to the extent necessary.

(2) Findings: Prior to granting a Greenway Conditional Use Permit in urban areas within the 150 foot-wide Greenway Conditional Use area, a city, or county shall make the following findings:

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Greenway Plan. This request shall include the proposed plan change, and reasons why such a plan change is necessary. The Department of Transportation shall, within 30 days submit the request with comments to LCDC.

(3) If the plan change is initiated by the Department of Transportation, the request shall be made in writing to LCDC:

(a) Requesting that LCDC adopt by administrative rule certain changes to DOT Greenway Plan;

(b) Explaining the proposed change to the plan;

(c) Explaining why the proposed change to the plan is necessary. The Department of Transportation shall notify the affected city or county 30 days prior to the submission of the proposed plan change to LCDC. The affected city or county comments on the proposed change shall be forwarded with the request to LCDC.

(4) The LCDC shall provide public notice of the proposed plan amendment, including the time and place of a public hearing on the proposed plan amendment.

(5) The LCDC shall review and consider testimony regarding the proposed plan amendment, pursuant to the requirements of ORS Ch. 183.

(6) The LCDC may adopt by rule the plan amendment if the plan change is consistent with the intent and purposes of the Willamette River Greenway as stated in Goal 15 of the Statewide Planning Goals and ORS 390.310 to 390.368.

(7) The local jurisdiction shall adopt the Willamette Greenway Plan amendment by ordinance. Such ordinance shall not have an effective date which is prior to LCDC's adoption of the plan amendment.

(8) A copy of the approved plan amendment shall be sent to the Department of Transportation, and the boundary change(s) shall be recorded on the DOT and LCDC Greenway maps as well as the local Greenway map(s) in the appropriate County Recorder's office.

Stat. Auth.: ORS Ch. 183, 197 & 390

Hist: LCD 5-1980, f. & ef. 7-2-80

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county shall provide information to all property owners of record as shown on the latest assessment roll holding lands within the Greenway that the plan is on file in the county recording office and that it is open for inspection during reasonable business hours. This shall constitute notice to all property owners within the Greenway of the provisions of the Plan. (Reasonable costs for distributing this information will be reimbursed by the Department of Transportation to the extent covered by law.)

Stat. Auth.: ORS Ch.
 Hist: LCD 6, f. & ef. 12-24-75

Amending the Preliminary Plan

660-20-050 DOT, in cooperation with units of local government, with the approval of LCDC, may revise the Preliminary Plan for the Willamette River Greenway from time to time. Recommendations to amend the plan shall be made only after opportunities have been provided for the involvement of citizens and affected property owners and governmental units:

(1) Amendment of Boundries of Areas to be Acquired: A request to set forth the boundaries of additional areas or interest to be acquired or to amend the boundaries of areas or interests to be acquired shall include a description of the nature of the areas to be acquired within the Greenway, adequate maps to clearly show the location of boundaries and interests and supporting data to substantiate the amendment.

(2) Other Amendments: Requests for other amendments shall include a description of the nature of the change and supporting maps and information to substantiate the change.

Stat. Auth.: ORS Ch.
 Hist: LCD 6, f. & ef. 12-24-75

Adoption, Effective Period, and Filing

660-20-055 (1) This preliminary Greenway Plan shall remain in full force and effect until it is replaced by an order of this Commission:

(a) Approving a completed Greenway Plan or approving a completed Greenway Segment, prepared by the Department of Transportation in cooperation with units of local government; and

(b) Acknowledging that the city and county comprehensive plans, zoning, and subdivision ordinances for the completed plan or segment thereof, as the case may be, have been adopted consistent with the Greenway Goal. (This order is temporary only and becomes inoperative as to a particular segment of the Greenway when:

(A) The county or city, as the case may be, completes that portion of its comprehensive plan and implementing ordinances dealing with that segment of the Greenway;

(B) DOT completes a Greenway Plan Segment dealing with the same portion of the Greenway; and

(C) Both the plan segment and the applicable portions of the comprehensive plan and implementing ordinances dealing with such Greenway segment are approved by the LCDC.)

(2) City and county comprehensive plans, zoning, and subdivision ordinances within the Greenway shall be completed in accordance with the particular governing body's compliance schedule required under ORS 197.325(2). Such schedule shall stipulate when each segment of the Greenway within the city or county's jurisdiction shall be completed. It is the intent of this Commission that the Greenway portions of comprehensive plans and implementing ordinances be completed as soon as possible. When DOT has completed and the LCDC has approved a segment of the final Willamette River Greenway Plan, LCDC shall terminate this order as to such segment when the applicable portions of the comprehensive plan, zoning, or subdivision ordinances in the county or city have been acknowledged to be in compliance with the Greenway

Statewide Planning Goal. (This order is temporary only and becomes inoperative as to a particular segment of the Greenway when:

(a) The county or city, as the case may be, completes that portion of its comprehensive plan and implementing ordinances dealing with that segment of the Greenway;

(b) DOT completes a Greenway Plan Segment dealing with the same portion of the Greenway; and

(c) Both the plan segment and the applicable portions of the comprehensive plan and implementing ordinances dealing with such Greenway segment are approved by the LCDC.)

(3) This preliminary plan shall be filed with the county recorder of each county in which the Greenway is located pursuant to ORS 390.322(2).

(4) Copies of this preliminary plan shall also be furnished to each city and county governing body and planning commission in which the Greenway is located. Copies shall also be furnished to each state and federal agency having responsibility within the Greenway.

(5) Also, each special district will be furnished information concerning this order and a description of the preliminary plan and where the district may obtain additional information concerning the preliminary plan.

(6) Annexed to this order and thereby made a part hereof are Exhibit 1 which is the Willamette River Greenway Plan of October 4, 1974, prepared by DOT and Exhibit 2 which is the book of 1:1000 aerial photo-mosaics dated November 1, 1974.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch.
 Hist: LCD 6, f. & ef. 12-24-75

Willamette River Greenway Plan Segments

660-20-060 The Land Conservation and Development Commission hereby adopts by reference orders approving the Oregon Department of Transportation Willamette River Greenway Plan Segments for the following: Cities of: Salem; Milwaukie; Gladstone; Corvallis; St. Helens; Dundee; Independence; Albany; Harrisburg; Millersburg; Eugene; Cottage Grove; Lake Oswego; Oregon City; West Linn; Wilsonville; Portland; and Springfield. Counties of: Multnomah; Lane, Benton (left bank); Columbia; Yamhill; Marion; Polk; Linn; and Clackamas.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the office of the Land Conservation and Development Commission.]

Stat. Auth.: ORS Ch. 390
 Hist: LCD 2-1978, f. & ef. 1-30-78; LCD 6-1978(Temp), f. & ef. 4-10-78; LCD 7-1978, f. & ef. 5-12-78; LCD 10-1978, f. & ef. 12-12-78; LCD 1-1979, f. & ef. 2-22-79; LCD 3-1980(Temp), f. & ef. 5-20-80; LCD 4-1980, f. & ef. 6-24-80; LCD 8-1981, f. & ef. 7-1-81; LCDC 2-1982, f. & ef. 5-27-82

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Amending Willamette Greenway Plan

660-20-065 The following procedure is established for amending segments of the Willamette River Greenway Plan:

(1) A request for a Willamette Greenway Plan modification from the plan that had previously been approved by LCDC shall be submitted by the Department of Transportation.

(2) If the plan change is initiated by a city or county the request shall be made by council or board action in writing to the Department of Transportation requesting submission of the amendment to LCDC for adoption of an administrative rule amending of the Department of Transportation's (DOT)

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DIVISION 30

REVIEW AND APPROVAL OF STATE
AGENCY COORDINATION PROGRAMS**Purpose**

660-30-000 The purpose of this division is to respond to the legislative findings and policy in ORS 197.005 and 197.010. This division implements provisions in Statewide Planning Goal 2, ORS 197.040(2)(e), 197.090(1)(b) and 197.180 and explains the relationship between OAR Chapter 660, Division 30 and Chapter 660, Division 31. The purpose of Commission certification of agency coordination programs is to assure that state agency rules and programs which affect land use comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 14, f. & ef. 12-15-77; LCDC 1-1982(Temp), f. & ef. 4-20-82; LCDC 6-1982, f. & ef. 7-22-82; LCDC 5-1986, f. & ef. 12-24-86

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Definitions

660-30-005 For the purpose of this division, the definitions in ORS 197.015 and the following definitions shall apply:

(1) "Acknowledged Comprehensive Plan" means a comprehensive plan and land use regulations or plan or regulation amendment which complies with the goals as provided in ORS 197.251, ORS 197.640 to 197.649 and ORS 197.625.

(2) "Rules and Programs Affecting Land Use":

(a) Are state agency's rules and programs (hereafter referred to as "land use programs") which are:

(A) Specifically referenced in the statewide planning goals; or

(B) Reasonably expected to have significant effects on:
(i) Resources, objectives or areas identified in the statewide planning goals; or

(ii) Present or future land uses identified in acknowledged comprehensive plans.

(b) Do not include state agency rules and programs, including any specific activities or functions which occur under the rules and programs listed in paragraph (2)(a)(A) of this rule, if:

(A) An applicable statute, constitutional provision or appellate court decision expressly exempts the requirement of compliance with the statewide goals and compatibility with acknowledged comprehensive plans; or

(B) The rule, program, or activity is not reasonably expected to have a significant effect on:

(i) Resources, objectives or areas identified in the statewide goals; or

(ii) Present or future land uses identified in acknowledged comprehensive plans; or

(C) A state agency transfers or acquires ownership or an interest in real property without making any change in the use or area of the property. Action concurrent with or subsequent to a change of ownership that will affect land use

or the area of the property is subject to either the statewide goals or applicable city or county land use regulations.

(c) A final determination of whether or not an agency rule or program affects land use will be made by the Commission pursuant to ORS 197.180 and OAR Chapter 660, Division 30.

(3) "Agency Coordination Program" is the submittal made by a state agency to the Department pursuant to ORS 197.180(2)(a) - (d) and OAR 660-30-060.

(4) "Certification" is an order issued by the Commission which finds that a state agency's coordination program satisfies the requirements of ORS 197.180(2)(a) - (d) and OAR Chapter 660, Division 30.

(5) "Compatibility with Comprehensive Plans" as used in ORS 197.180 means that a state agency has taken actions pursuant to OAR 660-30-070, including following procedures in its coordination program where certified, and there are no remaining land use conflicts between the adoption, amendment or implementation of the agency's land use program and an acknowledged comprehensive plan.

(6) "Compliance with the Goals" means that the state agency land use programs and actions must comply with the applicable requirements of the statewide planning goals as provided in OAR 660-30-065.

(7) "Agency consistency with Comprehensive Plans" as used in Statewide Goal 2 shall have the same meaning as the term "compatibility" as provided in section (5) of this rule and OAR 660-30-070.

(8) "Coordination" as used in ORS 197.015(5) means the needs of all levels of government, semipublic and private agencies and the citizens of the State of Oregon have been considered and accommodated as much as possible.

(9) "Commission" means the State Land Conservation and Development Commission.

(10) "Department" means the Department of Land Conservation and Development.

(11) "Director" means the Director of Land Conservation and Development.

(12) "Goals" means the mandatory statewide planning standards adopted by the Commission pursuant to ORS 197.005 to 197.855.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCD 12, f. & ef. 10-14-77; LCDC 6-1982, f. & ef. 7-22-82; LCDC 5-1986, f. & ef. 12-24-86

List of Agency Rules and Programs Affecting Land Use

660-30-010 [LCD 12, f. & ef. 10-14-77;
LCDC 6-1982, f. & ef. 7-22-82;
Repealed by LCDC 5-1986,
f. & ef. 12-24-86]

**Program for Cooperation With and Technical Assistance to
Local Governments**

660-30-015 [LCD 12, f. & ef. 10-14-77;
LCDC 6-1982, f. & ef. 7-22-82;
Repealed by LCDC 5-1986,
f. & ef. 12-24-86]

**Program for Assuring Compliance With the Goals and
Compatibility With Comprehensive Plans**

660-30-020 [LCD 12, f. & ef. 10-14-77;

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Director shall mail copies of a draft of the Director's report including needed corrections to the submitting agency, to all commenters and objectors and to any person who requests a copy in writing. The submitting agency and those persons filing timely comments and objections shall have twenty (20) days from the date of mailing to file written exceptions to the draft of the Director's report.

(4) The Director shall evaluate exceptions to the draft filed within the twenty (20) day period provided in section (3) of this rule. In a timely manner following the exception deadline, the Director shall in writing notify and provide supporting documents as appropriate to the submitting agency, all commenters, objectors, persons filing exceptions and any person who requests a copy in writing that:

(a) The report is unchanged from the draft and the director's recommendation that the agency's coordination program not be certified is now final; or

(b) The Director's recommendation that the agency's coordination program not be certified is now final but the report has been changed from the draft; or

(c) The Director's recommendation that the agency's program not be certified has been referred, along with all supporting documents and comments, objections and exceptions timely filed, to the Commission for its review and action in the manner provided by section (2) of this rule; or

(d) The Director's report has been changed to recommend that the agency's coordination program be certified and the report, along with all supporting documents and comments, objections and exceptions timely filed have been referred to the Commission for its review and action as provided by section (2) of this rule.

(5) A state agency which disagrees with the Director's finding and recommendation under subsections (4)(a) or (b) of this rule may request Commission review of the Director's report.

(6) Within the time period specified in the notice issued under paragraph (2)(d)(B) or subsection (4)(a) or (b) of this rule, but not greater than 90 days, the affected state agency shall amend and resubmit its coordination program to the Department. Resubmittal of a program by an agency shall be done in the same manner as described in OAR 660-30-045.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 5-1986, f. & ef. 12-24-86

Required Elements of an Agency Coordination Program

660-30-060 (1) An agency coordination program must satisfy the requirements specified in ORS 197.180(2)(a) - (d) and OAR 660-30-060(2) and (3).

(2) The four required elements of a state agency coordination program listed in ORS 197.180(2)(a) - (d) are as follows:

(a) Agency rules and summaries of programs affecting land use;

(b) A program of coordination pursuant to ORS 197.040(2)(e);

(c) a program for coordination pursuant to ORS 197.090(1)(b); and

(d) A program for cooperation with and technical assistance to local governments.

(3) To satisfy the requirement under subsection (2)(a) of this rule, a state agency must complete the following:

(a) Submit copies of all agency rules and list and briefly describe all agency programs authorized by law. Such description may be satisfied by provision of agency budget narratives or other similar explanatory information;

(b) Using the definitions in OAR 660-30-005(2), indicate which of the agency's rules and programs are land use programs;

(c) For each land use program provide a copy or summary of the applicable enabling statutes or constitutional authority, complete copies of administrative rules and procedures and an analysis of the relationship between the program and land use;

(d) Identify any agency land use programs subject to the requirements and procedures of the Commission's state permit compliance and compatibility rule, OAR Chapter 660, Division 31, as described in OAR 660-30-090(2); and

(e) For rules and programs determined not to be agency land use programs, the agency is not required to demonstrate compliance with the statewide planning goals and compatibility with acknowledged comprehensive plans. However, specific actions undertaken in conjunction with such rules or programs may require a local permit or approval.

(4) To satisfy the requirement under subsection (2)(b) of this rule, a state agency must complete the following:

(a) Compile agency land use programs into the following categories:

(A) Exempt Land Use Programs. In this category the agency shall place any land use program for which there is an applicable statute, constitutional provision or appellate court decision which expressly exempts the agency from the requirements in ORS 197.180 to be compatible with acknowledged comprehensive plans, but does not exempt the program from compliance with the statewide goals; and

(B) Compatible Land Use Programs. In this category the agency shall place those remaining land use programs not listed under paragraph (4)(a)(A) of this rule;

(b) Adopt or amend agency rules to implement procedures for assuring the agency's goal compliance described in OAR 660-30-065 for the land use programs listed under subsection (4)(a) of this rule;

(c) Adopt or amend agency rules to implement procedures for assuring the agency's compatibility with acknowledged comprehensive plans, including the resolution of disputes, as provided in OAR 660-30-070 for land use programs listed under paragraph (4)(a)(B) of this rule;

(d) Rules and procedures adopted by the agency to satisfy the requirements of goal compliance and plan compatibility must also be designed to address new or amended agency land use programs enacted subsequent to Commission certification pursuant to OAR 660-30-075; and

(e) Agency procedures for assuring goal compliance and comprehensive plan compatibility may be specific to individual land use programs or may be established to apply to more than one land use program where appropriate.

(5) To satisfy the requirements under subsection (2)(c) of this rule, a state agency must complete the following:

(a) Describe the procedures it will utilize to coordinate its land use programs with the Department and affected state and federal agencies and special districts; and

(b) Designate a unit within the agency to be responsible for the coordination of the agency's land use programs.

(6) To satisfy the requirement under subsection (2)(d) of this rule, a state agency must provide all of the following:

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LCDC 6-1982, f. & ef. 7-22-82;
Repealed by LCDC 5-1986,
f. & ef. 12-24-86]

Program for Coordination With Other Governmental Agencies and Bodies

660-30-025 [LCD 12, f. & ef. 10-14-77;
LCDC 6-1982, f. & ef. 7-22-82;
Repealed by LCDC 5-1986,
f. & ef. 12-24-86]

Procedures for Review and Certification of Coordination Agreements

660-30-030 [LCD 12, f. & ef. 10-14-77;
LCDC 6-1982, f. & ef. 7-22-82;
Repealed by LCDC 5-1986,
f. & ef. 12-24-86]

Procedures for Amending Coordination Agreements

660-30-035 [LCD 12, f. & ef. 10-14-77;
LCDC 6-1982, f. & ef. 7-22-82;
Repealed by LCDC 5-1986,
f. & ef. 12-24-86]

Findings Requirements

660-30-040 [LCDC 1-1982(Temp), f. & ef. 4-20-82;
LCDC 6-1982, f. & ef. 7-22-82;
Repealed by LCDC 5-1986,
f. & ef. 12-24-86]

Submittal of Agency Coordination Programs

660-30-045 (1) Upon a request by the Commission pursuant to a schedule developed by the Director, each state agency shall submit a coordination program to the Department. The agency shall provide the Department with seven (7) copies of its coordination program unless the agency and the Director mutually agree to a different number of copies. Copies of the program shall be available for public review during regular business hours at the Department's Salem office and the central office of the submitting agency. Copies shall also be available during scheduled business hours at the Department's field offices and any regional offices of the submitting agency.

(2) Upon receipt of an agency coordination program, the Director shall review the submittal to determine whether the agency's request contains the information and documents required by OAR 660-30-060.

(3) If the submittal is not complete, the Director shall, in writing, request any additional documents or information needed to make the submittal complete.

(4) The 90-day review period in ORS 197.180(3) shall commence upon notification in writing by the Director that the agency's submittal is complete.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 5-1986, f. & ef. 12-24-86

Notice of Review of Agency Coordination Programs

660-30-050 (1) After informing a state agency in writing that its submittal is complete, the Director shall provide an opportunity for interested persons to submit written com-

ments and objections to the Department regarding certification of the agency's coordination program. The notice shall identify the agency program to be reviewed, the time and places where the agency's program may be inspected and the date by which comments and objections must be received at the Department's Salem office.

(2) The length of the notice period shall be determined by the Director based on the nature of the agency program being reviewed, but shall be at least thirty (30) days.

Stat. Auth.: ORS Ch. 183 & 197
Hist.: LCDC 5-1986, f. & ef. 12-24-86

Review of Agency Coordination Programs

660-30-055 (1) An agency coordination program found to be complete pursuant to OAR 660-30-045(4) shall be evaluated by the Director. The results of this evaluation, including responses to timely objections, together with a recommendation regarding certification, shall be set forth in a written report.

(2) If the Director recommends that the agency's program be certified, the Department shall mail copies of the Director's report to the submitting agency, all commenters and objectors, any person who in writing requests a copy, and the Commission. The report shall be considered by the Commission at a date determined by the Director in the following manner:

(a) The submitting agency or persons who have submitted timely comments or objections as described in OAR 660-30-050 shall have twenty (20) days from the date of mailing of the Director's report to file written exceptions to that report;

(b) The Director may comment to the Commission in writing or orally regarding any materials, comments, objections or exceptions submitted to the Commission concerning any agency certification request;

(c) The Commission may allow any person who has filed a timely written comment or objection as provided in OAR 660-30-050 to appear before the Commission within time limits established by the Commission to present oral statements on the person's written comments, objections or exceptions. The Commission shall not consider any new or additional information or testimony that could have been presented to the Director within the timelines required by OAR 660-30-050 or by section (3) of this rule, but was not;

(d) Following its review of the Director's report and such additional comments and information provided under subsections (2)(a) - (c) of this rule, the Commission shall adopt an order which:

(A) Certifies the agency's coordination program; or

(B) Denies certification and identifies the needed corrections and date by which the agency is to amend its program and resubmit to the Department in the same manner as provided in OAR 660-30-045; or

(C) Postpones final action on the agency's coordination program to a future date as determined by the Commission; and

(e) Commission orders adopted under subsection (2)(d) of this rule shall be provided to the affected state agency, commenters, objectors, and other persons requesting a copy in writing.

(3) If the Director finds, pursuant to ORS 197.180 (3) - (5), that the agency's program should not be certified, the

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pursuant to subsection (4)(a) of this rule, or other equivalent steps as described in the agency's certified coordination program, that the acknowledged comprehensive plan's general provisions will not be substantially affected by the agency's program or action; or

(c) Determines based on the results of steps taken under subsection (2)(b) of this rule, that the acknowledged comprehensive plan contains no specific or general provisions applicable to the agency's program or action. In this situation, however, an agency shall comply with the statewide planning goals as provided in OAR 660-30-065(3)(c); or

(d) Utilizes in conjunction with a local government, the provisions of this division and the agency's coordination program, where certified, to resolve a land use dispute involving the agency's land use program or action and the acknowledged comprehensive plan; or

(e) Issues a permit in accordance with the requirements of OAR Chapter 660, Division 31.

(3) In carrying out the compatibility requirements of this rule, a state agency is not compatible if it approves or implements a land use program or action that is not allowed under an acknowledged comprehensive plan. However, a state agency may apply statutes and rules which the agency is required by law to apply, to deny, condition or further restrict an action or program, provided it applies those statutes and rules to the uses planned for in the acknowledged comprehensive plan.

(4) Each state agency's compatibility procedures for assuring compatibility with acknowledged comprehensive plan, including the resolution of land use disputes, shall at a minimum provide for the following actions:

(a) Meetings between the agency and the local government's planning representatives to discuss ways to make the agency's land use program or action compatible;

(b) Identification by the agency of alternative actions or modifications to the agency's program or action;

(c) Application by the agency for the necessary local land use approval, including any needed plan and land use regulation amendments;

(d) Pursuit of appropriate appeal by the agency of a denial of its request for local land use approval; and

(e) Request by the agency for the needed local land use approval during periodic review (OAR Chapter 660, Division 19) or an explanation by the agency why periodic review is not available or sufficient to respond to the agency's request.

(5) A state agency, or a local government may request informal LCDC mediation if the agency determines after pursuing procedures as appropriate under section (4) of this rule that there is a need to proceed with its proposed action or program which would be incompatible with the acknowledged comprehensive plan. LCDC mediation may proceed as mutually agreed by LCDC, the affected state agency and the local government.

(6) If, after pursuing any of the procedures required by section (4) of this rule that are appropriate under the circumstances, an agency contends that its proposed program or action would be compatible with an acknowledged comprehensive plan, but the local government contends that the program or action would not be compatible, the agency shall proceed as provided in sections (7) through (12) of this rule.

(7) Each agency's compatibility procedure shall provide for Commission compatibility determination as a means for

resolving disagreement between the agency and a local government regarding compatibility of the agency's proposed land use program or action with an acknowledged comprehensive plan.

(8) Commission compatibility determination shall only be requested if the state agency and local government remain in dispute after taking any steps in section (4) of this rule that are appropriate under the circumstances.

(9) The Commission may commence a compatibility determination upon written request from the chief official or governing authority of the agency, the local government or both. Compatibility determination shall include the following:

(a) The Commission may designate a hearings officer. The hearings officer shall compile a written assessment of the compatibility dispute. The assessment shall document the positions of each party, including a summary of the background of the dispute, identification of major issues and contentions and any other facts relevant to the case. The hearings officer shall conduct hearings as he or she determines are appropriate under the circumstances to aid in preparation of the report on the compatibility dispute;

(b) The hearings officer's report shall be provided to the Commission, the affected state agency, the local government and other persons who request a copy in writing;

(c) The Commission shall review the hearings officer's report at a regular or special meeting after providing a reasonable amount of time for review by the agency, the local government and other persons wishing to examine the report. Following any allowed testimony from the parties or other interested persons, the Commission shall determine whether the agency's proposed program or action is compatible with the acknowledged comprehensive plan; and

(d) The Department shall prepare a written record of the Commission's determination of compatibility. The record of the Commission's compatibility determination together with supporting findings and documents shall be provided to the state agency, the local government and any person requesting a copy in writing.

(10) The Department shall provide notice of opportunity for participation in and obtaining the results of all Commission determinations of compatibility to those who request such notice in writing.

(11) A compatibility determination shall have no final effect unless the affected agency proceeds and adopts the Commission's compatibility determination as its own. If the compatibility determination adopted by the affected agency is not the same as the Commission's determination, under subsection (9)(c) of this rule, the Commission's determination, findings and record shall be included in the record of the agency's action.

(12) If the agency's proposed program or action would be incompatible with the acknowledged comprehensive plan or the agency elects not to proceed as provided in sections (7) through (12) of this rule, the agency may pursue any of the following options:

(a) Take no action; or

(b) Modify its proposal to the extent needed to achieve compatibility with the acknowledged comprehensive plan.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

Review of Amendments to Agency Rules and Programs

660-30-075 (1) The purpose of this rule is to assure that

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(a) A description of the agency's program for cooperation with and technical assistance to local governments. This description shall identify how the agency will participate in and coordinate with the local planning process (i.e., plan amendment, periodic review and plan implementation) regarding implementation of the agency's land use programs;

(b) a listing of the agency section(s) to contact for obtaining cooperation and technical assistance;

(c) A description of the kinds of technical assistance, information and other services available from the agency and the process used to provide such assistance, information and services to local government;

(d) A description of how the agency shall assure that new or updated agency plans or programs mandated by state statute or federal law enacted after acknowledgment of comprehensive plans will be incorporated into these plans and how the agency will participate in periodic review in accordance with ORS 197.640(3) and OAR 660-19-055;

(e) A description, if applicable, of any special procedures or programs to cooperate and provide technical assistance to acknowledged coastal cities and counties recognized under the state's coastal zone management program; and

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

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

Agency Compliance With the Statewide planning Goals

660-30-065 (1) A state agency shall adopt as part of its coordination program under OAR 660-30-060 appropriate rules and procedures as required under this rule to assure that the agency's land use programs comply with the statewide planning goals.

(2) Except as provided in section (3) of this rule, a state agency shall comply with the statewide goals by assuring that its land use program is compatible with the applicable acknowledged comprehensive plan(s) as provided in OAR 660-30-070.

(3) A state agency shall adopt findings demonstrating compliance with the statewide goals for an agency land use program or action if one or more of the following situations exists:

(a) An agency's program or action specifically relates to or occurs in an area that is not subject to an acknowledged comprehensive plan; or

(b) An agency takes an action that is not compatible with an acknowledged comprehensive plan after exhausting efforts to be compatible as described in OAR 660-30-070; or

(c) An acknowledged plan pursuant to OAR 660-30-070(2)(c) does not contain either:

(A) Requirements or conditions specifically applicable to the agency's land use program or action thereunder; or

(B) General provisions, purposes, or objectives which would be substantially affected by the agency's action; or

(d) A statewide goal or interpretive rule adopted by the Commission under OAR Chapter 660 establishes a compliance requirement directly applicable to the state agency or its land use program; or

(e) An acknowledged comprehensive plan permits a use or activity contained in or relating to the agency's land use program contingent upon case-by-case goal findings by the agency; or

(f) The agency's land use program or action is expressly exempt by reason of applicable statute, constitutional provision or appellate court decision from compatibility with acknowledged comprehensive plans; or

(g) The agency carries out, in accordance with OAR 660-30-085, specified goal compliance requirements on behalf of certain applicable local governments.

(4) A state agency which is in one of the compliance situations described in section (3) of this rule shall address directly only those goals that have not otherwise been complied with by the local government. To assist in identifying which statewide goals may be directly applicable to the agency's land use program, the agency may:

(a) Utilize its agency coordination program, where certified;

(b) Consult directly with the affected local government;

(c) Request interpretive guidance from the Department; and

(d) Rely on any applicable goal interpretations for state agencies adopted by the commission under OAR Chapter 660.

(5) State agencies shall include the following elements in their goal compliance procedures adopted under sections (1) and (3) of this rule:

(a) Identification of the specific statewide goals which are most likely to be addressed directly by the agency;

(b) Commitment to address directly other applicable goals if requested or required; and

(c) Description of the most likely situations in which the agency will address statewide goal requirements in addition to any compatibility findings regarding the acknowledged comprehensive plan.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

Agency Compatibility With Acknowledged Comprehensive Plans

660-30-070 (1) A state agency shall be as part of its coordination program under OAR 660-30-060 adopt appropriate rules and procedures to assure that the agency's land use programs are compatible with acknowledged comprehensive plans. Such procedures also shall identify the steps the agency will utilize to resolve any land use disputes between the agency and a local government.

(2) An agency can achieve compatibility in several ways depending upon the nature of its land use program and the organization and specificity of the acknowledged comprehensive plan in question. Each agency shall incorporate one or more of the following approaches as appropriate into its own compatibility procedures pursuant to section (4) of this rule. An agency program or action is compatible when the agency:

(a) Receives land use approval from the local government where the acknowledged comprehensive plan contains requirements or conditions specifically applicable to the agency's land use program or action thereunder; or

(b) Determines, based on the response to written notice provided to local government, the results of meetings held

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(E) Adopt mandatory plan policies which commit the local government to amend its acknowledged comprehensive plan as necessary in the event that a future change or deletion of an agency land use program no longer enables the local government to continue to rely on the certified agency's program for compliance with the goals. The local government shall take action under this subsection upon written notification from the Department following a determination made under OAR 660-30-075 that the agency's program can no longer be relied upon for goal compliance by the local government;

(b) In advance of making a formal request under subsection (2)(c) of this rule, a local government shall notify in writing the applicable state agency of its intent to rely on the agency's land use program for compliance with the goals; and

(c) The local government shall incorporate the items referenced under subsection (2)(a) of this rule into the acknowledged comprehensive plan either through the post-acknowledgment plan amendment procedure or through periodic review as required by ORS 197.610 - 197.650 and OAR Chapter 660, Divisions 18 and 19, respectively.

(3) A local government's decision to rely on an uncertified agency land use program after the effective date of the amendments to this division must satisfy all of the following conditions:

(a) the affected comprehensive plan must be unacknowledged for the geographic area which the local government intends the agency's program to address;

(b) The comprehensive plan shall:

(A) Identify the specific goals or goal requirements the local government wishes to comply with through reliance on the uncertified agency's program;

(B) Identify through plan policy the particular uncertified state agency program which will be relied on to comply with the goal requirements listed in paragraph (3)(b)(A) of this rule;

(C) Contain adopted findings of fact and a statement of reasons which demonstrate that the agency's program does comply with the goal requirement(s) identified under paragraph (3)(b)(A) of this rule and the agency's program is at least equivalent to what the local government would otherwise provide to comply with the goal(s);

(D) Delete or otherwise remove any conflicting provisions of the comprehensive plan and land use regulations which are being replaced by reliance on the uncertified state agency's program; and

(E) Adopt mandatory plan policies which commit the local government to amend its comprehensive plan as necessary in the event that the local government is no longer able to rely on the agency's program for compliance as a result of:

(i) A change or deletion of the agency's program prior to certification by the Commission;

(ii) Certification of the agency's program pursuant to this division; or

(iii) Receipt of written notice from the Department following a determination under OAR 660-30-075 that the agency's program can no longer be relied upon for goal compliance by local government.

(c) In advance of submitting its acknowledgment request to the Commission for compliance as provided under section (3) of this rule, a local government shall notify in writing the applicable state agency of its intent to rely on the agency's uncertified program for compliance with the goals.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

Relationship Between OAR Chapter 660, Division 30 and Division 31

660-30-090 (1) The purpose of OAR Chapter 660, Division 31 (entitled "State Permit Compliance and Compatibility") pursuant to ORS 197.180(7), is to specify state agency responsibilities for goal compliance and comprehensive plan compatibility for agency land use programs which involve the issuance of state permits. For certain permits, OAR Chapter 660, Division 31 also establishes a process for a state agency to rely on a local government's determination of goal compliance and comprehensive plan compatibility obligation under ORS 197.180.

(2) A state agency in its agency coordination program, pursuant to OAR 660-30-060(3)(d) shall provide the following:

(a) A list of the agency's Class A and B permits affecting land use, including those permits listed in OAR 660-31-012;

(b) A description as required by OAR 660-31-026 of the process the agency will use to assure that permit approvals are in compliance with the goals and compatible with acknowledged comprehensive plans; and

(c) Definitions, as appropriate, of the terms "substantial modifications" of "intensification" as required by OAR 660-31-040 involving renewal permits.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

Application

660-30-095 (1) These amendments to OAR Chapter 660, Division 30 shall be effective upon state agencies and other affected persons upon filing of the adopted amendments with the Secretary of State.

(2) Any state agency with a coordination program certified by the Commission prior to the effective date of these amendments shall modify as necessary and submit to the Department in accordance with OAR 660-30-045(1) amendments to its coordination program to address the revised requirements of OAR Chapter 660, Division 30.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

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new agency rules and programs or amendments to existing land use programs of certified state agencies comply with the requirements of ORS 197.180 and OAR Chapter 660, Division 30. This rule shall not apply to the adoption of temporary agency rules or programs.

(2) A notice from a certified agency shall provide information sufficient to demonstrate that the proposed new or amended rule or program is one of the following:

(a) Is not an agency land use program; or

(b) Is an agency land use program and is covered under the agency's procedures pursuant to OAR 660-30-060(4)(d) for assuring goal compliance and comprehensive plan compatibility for new or amended agency land use program; or

(c) Is an agency land use program but is not covered under the agency's procedures under OAR 660-30-060(4)(d). An agency's notice must explain how the agency shall assure goal compliance and comprehensive plan compatibility for the proposed new or amended land use program.

(3) Department review in response to a notice from a certified agency under section (2) of this rule shall be as follows:

(a) The agency shall submit to the Department, pursuant to agency rule-making under ORS 183 or other applicable adoption procedures, a written notice of the agency's pending action. Such notice shall be received by the department not less than 45 days before the agency's action is to occur and shall:

(A) Identify the specific date, time and location of anticipated agency action;

(B) Describe the manner in which written and oral comment on the proposed action can be submitted to the agency;

(C) Provide a copy or a description of the proposed new or amended rule or program; and

(D) Describe how the proposed action addresses subsections (2)(a), (b), or (c) of this rule, as appropriate.

(b) Upon receipt of a notice from an agency as described under subsection (3)(a) of this rule, the Department shall review the proposed action. In accordance with paragraph (3)(a)(A) of this rule, the Department in writing may provide comments to the agency that the proposed action either:

(A) Satisfies subsections (2)(a), (b), or (c) of this rule; or

(B) Does not satisfy subsections (2)(a), (b), or (c) of this rule until more information is provided by the agency or until the proposed rule or program adequately incorporates the Department's suggested revision or modification.

(4) An agency proposing to adopt a new or amended rule or program under this rule shall provide written notice of the same type given to the Department under subsection (3)(a) of this rule to the following:

(a) Persons who in writing to the agency request notice about proposed rule or program actions pursuant to this rule; and

(b) Local governments who rely upon the certified agency's rule or program for compliance under OAR 660-30-085 and are affected by the proposed action.

(5) Except as provided in section (6) of this rule, any agency which does not receive any comment from the Director under paragraph (3)(b)(B) of this rule prior to taking its action, may deem that the Department finds the new or amended rule or program to have satisfied ORS 197.180 and OAR Chapter 660, Division 30. Such adopted new or

amended rules or programs need not be submitted for certification review.

(6) If an agency adopts a new or amended rule or program without supplying the information including any suggested modifications identified pursuant to paragraph (3)(b)(B) of this rule, the Department may require that the amended rule or program be submitted for certification review in the same manner as provided in OAR 660-30-045 through 660-30-055.

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

Agency Requirements to Assure Compliance With the State Goals and Compatibility With Acknowledged Comprehensive Plans prior to Certification by the Commission

660-30-080 (1) Until an agency's rules and programs are certified by the Commission, the agency shall make findings pursuant to ORS 197.180(6) when adopting or amending its rules and programs as to the applicability and application of the goals or acknowledged comprehensive plans, as appropriate.

(2) Previous Commission approvals of agency coordination programs remain effective until the Commission certifies agency programs pursuant to ORS 197.180 and OAR Chapter 660, Division 30; however, prior Commission approval shall not constitute certification. Agencies may rely on existing coordination programs as appropriate and may utilize applicable provisions of OAR Chapter 660, Division 30, in developing interim procedures to address ORS 197.180(6).

Stat. Auth.: ORS Ch. 183 & 197

Hist.: LCDC 5-1986, f. & ef. 12-24-86

Local Government Reliance on State Agency Land Use Programs

660-30-085 (1) As an alternative method for achieving compliance, a local government may rely on a state agency land use program for the purpose of meeting one or more statewide goals or individual goal requirements.

(2) A local government's decision to rely on a certified agency land use program after the effective date of the amendments to this division must satisfy all of the following conditions:

(a) The affected comprehensive plan must be acknowledged and shall:

(A) Identify the specific goals or goal requirements the local government wishes to comply with through reliance on the certified agency's land use program;

(B) Identify through plan policy the particular certified state agency land use program which will be relied on to comply with the goal requirements listed in paragraph (2)(a)(A) of this rule;

(C) Document in the plan that the Commission has expressly certified the agency's land use program as sufficient to satisfy the goal requirement's listed under paragraph (2)(a)(A) of this rule without supplemental regulation by the affected local government;

(D) Delete or otherwise remove any conflicting provisions of the comprehensive plan and land use regulations which are being replaced by reliance on the certified state agency's program; and

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DIVISION 31

**STATE PERMIT COMPLIANCE
AND COMPATIBILITY**

Introduction

Purpose

660-31-005 The purpose of this rule is to clarify state agency responsibilities to apply the Statewide Planning Goals and Acknowledged Comprehensive Plans during permit reviews (ORS 197.180(1) through (7)). The rule establishes procedures and standards which require consideration of Goals and Acknowledged Plans prior to approval of state permits. The rule establishes a process for state agencies to rely on a local determination of compliance with the State Planning Goals and the Acknowledged Comprehensive Plan when issuing certain permits. The rule also requires that affected state agencies develop and submit to LCDC procedures for consistency review.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 2-1984, f. & ef. 2-27-84

Definitions

660-31-010 (1) "Acknowledged Comprehensive Plan" means a comprehensive plan and implementing ordinances that have been adopted by a city or county and have been found by the Land Conservation and Development Commission to be in compliance with the Statewide Planning Goals pursuant to ORS 197.251.

(2) "Affected Local Government" means the unit of general purpose local government that has comprehensive planning authority over the area where the proposed activity and use would occur.

(3) "Class A Permits" are state permits affecting land use that require public notice and public hearing at the agency's discretion prior to permit approval, including those permits identified as Class A permits in OAR 660-31-012(1).

(4) "Class B Permits" are those state permits affecting land use which do not require public notice or an opportunity for public hearing before permit issuance, including those permits identified as Class B permits in OAR 660-31-012(2).

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 2-1984, f. & ef. 2-27-84

Listing of Class A and Class B State Agency Permits Affecting Land Use

660-31-012 (1) Class A Permits:

(a) Department of Energy (DOE) — Energy Facility Site Certificates;

(b) Department of Fish and Wildlife (DFW) — Salmon Hatchery Permit;

(c) Division of State Lands (DSL) — Fill and Removal Permit;

(d) Department of Transportation (DOT) — Ocean Shore Improvement Permit;

(e) Department of Environmental Quality — Hazardous Waste Disposal, Collection or Storage Permit.

(2) Class B Permits:

(a) Department of Agriculture — Oyster plat application;

(b) Department of Environmental Quality:

(A) Air Contaminant Discharge Permit;

(B) Waste Discharge Permit (National Pollution Discharge Elimination System — NPDES);

(C) Indirect Source Permit;

- (D) Water Pollution Control Permit;
- (E) Solid Waste Disposal Permit.
- (c) Department of Fish and Wildlife — Placing Explosives or Harmful Substances in Waters Permit;
- (d) Department of Geology and Mineral Industries:
 - (A) Surface Mining Operation Permit;
 - (B) Permit to Drill — Geothermal Well;
 - (C) Permit to Drill — Oil or Gas Well.
- (e) Protective Health Services Section, Health Division, Department of Human Resources:
 - (A) Public Water Supply Plan;
 - (B) Organization Camp Plan Review;
 - (C) Recreational Vehicle Park Plan Review.
- (f) Water Resources Department:
 - (A) Appropriate Groundwater;
 - (B) Appropriate Surface Water;
 - (C) Water Storage;
 - (D) Hydroelectric.
- (g) Department of Transportation (DOT):
 - (A) Road Approach;
 - (B) Airport Site Approval;
 - (C) On and Off-Premise Signs.
- (h) Division of State Lands — Geophysical and Geological Survey Permits;
- (j) Public Utility Commissioner (PUC) — Railroad Highway Crossing Project.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 2-1984, f. & ef. 2-27-84

Consistency Review Requirements

Identification of Class A and Class B Permits

660-31-015 Affected state agencies shall upon request of the Commission submit a program for permit consistency listing their Class A and Class B permits affecting land use including those set forth in Appendix 1. Upon submitting its program to the Commission, an agency may request a change in the designation of Class A and Class B permits.

Stat. Auth.: ORS Ch. 197

Hist.: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Consistency Review Procedures

660-31-020 [LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; Repealed by LCDC 2-1984, f. & ef. 2-27-84]

Review Criteria for Class A and B Permits

660-31-025 (1) Where the affected local government does not have an Acknowledged Comprehensive Plan, the state agency's or local government's review shall assess whether or not the proposed activity and use are in compliance with the Statewide Planning Goals.

(2) Where the affected local government has an Acknowledged Comprehensive Plan, the state agency or local government review shall address compatibility with the Acknowledged Comprehensive Plan when the activity or use is:

- (a) Prohibited by the plan;
- (b) Allowed outright by the plan;
- (c) Allowed by the plan but subject to standards regarding siting, design, construction and/or operation; or
- (d) Allowed by the plan but subject to future goal considerations by the local jurisdiction.

OREGON ADMINISTRATIVE RULES
CHAPTER 660, DIVISION 40 — LAND CONSERVATION AND DEVELOPMENT COMMISSION

DIVISION 40

**CERTIFICATION OR
COPYING PUBLIC RECORDS**

Public Records

660-40-005 Pursuant to ORS 192.430 and 192.440, the Department:

(1) May charge the following fees for certification or copying of any public records in the Department's custody and not otherwise exempt from disclosure:

(a) For each certification containing 5 pages or less\$5
(b) For each page of a certified document in excess of five pages.....\$.25e/pg

(c) For each page of an uncertified copy.....\$.25e/pg

(2) In addition to the charges prescribed in section (1) of this rule, an amount, as determined reasonable by the Director,

to reimburse the Department for the actual cost of making the records available.

(3) Shall make all public records of the Department, not otherwise exempt from disclosure by law, available for inspection and copying during regular business hours of the Department.

(4) May condition the time and manner of inspection or copying as necessary under the circumstances to protect the records and to prevent interference with the regular discharge of the duties of the Commission, Department and its employees.

(5) Shall post within public view the fee schedule for certification or copying of public records.

Stat. Auth.: ORS Ch. 183, 192 & 197

Hist: LCD 12-1981, f. & ef. 12-15-81

OREGON ADMINISTRATIVE RULES
CHAPTER 660, DIVISION 31 — LAND CONSERVATION AND DEVELOPMENT COMMISSION

(3) Where the affected local government has an Acknowledged Comprehensive Plan the Statewide Planning Goals shall be a criteria for permit review after acknowledgment when the state agency finds one of the following exists:

(a) Local government or the Director has determined during periodic review that one or more factors under ORS 197.640(3)(a)(b) or (d) apply;

(b) The Acknowledged Comprehensive Plan and implementing ordinances do not address or control the activity under consideration;

(c) The Acknowledged Comprehensive Plan allows the activity or use but subject to future goal considerations by an agency; or

(d) The comprehensive plan or land use regulations are inconsistent with a state agency plan or program relating to land use that was not in effect at the time that the local government's plan was acknowledged; and, the plan or program is mandated by state statute or federal law, is consistent with the Goals and has objectives that cannot be achieved consistent with the comprehensive plan or land use regulations.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Compliance and Compatibility Review Procedures for Class A and B Permits

660-31-026 State Agency Coordination Agreements shall describe the process the agency will use to assure that permit approvals are in compliance with Statewide Planning Goals and compatible with Acknowledged Comprehensive Plans:

(1) Class A Permits: In their review of Class A permits state agencies shall:

(a) Include in the notice for the proposed permit a statement that the proposed activity and use are being reviewed for compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan as part of the permit review;

(b) Insure that the notice for the proposed permit is distributed to the affected city(ies) or county(ies) and its citizen advisory committee;

(c) When there is a public hearing on a proposed permit, consider testimony on compliance of the proposed activity and use with the Statewide Planning Goals and compatible with the Acknowledged Comprehensive Plan;

(d)(A) Based on comments received from the public and other agencies, determine whether or not the proposed permit complies with the Statewide Planning Goals and is compatible with the Acknowledged Comprehensive Plan;

(B) If a state agency's existing process for administration of Class A permits is substantially equivalent to the process required by this section, the agency may request LCDC approval of its existing process as described in its agency coordination agreement.

(2) Class B Permits: In accordance with OAR 660-31-020 and 660-31-035(2), the review process shall assure either:

(a) That prior to permit issuance, the agency determines that the proposed activity and use are in compliance with Statewide Planning Goals and compatible with the applicable Acknowledged Comprehensive Plan; or

(b) That the applicant is informed that:

(A) Issuance of the permit is not a finding of compliance with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan, and

(B) The applicant must receive a land use approval from the affected local government. The affected local government

must include a determination of compliance with the Statewide Planning Goals or compatibility with the Acknowledged Comprehensive Plan which must be supported by written findings as required in ORS 215.416(6) or 227.173(2). Findings for an activity or use addressed by the acknowledged comprehensive plan in accordance with OAR 660-31-020, may simply reiterate the specific plan policies, criteria, or standards which were relied upon in rendering the decision and state why the decision is justified based on the plan policies, criteria or standards.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 2-1984, f. & ef. 2-27-84

Effect of a Determination of Noncompliance or Incompatibility

660-31-030 In accordance with OAR 660-31-025 when a state agency or local government determines that a proposed activity or use is not in compliance with an applicable Statewide Planning Goal or not compatible with the Acknowledged Comprehensive Plan, the state agency shall deny the state permit and cite the inconsistency as the basis for denial. State agencies may defer approval or conditionally approve a permit when compliance with a Statewide Planning Goal or the Acknowledged Comprehensive Plan requires an action that can only be taken by the affected local government.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Reliance on the Local Government's Determination

660-31-035 (1) Class A Permits: When making findings, state agencies may use the affected local government's compatibility determination when the agency finds the affected local government has determined that the proposed activity and use are compatible or incompatible with its Acknowledged Comprehensive Plan.

(2) Class B Permits: State agencies may rely on the affected local government's determination of consistency with the Statewide Planning Goals and compatibility with the Acknowledged Comprehensive Plan when the local government makes written findings demonstrating compliance with the goals or compatibility with the acknowledged plan in accordance with OAR 660-31-026(2)(b)(B).

Stat. Auth.: ORS Ch. 197

Hist: LCDC 9-1978, f. & ef. 9-22-78; LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Renewal Permits

660-31-040 A determination of compliance with the Statewide Planning Goals or compatibility with Acknowledged Comprehensive Plan is not required if the proposed permit is a renewal of an existing permit except when the proposed permit would allow a substantial modification or intensification of the permitted activity. Substantial modifications or intensification shall be defined in an agencies' State Agency Coordination Agreement under ORS 197.180.

Stat. Auth.: ORS Ch. 197

Hist: LCDC 1-1983(Temp), f. & ef. 1-31-83; LCDC 2-1984, f. & ef. 2-27-84

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OREGON ADMINISTRATIVE RULES
CHAPTER 661, DIVISION 10 — LAND USE BOARD OF APPEALS

DIVISION 10

RULES OF PROCEDURE FOR APPEALS

Introduction

661-10-000 (1) **Scope of Rules and Effective Date:** These rules govern procedure for all appeals and petitions for review filed with the Land Use Board of Appeals on or after October 3, 1983. Petitions for Review filed prior to October 1, 1983, will be processed under the Board's Rules of Procedure adopted April 15, 1980.

(2) **Legal Authority for Rules:** 1983 Oregon Laws, Chapter 827, Section 28(b)(4), provides the Board shall adopt rules governing the conduct of review proceedings.

(3) **Principal Authorities Relied Upon:** In adopting these rules, the Board relies upon its existing Rules of Procedure adopted April 15, 1980, and subsequent amendments thereto, the Rules of Appellate Procedure for the Supreme Court and Court of Appeals of the State of Oregon, June 1, 1982, and the Attorney General's Model Rules of Procedure under the Administrative Procedures Act, November 17, 1981.

(4) **Fiscal Impact:** The rules will have a fiscal impact upon petitioners and makers of land use decisions on appeal before the Board in that:

(a) The rules require a deposit for costs and further provide for distribution of costs after issuance of the Board's final order;

(b) The rules include a provision for mileage and fees for witnesses; and

(c) The rules control the award of attorney fees in certain circumstances.

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 2-1983(Temp), f. & ef. 10-5-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Purpose

661-10-005 The procedures established in these rules are intended to provide for the speediest practicable hearing and decision in the review of land use decisions while affording all interested persons reasonable notice and opportunity to participate, reasonable time to prepare and submit their cases, and a full and fair hearing. The procedures established in these rules seek to accomplish these objectives to the maximum extent consistent with the time limitations placed upon the Board in 1983 Oregon Laws, Chapter 827. These rules shall be interpreted to effectuate these policies and to promote justice. Technical violations of these rules which do not affect substantial rights or interests of parties or of the public shall not interfere with the review of a petition.

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Definitions

661-10-010 In these rules, unless the context or subject matter otherwise requires:

(1) "Applicant" is the person identified by the governing body as having applied for authorization for a particular land use activity or having requested that the governing body take some action which resulted in a land use decision.

(2) "Board" means the Land Use Board of Appeals.

(3) "Final decision or determination" means a decision, determination which has been reduced to writing and which bears the necessary signatures of the governing body.

(4) "Governing body" means a city, county or special district governing body or a state agency.

(5) "Land use decision" has the meaning given the term in ORS 197.015 as amended by 1983 Oregon Laws, Chapter 827, §1.

(6) "Notice" means the Notice of Intent to Appeal and refers to that document which must be filed with the Board in order to begin a review proceeding before the Board.

(7) "Party" means the petitioner, the governing body, and any person who files a Statement of Intent to Participate as provided in rule 661-10-020 or any other person who intervenes as provided in rule 661-10-050. "Party" does not include a state agency that files a brief pursuant to 1983 Oregon Laws, Chapter 827, Section 31(6).

(8) "Transmit" means to send with the United States Postal Service by first class mail or to deliver in person.

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Notice of Intent to Appeal

661-10-015 (1) **Filing of Notice:** The Notice must be delivered to and received by the Board for filing on or before the 21st day after the date the decision sought to be reviewed becomes final. A Notice received after that day will not be timely filed, and the appeal will be dismissed. The Notice must be served on the governing body, the governing body's counsel, and all persons identified in the Notice as required by rule 661-10-015(2)(f) within 21 days from the date of the land use decision.

(2) **Contents of Notice:** The Notice shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name of the person filing the Notice, identifying that person as a petitioner, and the name of the governing body identifying that governing body as the respondent.

(b) Below the caption the heading "Notice of Intent to Appeal";

(c) The full title of the land use decision as it appears on the final decision;

(d) The date of the land use decision;

(e) A concise description of the land use decision;

(f) The name, address and telephone number of each of the following:

(A) The petitioner, except that if the petitioner is represented by an attorney, then the petitioner's address and telephone number may be deleted and the name, address and telephone number of the attorney shall be included;

(B) The applicant, if any (if other than the petitioner), except that if the applicant was represented by an attorney before the governing body, then the applicant's address and telephone number may be deleted and the name, address and telephone number of the applicant's attorney of record shall be included;

(C) The governing body and the governing body's legal counsel;

(D) Any other person whom the governing body's records indicate was mailed written notice of the land use decision for which review is sought.

(g) A statement which advises all persons whose name, address and telephone number are required to appear in notice as provided in subsection (f) of this section, other

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CHAPTER 661, DIVISION 10 — LAND USE BOARD OF APPEALS

the governing body, that in order to participate in the review proceeding before the Board a Statement of Intent to Participate in such proceedings as required by rule 661-10-020 must be filed with the Board within 15 days of service of the Notice.

(h) Proof of service upon all persons required to be named in the Notice which conforms to rule 661-10-010(9).

(3) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of \$50 and a deposit for costs in the amount of \$150. A separate check or money order shall be submitted for the filing fee and the deposit of costs. Cash will not be accepted.

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

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Statement of Intent to Participate

661-10-020 (1) Any person identified in the Notice, other than the petitioner and governing body, who desires to participate as a party in the appeal shall within 15 days of service of the Notice upon such person, file with the Board and serve on all parties designated in the Notice, a Statement of Intent to Participate. The Statement may be in the form set forth in Exhibit 2 of these rules.

(2) Unless otherwise advised in writing, the Board shall designate as respondents all persons filing a Statement of Intent to Participate.

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

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Record

661-10-025 (1) Contents: Unless the Board otherwise orders, or the parties otherwise stipulate, the record shall include at least the following:

(a) The final decision including the findings and conclusions;

(b) All exhibits, maps, documents or other written materials;

(c) All written testimony submitted in the course of the governing body's proceeding;

(d) Minutes of the proceeding as required by law.

(2) Transmittal of Record:

(a)(A) The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board the original or certified copy of the record of the proceeding under review. The governing body may, however, retain any large maps or other large documents which are difficult to duplicate until the time for submission of the governing body's brief.

(B) Contemporaneously with transmittal, the governing body shall serve a copy of the record, exclusive of large maps and other large documents which are difficult to duplicate, on the petitioner and shall furnish a copy of the record to any other party provided such other party reimburses the governing body for the reasonable expense incurred in copying the record so furnished.

(b) The record shall:

(A) Be transmitted to the Board in suitable cover or folder, bearing the title of the case as it appears in the caption on the Notice and the governing body's numerical designation, if any, of the land use decision;

(B) Include a table of contents;

(C) Be securely fastened together;

(D) Contain consecutive numbering of pages with the page number appearing at the bottom of each page;

(E) Be prepared so that its contents appear in chronological order with the most recent item in the record appearing on top.

(3) Objectives to Sufficiency or Accuracy of Record:

(a) Prior to filing an objection with the Board as provided in this section, a party shall first attempt to resolve the matter with the governing body or its legal counsel. When the governing body or its legal counsel transmits amendments or additions to the record in order to resolve the matter without objection, the date of such transmittal shall be considered the date of transmittal of the record for the purposes of computing time limits for issuance of the Board's final opinion and order. The date of receipt of such amendments by the Board shall be the date for computing the time limits for submittal of the petition for review and the respondent's brief. If objection is thereafter filed with the Board, the objection shall state that the party filing the objection was not able to resolve the matter with the governing body.

(b) Any objection that the record does not include all matters before the governing body, that the record contains matters not before the governing body, that the minutes do not accurately reflect the testimony submitted to the governing body or that the record is in any other manner insufficient or inaccurate shall be filed with the Board within 10 days following service of the record on the person filing the objection.

(c) If the objection is to the completeness or accuracy of the minutes, the party making the objection shall demonstrate with particularity how the minutes are defective. Upon such a demonstration the Board shall require the governing body to produce any additional evidence it has supporting the accuracy and completeness of the contested minutes. If the evidence is to be found in a taped record, the relevant portion of the taped record shall be submitted to the Board in typewritten form.

(d) The Board may conduct a conference to consider any objections filed concerning the record.

(e) Filing of an objection to the sufficiency or accuracy of the record shall suspend the time for the filing of the petition for review, the respondent's brief and the time within which the Board must make a final decision. When the objection is settled by the parties or when the Board rules on the objection, the Board will issue a letter or order declaring the record settled. The date of issuance of the letter or order shall be considered the date of transmittal of and receipt of the record for the purposes of computing time limits for other events provided in these rules and 1983 Oregon Laws, Chapter 827.

(4) Review of Maps or Other large Documents: Any party to an appeal who desires to review any large maps or other large documents must make suitable arrangements with the governing body or the Secretary of the Board.

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

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Petition for Review

661-10-030 (1) Filing and Service of Petition: The petition for review shall be filed with the Board and served on the governing body and all parties who have filed a Notice of Intent to Participate or intervened within 21 days after the date the record is received by the Board. Failure to file a petition for review within the time required will result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body.

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(2) Specifications: The petition for review shall:

(a) Contain a table of contents in the front portion;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for an extended petition is allowed by the Board;

(c) Set out on a cover page, which shall be blue in color, the full title of the review proceeding, including the names, addresses and telephone numbers of all parties or their attorneys who have filed Statements of Intent to Participate in the review proceeding. All such parties shall be designated as respondents on the cover page of the petition for review, unless otherwise indicated pursuant to rule 661-10-020(2);

(d) Be typewritten, in pica type, and double spaced with double space above and below each paragraph or less of quotation. Printed or used area shall not exceed 6 and 1/4 inches by 9 and 1/2 inches, exclusive of page numbers;

(e) Be on white pleading paper, without glaze, with surface suitable for both pen and pencil notations;

(f) Contain on the last page the name of the author of the petition for review and the name of the law firm or firms, if any, representing the petitioner.

(3) Contents: The petition for review shall contain petitioner's brief and shall set out the facts that establish that the petitioner has standing:

(a) If the petition challenges a legislative decision, the facts must show in what manner the interests of the petitioner have been adversely affected or in what manner the petitioner has been aggrieved.

(b) If the petition challenges an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation, the facts must show that the person participated either orally or in writing in the local government proceedings leading to adoption of the amendment.

(c) The provisions of the section (2) of this rule do not apply where:

(A) The local government determines that the goals do not apply to an amendment or new regulation; or

(B) Where the local government has submitted the amendment or new regulation with less than 45 days notice provided in ORS 197.610 under a local government determination that emergency circumstances exist requiring expedited review; or

(C) Where an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation differs from the proposal submitted under ORS 197.610 to such a degree that the notice under ORS 197.610 did not reasonably describe the nature of the local government final action.

(d) If the petition challenges a quasi-judicial decision, the facts must show that the petitioner appeared, either orally or in writing, in the proceeding below and that either the petitioner was entitled as a matter of right to notice and hearing prior to the making of the decision sought to be reviewed or the petitioner's interests were adversely affected or the petitioner was aggrieved by the decision.

(e) Open with a clear and concise statement of the case which shall set forth in the following order and under separate headings:

(A) The nature of the land use decision and the relief sought by the petitioner;

(B) A succinct and clear summary of arguments appearing in the body of the petition for review;

(C) A concise but complete summary of the facts of the appeal material to the determination of the question or questions presented for review. The summary shall be in narrative form with reference to the place in the record where such facts appear;

(D) Any other matters necessary to inform the Board concerning the questions and contentions raised by petitioner, insofar as such matters are a part of the record, with reference to the portions of the record where such matters appear.

(f) Set forth clearly and succinctly each assignment of error under a separate and appropriate heading. Where several assignments of error present essentially the same question, they shall be combined so far as is practicable.

(g) Set forth a separate argument for each assignment of error or combination of assignments of error; and

(h) Contain a copy of the land use decision of which review is sought, including the written findings of fact, statements of reasons and conclusions of law adopted by the governing body.

(4) Amended Petition: A petition for review which fails to comply with sections (2) or (3) of this rule may, with permission of the Board, be amended. The Board shall determine whether to allow an amended petition for review to be filed in accordance with the provisions in rule 661-10-005.

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Respondent's Brief

661-10-035 (1) Filing of Brief: Respondent's brief shall be filed with the Board within 42 days after the date the record is received by the Board. A copy of the respondent's brief shall be served on the petitioner and all persons who have filed a Statement of Intent to Participate or who have been allowed to intervene in the review proceeding.

(2) Specifications: Respondent's brief shall conform to the specifications required of the petition for review, except that the brief shall have a cover page which is red in color. If there is more than one respondent in the review proceeding, cover page should specify which respondent is filing the brief.

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the petition for review, omitting repetition of the assignments of error. Under the heading "Statement of the Case", the respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters as may apply to the decision. The additional statement shall refer to pages of the record in support of the additional matter set forth but shall not repeat those portions of petitioner's statement with which respondent agrees.

(b) If respondent challenges petitioner's standing on the basis that the facts alleged in support of standing are not true, respondent shall state in its brief under a separate heading the true facts and in what manner the facts alleged by petitioner are untrue. If necessary in order to obtain sufficient information to dispute petitioner's allegations of standing respondent may take petitioner's deposition pursuant to ORS 183.425 and OAR 661-10-045(6). Such deposition, if relied upon by respondent, shall be appended to respondent's brief, or filed with the Board and served on all parties as soon as is practicable.

(4) Amended Brief: The Board may allow the filing of an amended brief in accordance with the provisions for filing an amended petition for review contained in rule 661-10-030(4).

Stat. Auth.: ORS Ch.

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

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State Agency Briefs

661-10-036 A state agency that wishes to file a brief pursuant to 1983 Oregon Laws, Chapter 827, Section 31(6) shall file the brief within the time set for respondent's brief.

Stat. Auth.: ORS Ch.

Hist: LUBA 1-1983, f. & ef. 10-3-83

Oral Argument

661-10-040 (1) The parties shall be afforded an opportunity to present oral argument to the Board. The Board shall set a time for oral argument, generally within seven days of the filing of respondent's brief. The Board shall inform the parties of the time and place of oral argument. Unless the Board otherwise orders, petitioner and respondent shall each be allowed 30 minutes for oral argument. Unless otherwise required by any of the parties and appropriate arrangements are made by such party or parties, all arguments before the Board shall be tape recorded only. The parties may with consent of the Board stipulate to submit a case to the Board on briefs without oral argument.

(2) A state agency which has filed a brief pursuant to 1983 Oregon Laws, Chapter 827, Section 31(6) and Rule 10 may move to argue orally before the Board. The motion must be filed at least five (5) days prior to the date set for oral argument.

Stat. Auth.: ORS Ch.

Hist: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Special Evidentiary Hearing

661-10-045 (1) The Board may upon written motion conduct a special evidentiary hearing in the case of disputed allegations of unconstitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. A special evidentiary hearing may also be held to consider claims of irreparable injury in requests for stays under 1983 Oregon Laws, Chapter 827, Section 34.

(2) A motion for a special evidentiary hearing shall contain:

(a) A statement explaining with particularity what facts the moving party will present at the hearing and how those facts will affect the outcome of the Board's review proceeding.

(b) Whenever possible, the motion will contain affidavits supporting the request for hearing and the facts the moving party wishes to prove.

(3) Conduct of Hearing:

(a) If allowed, and insofar as the Board finds it practical, the hearing shall be conducted in the following manner:

(A) The moving party shall present its evidence including that of any witnesses;

(B) The other party(ies) shall have the opportunity to present evidence disputing that of the moving party;

(C) The moving party shall be allowed brief rebuttal testimony.

(b) Any member of the Board or parties to the proceeding shall have the right to question, examine or cross-examine any witnesses.

(c) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition.

(d) The hearing may be continued with recesses as determined by the Board.

(e) The Board may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial matter.

(f) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the Board as part of the record of the Board's proceeding.

(4) Evidentiary Rules:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All offered evidence, not objected to, will be received by the Board subject to its power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Board with rulings on its admissibility or exclusion to be made at or any time before the time a final order is issued.

(e) Any time ten days or more before a hearing or at such other time as the Board may specify, any party may serve on an opposing party a copy of any affidavit, certificate or other document the party proposes to introduce in evidence. Unless the opposing party requests cross-examination of the affiant, certificate preparer or other document preparer or custodian, within five days prior to hearing, or at such other time as the Board may specify, the affidavit or certificate may be offered and received with the same effect as oral testimony.

(f) If the opposing party requests cross-examination of the affiant, certificate preparer or other document preparer or custodian as provided in rule 661-10-045(4)(3) and the opposing party is informed within five days prior to the hearing, or at such other time as the Board may specify, that the person will not appear for cross-examination, the affidavit, certificate or other document may be received in evidence, provided the Board determines that:

(A) The contents of the affidavit, certificate or other document is of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs; and

(B) The party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.

(5) The filing of any motion for evidentiary hearing will suspend the time limits for any other event in the review proceeding including the issuance of the Board's final order. If the Board grants the request for hearing, the time limits for other events shall continue to be suspended until the close of the evidentiary hearing. The Board shall schedule any evidentiary hearing not less than ten days after the time the Board issues an order granting the motion for evidentiary hearing or at such other times as the parties may agree. If the Board denies a request for an evidentiary hearing, the time for all future events will begin to run upon the date the Board issues its order denying the hearing.

(6) Depositions, Subpenas:

(a) On petition of any party to a proceeding before the Board, the Board may order testimony of any witness to be taken by deposition in the same manner prescribed by law for depositions in civil actions (ORCP 38-40). Depositions may also be taken by the use of audio or audio visual recordings. The petition for depositions shall set forth:

(A) The name and address of the witness whose testimony is desired.

(B) A showing of relevance and materiality of the testimony.

(C) A request for an order that the testimony of the witness be taken before an officer named in the petition for that purpose.

(b) Should the Board order an evidentiary hearing, the Board shall issue subpoenas to any party to a contested case

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upon request upon a showing of relevance and reasonable scope of the evidence sought. Subpenas may also be issued under the signature of the attorney of record of a party.

(c) Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the Board, shall be tendered fees and mileage as prescribed by law for witnesses in civil actions. The party requesting the subpoena shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

Stat. Auth.: ORS Ch.

Hint: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Intervention

661-10-050 (1) Except for those persons identified in the Notice of Intent to Appeal as required by rule 661-10-015(2)(f), any person who can show entitlement to standing under rule 661-10-020(3)(a) through (e) may intervene in and become a party to any review proceeding before the Board involving that land use decision. Such intervention must be by written motion and must contain the facts which show that the person is entitled to intervene. The motion to intervene shall be filed within the time for:

(a) Filing the petition for review, if intervention is sought as a petitioner, or the time for

(b) Filing the respondent's brief, if intervention is sought as a respondent.

(2) The motion should set forth assignments of error or responses to assignments of error, as appropriate, with supporting argument. The motion shall contain intervenor's brief and shall conform to the specifications for the petition for review as set forth in rule 661-10-030. Where intervention is sought as a respondent, no reply by the petitioner will be allowed without permission of the Board.

Stat. Auth.: ORS Ch.

Hint: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 4-1980, f. & ef. 9-8-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Consolidation

661-10-055 The Board may, at the request of any party or on its own motion consolidate any petitions for review into one proceeding provided the petitions seek review of the same land use decision and involve the same or substantially similar issues.

Stat. Auth.: ORS Ch.

Hint: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Exceptions to Board's Recommendation

661-10-060 [LUBA 1-1979(Temp), f. & ef. 11-1-79;
LUBA 2-1980, f. & ef. 4-29-80;
Repealed by LUBA 1-1983, f. & ef. 10-3-83]

Motions

661-10-065 (1) When Motion is Appropriate: Unless the rules or applicable statutes provide another form of application, a request for an order or relief shall be made by serving and filing a motion in writing for such order or relief.

(2) Time of Filing: A party seeking to challenge the failure of an adverse party to comply with any of the requirements of statutes or Board rules shall make such challenges by motion filed with the Board and served on the adverse party within 10 days after the moving party obtains knowledge of such alleged failure. The adverse party may, within 10 days of the receipt of a motion under this rule, serve and file an answer.

(3) How Submitted: Parties shall submit all motions without oral argument unless otherwise directed by the Board. The motion shall show proof of service on all opposing counsel.

Stat. Auth.: ORS Ch.

Hint: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

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Final Order of Board

661-10-070 (1) An Order of the Board shall be deemed final when the cover page of the order containing the caption of the appeal:

- (a) States that it is the "Final Opinion and Order";
- (b) Indicates whether the decision being reviewed is affirmed, reversed or remanded:
 - (A) The Board will reverse a land use decision when:
 - (i) The governing body exceeded its jurisdiction; or
 - (ii) The decision is unconstitutional; or
 - (iii) The decision violates a provision of applicable law which is prohibited as a matter of law.
 - (B) Reversal of a decision vacates the decision.
 - (C) The Board will remand a land use decision for further proceedings when:
 - (i) The findings are insufficient to support the decision; or
 - (ii) The decision is not supported by substantial evidence in the whole record; or
 - (iii) The decision is flawed by procedural errors that prejudice the substantial rights of the petitioner(s); or
 - (iv) The decision improperly construes the applicable law.
 - (D) Remand of a decision reinvests the maker of the land use decision with jurisdiction over the issues remanded.
- (c) Contains the date of the final order;
- (d) Has received a time and date stamp of the Land Use Board of Appeals.

(2) When an order of the Board becomes final it shall be made available to interested members of the public. The Board may charge \$.10 per page for copies of its final orders or other orders furnished to members of the public.

Stat. Auth.: ORS Ch.

Hint: LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83

Miscellaneous Provisions

661-10-075 (1) Extension of Time:

(a) Except as provided in subsection (b) of this section, any time deadline established by these rules for the filing of documents with the Board, other than the Notice of Intent to Appeal and the Petition for Review, may be extended by the Board upon motion of the party seeking the extension. The motion shall state the reasons for the granting of the extension and must be filed with the Board within the time required for performance of the act for which an extension of time requested.

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(b) A motion which seeks to extend the time for filing the petition for review or respondent's brief must be accompanied by a written stipulation signed by all the parties to the appeal consenting to the extension. A written stipulation consenting to an extension to time for filing respondent's brief must also contain a provision consenting to an extension of the time within which the Board is required to issue a final order by an amount of time equal to the extension stipulated by the parties.

(c) The Board may extend the time within which the Board must make a final decision on a petition for review on its own motion or at the request of one of the parties if the Board finds that the ends of justice served by granting the extension outweigh the best interests of the public and the parties in having a decision within 77 days. The factors the Board shall consider in determining whether to grant an extension under this subsection of these rules are as follows:

(A) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible resulting in a miscarriage of justice; or

(B) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that is unreasonable to expect adequate consideration of the issues within the 77 day time limit.

(d) Other than the time limit within which to file the notice of intent to appeal, any time limit established by these rules, including the time within which the Board must issue its final decision, may be extended upon consent of all the parties.

(e) Except when ordered by the Board, the filing of a motion to dismiss will not stay or suspend any time limit established by these rules or the provisions of 1983 Oregon Laws, Chapter 727.

(2) Cost Bill and Attorneys Fees:

(a) In order for the Board to award costs, in whole or in part, to the prevailing party, the prevailing party shall file a cost bill within 15 days of the date the final order is issued and shall serve a copy of the cost bill on all parties to the proceeding. The prevailing party may be awarded as costs statutory witness fees, if any are incurred, and costs associated with the court reporting of the proceedings before the Board if the proceedings have been so reported at the election of the prevailing party. In addition, if the prevailing party is the governing body, the governing body may be awarded costs incurred in preparing the record. If the prevailing party is the petitioner, the petitioner may be awarded the cost of the filing fee. Any objections to the cost bill must be filed with the Board within 10 days after it is filed with the Board. Costs awarded against more than one party shall be divided equally among all such parties unless the Board otherwise directs.

(b) A party seeking an award of attorney's fees shall file a petition therefor within 15 days of the date the final order is issued and shall serve a copy of the petition on all parties to the proceeding. Any objections to the petition for attorney's fees and expenses must be filed with the Board within 10 days after the petition is filed.

(3) Cross Petition: Any person identified in the Notice as a respondent who desires to file a petition for review may do so by filing a cross petition for review. The cover page shall identify the petition as a cross petition and the party filing the cross petition. The cross petition must be filed within the time required for filing the petition for review and must comply in all respects with the requirements of this rule governing the petition for review, except that a Notice of Intent to Appeal need not have been filed by such party.

(4) Reply Briefs: Reply briefs shall not be allowed unless permission is first obtained from the Board. If allowed, the reply brief shall be confined solely to matters raised in the respondent's brief and the form shall be similar to the form of a

respondent's brief. However, a petitioner may, as a matter of right, file a reply brief on the question of the Board's jurisdiction if that issue is raised in the respondent's brief. Reply briefs shall have a gray cover.

(5) Filing and Service:

(a) With the exception of the notice of intent to appeal, which must be filed in the manner specified in rule 661-10-015(1), anything to be filed with the Land Use Board of Appeals may be accomplished by:

(A) Delivery to the Board on or before the date due; or

(B) Mailed on or before the date due by first class mail with the United States Postal Service.

(b) Service:

(A) A copy of anything filed under these rules must, contemporaneously with filing, be served by the filing party or attorney on all parties to the cause.

(B) Service may be in person or by first-class mail. Service by United State Postal Service mail is complete on deposit in the mail.

(C) All service copies must include a certificate showing the date of filing or mailing to the Board.

(D) Anything filed with the Board shall contain either an acknowledgment of service by the person served or proof of service in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who made service.

(E) Proof of service shall appear on or be affixed to anything filed.

(6) Copies of Documents to be Filed With the Board:

(a) The petition for review and any briefs filed with the Board shall be filed together with four copies.

(b) Any other document filed with the Board, except documents to be included as part of the record on review, shall be filed together with one copy.

(7) Conferences: On its own motion or at the request of any party, the Board may conduct one or more conferences. The Board shall provide reasonable notice advising all parties of the time, place and purpose of the conference.

(8) Appearances Before the Board: A party to a proceeding before this Board may appear on his own behalf or be represented by an attorney. Appearances by a person other than an individual shall be by attorney, in all cases. As used in this rule, attorney means an active member of the Oregon State Bar.

(9) Computation of Time: The time provided in these rules for acts to be performed shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other legal holiday, the act must be performed on the next judicial day.

(10) Address and Hours of the Board: The Board's address is 106 State Library Building, Salem, Oregon, 97310. The telephone number is 373-1265. The offices of the Board shall be open from 8:30 a.m. to 5 p.m. Monday through Friday, exclusive of legal holidays.

(11) Citations to Board Decisions: Citations to Board decisions shall be in the following form: _____ Or LUBA _____ ().

Stat. Auth.: ORS Ch.

Hist: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 2-1981(Temp), f. & ef. 8-20-81; LUBA 1-1982(Temp), f. & ef. 5-19-82; LUBA 1-1983, f. & ef. 10-3-83

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OREGON ADMINISTRATIVE RULES
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EXHIBIT 1
(661-10-013)

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

Jane Smith,
Petitioner,
vs.
Willamette County,
Respondent.
LUBA No.

NOTICE OF INTENT TO APPEAL

I.
Notice is hereby given that petitioner intends to appeal
that land use decision of respondent entitled
which became final on
and which involves (set forth a brief statement of the nature
of the decision).

II.
Petitioner, Jane Smith, is represented by (include name,
address and telephone number of attorney).
Applicant, John Developer, was represented in the
proceeding below by: (include name, address and telephone
number of attorney).
Respondent, Willamette County, has as its mailing address
and telephone number: and has, as its legal
counsel:

Other persons mailed written notice of the land use

decision by Willamette County, as indicated by its records in
this matter, include: (include names, addresses and telephone
numbers of all persons whom the governing body's records
indicate were mailed written notice of the land use decision).

NOTICE:

Anyone designated in paragraph II of this Notice other than
Respondent Willamette County who desires to participate as a
party in this case before the Land Use Board of Appeals must
file with the Board a Statement of Intent to Participate in
this proceeding as required by rule 661-10-020. The Statement
must be filed with the Board within 15 days of service of this
Notice.

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on
I served a
true and correct copy of this Notice of Intent to Appeal on all
persons listed in paragraph II of this Notice pursuant to rule
661-10-010(8) by (a) mail or (b) personal delivery. [INDICATE
WHICH]

Dated:

Signature

OREGON ADMINISTRATIVE RULES
CHAPTER 661, DIVISION 10 — LAND USE BOARD OF APPEALS

EXHIBIT 2
(661-10-020)

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

Jane Smith,)	
)	LJBA No. _____
Petitioner,)	
)	
vs.)	
)	
Willamette County,)	
)	
Respondent.)	

STATEMENT OF INTENT TO PARTICIPATE

_____ intends to participate in the above captioned review proceeding.

Signature

CERTIFICATE OF SERVICE

I hereby certify that on _____, I served a true and correct copy of this Statement of Intent to Participate on all persons listed in paragraph II of the Notice of Intent to Appeal pursuant to rule 661-10-010(8) by (a) mail or (b) personal delivery. [INDICATE WHICH]

Dated: _____

Signature

STATE AGENCY AUTHORITIES
INCLUDED IN THE
OREGON COASTAL MANAGEMENT PROGRAM

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Department of Transportation		
Chapter 377	Highway Beautification	6
Chapter 390	Ocean Shores	6
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HOUSING DIVISION

Chapter 456

HOUSING DIVISION

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Chapter 466

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HAZARDOUS WASTE AND PCB

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456.550**PUBLIC HEALTH AND SAFETY**

thing of value from the United States or any of its agencies, or from other persons, for any of the purposes contemplated by Article XI-1(2) of the Oregon Constitution and by ORS 456.515 to 456.547. Unless enjoined by the terms and conditions of any such gift or grant, the division may convert the same or any of them into money through sale or other disposal thereof. [1977 c.485 §9]

HOUSING DIVISION**(Administration)**

456.550 Policy. (1) There exists in this state a seriously inadequate supply of and a pressing need for safe and sanitary dwelling accommodations within the financial means of persons and families of lower income, including but not limited to persons and families displaced by the clearing of slums and blighted areas or by other public programs;

(2) Private lending institutions have been and will continue to be unable to provide necessary financial support for lower income housing and the resulting shortage of financing has been in whole or in part responsible for the shortage of lower income housing;

(3) It is a valid public purpose to provide for the construction, rehabilitation, purchase, leasing and refinancing of housing for such persons and families who would otherwise be unable to obtain adequate dwelling accommodations which they could afford and to aid in the acquisition of land for present or future developments including such housing accommodations; and

(4) It is further found that the authority and powers conferred by ORS 456.550, 456.559, 456.574 to 456.625 and 456.630 to 456.720 upon the division and the administrator constitute a necessary public program and serve a valid public purpose.

(5) To stimulate and increase the supply of housing for persons and families of lower income it is necessary that a central source of housing information, planning, educational services and technical assistance and a revolving fund be established. The Housing Division shall be that central source in this state. [1971 c.505 §1; 1973 c.828 §1; 1973 c.832 §3; 1975 c.154 §7]

456.554 Housing Division established; administrator. (1) The Housing Division is established within the Department of Commerce.

(2) The Housing Division shall be under the supervision and control of an administrator who is responsible for the performance of the duties imposed upon the division. The Director of the

Department of Commerce shall appoint the administrator, subject to the approval of the Governor. The administrator shall hold his office at the pleasure of the director. The person appointed as administrator shall be a person who, by training and experience, is well qualified to perform the duties of the office.

(3) The administrator shall receive such salary as may be provided by law, or, if not so provided, as may be fixed by the director. In addition to his salary, the administrator shall, subject to the limitations otherwise provided by law, be reimbursed for all expenses actually and necessarily incurred by him in the performance of his official duties. [Formerly 456.560]

456.559 Powers and duties of division. (1) The division shall:

(a) Maintain current housing data and information concerning available programs, status of funding, programs planned or undertaken which might conflict with, overlap, duplicate or supersede other planned or existing programs and call these to the attention of appropriate state agencies, governmental bodies and public or private housing sponsors.

(b) Provide to appropriate state agencies, governmental bodies and public or private housing sponsors such advisory and educational services as will assist them in the development of housing plans and projects.

(c) Make noninterest bearing advances, in accordance with ORS 456.710 and the policies of the division to qualified nonprofit sponsors for development costs of housing projects until mortgage funds are released to repay the advances as provided in ORS 456.710.

(d) Advise and assist appropriate state agencies, governmental bodies and public or private housing sponsors, cities and counties, in all programs and activities which are designed or might tend to fulfill the purposes of ORS 184.520 and 456.550 to 456.720.

(e) Encourage and assist in the planning, development, construction, rehabilitation and conservation of dwelling units for persons and families of lower income.

(f) Be the central state agency to apply for, receive and distribute, on behalf of appropriate state agencies, governmental bodies and public or private housing sponsors in the state, grants, gifts, contributions, loans, credits or assistance from the Federal Government or any other source for housing programs except when the donor, grantor, or lender of such funds specifically directs some other agency to administer them.

HOUSING; BUILDING CODE**456.571**

(g) For the purposes of acquiring moneys, credits or other assistance from any agency or instrumentality of the United States or from any public corporation chartered by the United States, comply with any applicable agreements or restrictions for the receipt of such assistance and become a member of any such association or public corporation chartered by the United States.

(h) The division shall give preference to projects involving the rehabilitation and conservation of existing housing units wherever economically feasible.

(2) Except as otherwise provided in ORS 456.625 (7), the division shall not itself develop, construct, rehabilitate or conserve housing units; and neither the division nor any housing sponsor, including but not limited to any association, corporation, cooperative housing authority or urban renewal agency organized to provide housing and other facilities pursuant to ORS 456.550, 456.574 to 456.625 and 456.630 to 456.720 and this section, may own, acquire, construct, purchase, lease, operate or maintain utility facilities, including facilities for the generation of electricity, for the distribution of gas and electricity, and for the conveyance of telephone and telegraph messages.

(3) In accordance with the provisions of this section and with the concurrence of the State Housing Council, the Housing Division shall establish state-wide priorities for housing programs. State agencies shall coordinate their housing programs through the Housing Division. All state agencies intending to apply for federal funds for use in planning, developing or managing housing, or rendering assistance to governmental bodies or sponsors or individuals involved therein shall submit a description of the proposed activity to the division for review not less than 30 days prior to the intended date of submission of the application to the federal agency. The division shall determine whether the proposal would result in a program that would overlap, duplicate or conflict with any other housing program in the state. If the division finds overlapping or duplication or conflict, it shall recommend modifications in the application. The Executive Department shall consider these recommendations in making its decision to approve or disapprove the application. The division shall complete its review and forward its recommendations within 15 working days after receipt of the notification. Failure of the division to complete the review within that time shall constitute approval of the application by the division. [Formerly 456.570]

456.560 [1971 c.505 §2; renumbered 456.554]

456.563 Additional powers of administrator. The administrator, in addition to the administrator's other powers, shall have the following powers:

(1) Subject to the applicable provisions of the State Personnel Relations Law, to appoint all subordinate officers and employees of the division and prescribe their duties and fix their compensation.

(2) Make, with the concurrence of the State Housing Council, the rules necessary for the administration and enforcement of ORS 456.550 to 456.720 and establish criteria for granting of benefits conferred by ORS 456.550 to 456.720. [Formerly 456.560]

456.567 State Housing Council; appointment; terms; compensation. (1) The State Housing Council is established within the Department of Commerce. The council shall consist of seven members appointed by the Governor subject to confirmation by the Senate under ORS 171.562 and 171.565.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to be immediately effective for the unexpired term.

(3) The Governor shall appoint the chairman of the council.

(4) The administrator of the division shall act as secretary to the council and official custodian of its records.

(5) The members of the council are entitled to compensation and expenses as provided in ORS 292.495. [Formerly 456.560]

456.570 [1971 c.505 §§4, 5; 1973 c.828 §2; 1973 c.832 §4; 1979 c.327 §28; renumbered 456.559]

456.571 Powers and duties of council. (1) The State Housing Council shall cooperate with the administrator in stimulating and increasing the supply of housing for persons and families of lower income.

(2) The council shall review each loan or grant in excess of \$100,000 proposed to be made by the administrator under the division's programs and the council may approve or disapprove any loan or grant. The administrator shall submit each loan or grant in excess of \$100,000 the division proposes to make to the council for review and shall not make any loan or grant in

STORAGE, TREATMENT AND DISPOSAL OF HAZARDOUS WASTE AND PCB**(General Provisions)**

466.005 Definitions for ORS 453.635 and 466.005 to 466.385. As used in ORS 453.635 and 466.005 to 466.385 and 466.890, unless the context requires otherwise:

- (1) "Commission" means the Environmental Quality Commission.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Director" means the Director of the Department of Environmental Quality.
- (4) "Dispose" or "disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that the hazardous waste or any hazardous constituent thereof may enter the environment or be emitted into the air or discharged into any waters of the state as defined in ORS 468.700.
- (5) "Generator" means the person, who by virtue of ownership, management or control, is responsible for causing or allowing to be caused the creation of a hazardous waste.
- (6) "Hazardous waste" does not include radioactive material or the radioactively contaminated containers and receptacles used in the transportation, storage, use or application of radioactive waste, unless the material, container or receptacle is classified as hazardous waste under paragraph (a), (b) or (c) of this subsection on some basis other than the radioactivity of the material, container or receptacle. Hazardous waste does include all of the following which are not declassified by the commission under ORS 466.015 (3):
 - (a) Discarded, useless or unwanted materials or residues resulting from any substance or combination of substances intended for the purpose of defoliating plants or for the preventing, destroying, repelling or mitigating of insects, fungi, weeds, rodents or predatory animals, including but not limited to defoliant, desiccants, fungicides, herbicides, insecticides, nematocides and rodenticides.
 - (b) Residues resulting from any process of industry, manufacturing, trade or business or government or from the development or recovery of any natural resources, if such residues are classified as hazardous by order of the commission, after notice and public hearing. For purposes of classification, the commission must find that the residue, because of its quantity, concentration, or physical, chemical or infectious characteristics may:
 - (A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
 - (B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.
 - (c) Discarded, useless or unwanted containers and receptacles used in the transportation, storage, use or application of the substances described in paragraphs (a) and (b) of this subsection.
 - (7) "Hazardous waste collection site" means the geographical site upon which hazardous waste is stored.
 - (8) "Hazardous waste disposal site" means a geographical site in which or upon which hazardous waste is disposed.
 - (9) "Hazardous waste treatment site" means the geographical site upon which or a facility in which hazardous waste is treated.
 - (10) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage.
 - (11) "PCB" has the meaning given that term in ORS 468.900.
 - (12) "Person" means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.
 - (13) "Store" or "storage" means the containment of hazardous waste either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.
 - (14) "Transporter" means any person engaged in the transportation of hazardous waste by any means.
 - (15) "Treat" or "treatment" means any method, technique, activity or process, including but not limited to neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render the waste nonhazardous, safer for transport, amena-

466.010**PUBLIC HEALTH AND SAFETY**

ble for recovery, amenable for storage, or reduced in volume. [Formerly 459.410]

466.010 Purpose. (1) The Legislative Assembly finds it is in the interest of public health and safety and environment to protect Oregon citizens from the potential harmful effects of the transportation and treatment or disposal of hazardous waste and PCB within Oregon.

(2) Therefore, the Legislative Assembly declares that it is the purpose of ORS 466.005 to 466.385 and 466.890 to:

(a) Protect the public health and safety and environment of Oregon to the maximum extent possible;

(b) Exercise the maximum amount of control over actions within Oregon relating to hazardous waste and PCB transportation and treatment or disposal;

(c) Limit to the extent possible the treatment or disposal of hazardous waste and PCB in Oregon to materials originating in the states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469.930; and

(d) Limit to the extent possible the size of any hazardous waste or PCB treatment or disposal facility in Oregon to a size that is appropriate to treat or dispose of waste or PCB originating in Oregon and, if capacity permits, to waste or PCB originating in those states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management under ORS 469.930. [1985 c.670 §3]

(Administration)

466.015 Powers and duties of department. The department shall:

(1) Provide for the administration, enforcement and implementation of ORS 466.005 to 466.385 and 466.890 and may perform all functions necessary:

(a) To insure the proper management of hazardous waste by generators;

(b) For the regulation of the operation and construction of hazardous waste treatment, collection and disposal sites; and

(c) For the licensing of hazardous waste treatment, collection and disposal sites in consultation with the appropriate county governing body or city council.

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in

activities subject to the provisions of ORS 466.005 to 466.385 and 466.890.

(3) After notice and public hearing pursuant to ORS 183.310 to 183.550, declassify as hazardous wastes those substances described in ORS 466.005 (6) which the commission finds, after deliberate consideration, taking into account the public health, welfare or safety or the environment, have been properly treated or decontaminated or contain a sufficiently low concentration of hazardous material so that such substances are no longer hazardous. [Formerly 459.430]

466.020 Rules and orders. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission shall:

(1) Adopt rules and issue orders thereon, including but not limited to establishing minimum requirements for the treatment, storage and disposal of hazardous wastes, minimum requirements for operation, maintenance, monitoring, reporting and supervision of treatment, collection or disposal sites, and requirements and procedures for selection of such sites.

(2) Adopt rules and issue orders thereon relating to the procedures of the department with respect to hearings, filing of reports, submission of plans and the issuance, revocation and modification of licenses issued under ORS 466.005 to 466.385 and 466.890.

(3) Adopt rules and issue orders thereon to classify as hazardous wastes those residues defined in ORS 466.005 (6)(b).

(4) Adopt rules and issue orders thereon relating to reporting by generators of hazardous wastes concerning type, amount and disposition of such hazardous waste. Rules may be adopted exempting certain classes of generators from such requirements.

(5) Adopt rules and issue orders relating to the transportation of hazardous waste by air or water. [Formerly 459.440]

466.025 Duties of commission. In order to carry out the provisions of ORS 466.005 to 466.385 and 466.890, the commission shall:

(1) Limit the number of facilities disposing of or treating hazardous waste or PCB;

(2) Establish classes of hazardous waste or PCB that may be disposed of or treated;

(3) Designate the location of a facility designed to dispose of or treat hazardous waste or PCB; and

(4) Limit to the extent otherwise allowed by law, the hazardous waste or PCB accepted for treatment or disposal at a facility first to haz-

ardous waste or PCB originating in Oregon, or if the capacity of the facility as established under ORS 466.055 allows, or it is necessary for the commission to receive and maintain state authorization of a hazardous waste regulatory program under P.L. 94-580 and P.L. 98-616, to states that are parties to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930. [1985 c.670 §4]

466.030 Designation of classes of facilities subject to certain provisions. The Environmental Quality Commission may, by rule, designate classes of facilities designed to treat or dispose of hazardous waste or PCB that shall be subject to the provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.320. [1985 c.670 §8]

466.035 Commission authority to impose standards for hazardous waste or PCB at Oregon facility. The commission may impose specific standards for the range and type of hazardous waste or PCB treated or disposed of at a facility in order to protect the public health and safety and environment of Oregon. [1985 c.670 §9]

466.040 Application period for PCB or hazardous waste license. Whenever the Environmental Quality Commission finds there is a need for an additional hazardous waste or PCB treatment or disposal facility according to the criteria established in ORS 466.055, the commission shall establish an application period during which persons may apply for a PCB disposal facility license according to the provisions of ORS 466.260 to 466.285 or a hazardous waste disposal facility license under ORS 466.005 to 466.385 and 466.890. [1985 c.670 §10]

466.045 Application form; contents; fees; renewal application. (1) Upon request, the department shall furnish an application form to any person interested in developing or constructing a hazardous waste or PCB treatment or disposal facility. Each such form shall contain:

(a) The name and address of the applicant.

(b) A statement of financial condition of the applicant, including assets, liabilities and net worth.

(c) The experience of the applicant in construction, management, supervision or development of hazardous waste or PCB treatment or disposal facilities and in the handling of such substances.

(2) The department shall also require the submission of such information relating to the construction, development or establishment of a

proposed hazardous waste or PCB treatment or disposal site and facilities to be operated in conjunction therewith, and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license.

(3) If the application is for a new license to operate a new hazardous waste or PCB treatment or disposal facility, the application shall be accompanied by a fee in an amount sufficient to cover the department's costs in investigating and processing the application, but which shall not exceed \$70,000, which shall be continuously appropriated to the department for payment of the department's administrative expenses incurred in the process of licensing the treatment or disposal facility. Any portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant.

(4) If the application is for the renewal of an existing license, the application shall be accompanied by a fee in an amount estimated by the department to be sufficient to cover the department's costs in investigating and processing the renewal application. If the department incurs expenses in excess of the estimated fee, the applicant shall pay the excess fees. Under no circumstances shall the renewal fee exceed a total of \$50,000. Any portion of the fee that exceeds the department's administrative expenses shall be refunded to the applicant. Such fees shall be continuously appropriated to the department for payment of the department's administrative expenses incurred in the process of renewing the license for a treatment or disposal facility. [1985 c.670 §11]

466.050 Citizen advisory committees.

(1) To aid and advise the director and the commission in the selection of a hazardous waste or PCB treatment or disposal facility or the site of such facility, the director shall establish citizen advisory committees as the director considers necessary. The director shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The director or a designee shall be a nonvoting member of each committee.

(2) The advisory committees appointed under subsection (1) of this section shall review applications during an application period established under ORS 466.040 and make recommendations on the applications to the commission. [1985 c.670 §12]

466.055 Criteria for new facility.

Before issuing a license for a new facility designed to dispose of or treat hazardous waste or PCB, the commission must find, on the basis of a

information submitted by the applicant, the department or any other interested party, that the proposed facility meets the following criteria:

(1) The proposed facility location:

(a) Is suitable for the type and amount of hazardous waste or PCB intended for treatment or disposal at the facility;

(b) Provides the maximum protection possible to the public health and safety and environment of Oregon from release of the hazardous waste or PCB stored, treated or disposed of at the facility; and

(c) Is situated sufficient distance from urban growth boundaries, as defined in ORS 197.295, to protect the public health and safety, accessible by transportation routes that minimize the threat to the public health and safety and to the environment and sufficient distance from parks, wilderness and recreation areas to prevent adverse impacts on the public use and enjoyment of those areas.

(2) Subject to any applicable standards adopted under ORS 466.035, the design of the proposed facility:

(a) Allows for treatment or disposal of the range of hazardous waste or PCB as required by the commission; and

(b) Significantly adds to:

(A) The range of hazardous waste or PCB handled at an already licensed treatment or disposal facility; or

(B) The type of technology employed at already licensed treatment or disposal facilities.

(3) The proposed facility uses the best available technology for treating or disposing of hazardous waste or PCB as determined by the department or the United States Environmental Protection Agency.

(4) The need for the facility is demonstrated by:

(a) Lack of adequate current treatment or disposal capacity to handle hazardous waste or PCB generated by Oregon companies;

(b) A finding that operation of the proposed facility would result in a higher level of protection of the public health and safety or environment; or

(c) Significantly lower treatment or disposal costs to Oregon companies.

(5) The proposed hazardous waste or PCB treatment or disposal facility has no major adverse effect on either:

(a) Public health and safety; or

(b) Environment of adjacent lands. [1985 c.670 §5]

466.060 Criteria to be met by owner and operator before issuance of license.

Before issuing a license for a facility designed to treat or dispose of hazardous waste or PCB, the license applicant must demonstrate, and the commission must find, that the owner and operator meet the following criteria:

(1) The owner, any parent company of the owner and the operator have adequate financial and technical capability to properly construct and operate the facility; and

(2) The compliance history of the owner including any parent company of the owner and the operator in owning and operating other similar facilities, if any, indicates an ability and willingness to operate the proposed facility in compliance with the provisions of ORS 466.005 to 466.385 and 466.890 or any condition imposed on the licensee by the commission. [1985 c.670 §7]

466.065 Applicant for renewal to comply with ORS 466.055. As a condition to the issuance of a renewal license under ORS 466.005 to 466.385 and 466.890, the commission may require the applicant to comply with all or some of the criteria set forth in ORS 466.055. [1985 c.670 §6]

(Hazardous Waste)

466.070 Standards for rules. (1) In adopting rules under ORS 466.020 regulating the disposal of hazardous wastes, including, but not limited to, rules for the operation and maintenance of hazardous waste disposal sites, the commission shall provide for the highest and best practicable disposal of the hazardous wastes in a manner that will minimize:

(a) The possibility of a dangerous uncontrolled reaction, the release of leachate, noxious gases or odors, fire, explosion or the discharge of the hazardous wastes; and

(b) The amount of land used for burial of the hazardous wastes.

(2) The department shall investigate and analyze in detail the disposal methods and procedures required to be adopted by rule under ORS 466.020 and subsection (1) of this section and shall report its findings and recommendations to the commission. [Formerly 459.442]

466.075 Rules for generators of hazardous waste. (1) The commission may, by rule, require generators of hazardous waste to:

(a) Identify themselves to the department, list the location and general characteristics of

their activity and name the hazardous waste generated;

(b) Keep records that accurately identify the quantities of such hazardous waste, the constituents thereof, and the disposition of such waste;

(c) Furnish information on the chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such waste;

(d) Use a department approved manifest system to assure that all such hazardous waste generated is destined for treatment, storage or disposal in treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) which are operating pursuant to lawful authority; and

(e) Submit reports to the department setting out quantities of hazardous waste generated during a given time period and the disposition of all such waste.

(2) The generator of a hazardous waste shall be allowed to store a hazardous waste produced by that generator on the premises of that generator for a term not to exceed that set by rule without obtaining a hazardous waste collection site license. This shall not relieve any generator from complying with any other rule or standard regarding storage of hazardous waste.

(3) The commission by rule may exempt certain classes or types of hazardous waste generators from part or all of the requirements upon generators adopted by the commission. Such an exemption can only be made if the commission finds that, because of the quantity, concentration, methods of handling or use of a hazardous waste, such a class or type of generator is not likely either:

(a) To cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness; or

(b) To pose a substantial present or potential threat to human health or the environment.

(4) The commission by rule may provide for a special license for the treatment of hazardous waste on the premises of a generator. Such a special license may be established only if such treatment has no major adverse impact on:

(a) Public health and safety; or

(b) The environment of adjacent lands. [Formerly 459.445]

466.080 Rules for transportation of hazardous waste. In adopting rules governing transportation of any hazardous wastes for which a permit is required, the Public Utility Commis-

sioner or the State Department of Agriculture must consult with and consider the recommendations of the department prior to the adoption of any such rules. Transporters shall be required to deliver hazardous wastes to a site named in the manifest provided for in ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2) or an alternative site approved by the department. [Formerly 459.450]

466.085 Authority of commission and department to obtain authorization for state hazardous waste regulatory program.

The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a hazardous waste regulatory program under the provisions of the Federal Resource Conservation and Recovery Act, P.L. 94-580 and P.L. 98-616, and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 and P.L. 98-616. The commission may adopt, amend or repeal any rule or license and the commission or department may enter into any agreement necessary to implement this section. [Formerly 459.455]

Note: Section 4, chapter 735, Oregon Laws 1985, provides:

Sec. 4. (1) ORS 459.455 [renumbered 466.085] is repealed.

(2) The repeal of ORS 459.455 by this section does not become operative until July 1, 1987.

466.090 Inspection and copying of records authorized; exceptions. (1) Except as provided in subsection (2) of this section, any information filed or submitted pursuant to ORS 466.005 to 466.385 and 466.890 shall be made available for public inspection and copying during regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 466.005 to 466.385 and 466.890 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to other officers, employees or authorized representatives of the state concerned with carrying out ORS 466.005 to 466.385 and 466.890 or when relevant in any proceeding under ORS 466.005 to 466.385 and 466.890.

(3) Records, reports and information obtained or used by the department or the commission in administering the state hazardous waste program under ORS 466.005 to 466.385 and 466.890 shall be available to the United States Environmental Protection Agency upon request. If the records, reports or information has been submitted to the state under a claim of confidentiality, the state shall make that claim of confidentiality to the Environmental Protection Agency for the requested records, reports or information. The federal agency shall treat the records, reports or information that is subject to the confidentiality claim as confidential in accordance with applicable federal law. [Formerly 459.460]

466.095 Hazardous waste to be collected, disposed of or treated at licensed site; exemptions. (1) Except as provided in ORS 466.075 (2), no person shall:

(a) Store a hazardous waste anywhere in this state except at a licensed hazardous waste treatment, collection or disposal site;

(b) Establish, construct or operate a hazardous waste collection site in this state without obtaining a hazardous waste collection site license issued pursuant to ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2); or

(c) Establish, construct or operate a hazardous waste treatment site in this state without obtaining a hazardous waste treatment site license issued under ORS 466.005 to 466.385 and 466.890.

(2) The commission may exempt certain classes of hazardous waste collection or treatment sites from part or all of the licensing requirements for these sites. Such an exemption can only be made if the commission finds that, because of the quantity, concentration or type of waste or duration of storage, such a class of collection or treatment site is not likely to endanger the public health, welfare or safety or the environment.

(3) If the director finds an emergency condition to exist, the director may authorize the short-term storage or treatment of a hazardous waste anywhere in the state as long as such temporary storage or treatment shall not constitute a hazard to public health, welfare or safety or to the environment.

(4) Hazardous waste collection sites operating on June 30, 1977, shall be required to obtain a hazardous waste collection site license not later than January 1, 1978.

(5) Hazardous waste treatment sites operating on October 3, 1979, shall be required to obtain

a hazardous waste treatment site license not later than July 1, 1980. [Formerly 459.505]

466.100 Disposal of waste restricted; license required. (1) Except as provided in subsection (3) of this section, no person shall dispose of any hazardous waste anywhere in this state except at a hazardous waste disposal site licensed pursuant to ORS 466.110 to 466.170.

(2) No person shall establish, construct or operate a disposal site without a license therefor issued pursuant to ORS 466.005 to 466.385 and 466.890.

(3) The department may authorize disposal of specified hazardous wastes at specified solid waste disposal sites operating under department permit issued pursuant to ORS 459.205 to 459.245, 459.255 and 459.265. Such authorization may be granted only under procedures approved by the commission, which shall include a determination by the department that such disposal will not pose a threat to public health, welfare or safety or to the environment. [Formerly 459.510]

466.105 Duties of licensee. Each hazardous waste collection or treatment site licensee shall be required to do the following as a condition to holding the license:

(1) Maintain records of any hazardous waste identified pursuant to provisions of ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2) which is stored or treated at the site and the manner in which such waste was stored or treated, transported and disposed of.

(2) Report periodically to the department on types and volumes of wastes received and their manner of disposition.

(3) Participate in the manifest system designed by the department.

(4) Maintain current contingency plans to minimize damage from spillage, leakage, explosion, fire or other accidental or intentional event.

(5) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to protect the environment and the health, safety and welfare of the people of this state.

(6) Assure that all personnel who are employed by the licensee are trained in proper procedures for handling, transfer, transport, treatment and storage of hazardous waste including, but not limited to, familiarization with all contingency plans.

(7) Maintain other plans and exhibits pertaining to the site and its operation as determined

by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(8) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated.

(9) Maintain a cash bond or other equivalent financial assurance in the name of the state in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of all license requirements. The financial assurance shall remain available for the duration of the license and until the site is closed, except to the extent it is released or modified by the department. [Formerly 459.517]

466.110 Application; form. (1) The department shall furnish an application form to anyone who wishes to operate a hazardous waste collection or treatment site.

(2) In addition to information requested on the application form, the department shall also require the submission of such information relating to the construction, development or establishment of a proposed hazardous waste collection or treatment site and facilities to be operated in conjunction therewith and such additional information, data and reports as it deems necessary to make a decision on granting or denying a license. [Formerly 459.535]

466.115 Required application information. License applications submitted to the department for managing, operating, constructing, developing or establishing a hazardous waste disposal site must contain the following:

(1) The management program for the operation of the site, including the person to be responsible for the operation of the site and a resume of the qualifications of the person, the proposed method of disposal, the proposed method of pretreatment or decontamination upon the site, if any, and the proposed emergency measures to be provided at such site.

(2) A description of the size and type of facilities to be constructed upon the site, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and the type of fire control facilities to be provided at such site.

(3) A preliminary engineering sketch and flow chart showing proposed plans and specifica-

tions for the construction and development of the site and the waste treatment and water supply facilities, if any, to be used at such site.

(4) The exact location and place where the applicant proposes to operate and maintain the site, including the legal description of the lands included within such site.

(5) A preliminary geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and the opinion of the geologist relating to possible sources of contamination of such water resources.

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect. [Formerly 459.540]

466.120 Required application information to operate site. Applications for a license to operate a hazardous waste collection or treatment site shall include at a minimum:

(1) The name and address of the applicant and the exact location of the proposed collection or treatment site.

(2) Estimates with respect to compositions, quantities and concentrations of any hazardous wastes identified under ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2), and the time, frequency or rate at which such hazardous waste may be received, stored, treated, transported or disposed.

(3) A description of the operational plan for the site, including handling methods, storage or treatment methods, hours and days of operation and a preliminary engineering sketch showing layout of the site, location of water supply and drainage facilities and traffic flow.

(4) A description of security measures at the site including, but not limited to, type, height and location of fencing, manner for controlling access to the site, alarm systems and warning signs.

(5) The name of any person who will be responsible for managing the operation of the site and a statement of the qualifications of such persons.

(6) The name of the liability insurance carrier who will provide coverage required in ORS 466.105. [Formerly 459.545]

466.125 Notice of hearings on applications. (1) Prior to holding hearings on a hazardous waste disposal site license application, the commission shall cause notice to be given in the county or counties where the proposed site is located in a manner reasonably calculated to notify interested and affected persons of the license application.

(2) The notice shall contain information regarding the approximate location of the site and the type and amount of materials intended for disposal at such site, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed site shall have opportunity to testify at the hearing. [Formerly 459.550]

466.130 Public hearing in areas of proposed site required. The commission shall conduct a public hearing in the county or counties where a proposed hazardous waste disposal site is located and may conduct hearings at such other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [Formerly 459.560]

466.135 Recommendations by state agencies on applications for license; effect.

Upon receipt of an application for a hazardous waste disposal site license, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commissioner, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond by making a recommendation as to whether the license application should be granted. If the Health Division recommends against granting the license, the commission must refuse to issue the license. Recommendation from other agencies shall be considered as evidence in determining whether to grant the license. [Formerly 459.570]

466.140 Review of disposal applications; issuance. (1) The department shall examine and review all hazardous waste disposal site license applications submitted to it and make such investigations as it considers necessary, and make a recommendation to the commission as to whether to issue the license.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the commission is subject to judicial review under ORS 183.480. [Formerly 459.580]

466.145 Review of treatment applications; issuance. (1) The department shall review and cause to be investigated all hazardous waste treatment site license applications submitted to it.

(2) After reviewing and investigating the application, the department shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the department is subject to review by the commission under the provisions of ORS 183.310 to 183.550 governing contested cases. [Formerly 459.585]

466.150 Conveyance of disposal site by licensee to state required; license requirements. (1) As a condition of issuance of a hazardous waste disposal site license, the licensee must deed to the state all that portion of the hazardous waste disposal site in or upon which hazardous wastes shall be disposed of. If the state is required to pay the licensee just compensation for the real property deeded to it, the licensee shall pay the state annually a fee in an amount determined by the department to be sufficient to make such real property self-supporting and self-liquidating.

(2) Each hazardous waste disposal site licensee under ORS 466.005 to 466.385 and 466.890 shall be required to do the following as a condition to holding the license:

(a) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved therefor pursuant to ORS 466.005 to 466.385 and 466.890 and the rules adopted thereunder.

(b) Commence operation, management or supervision of the hazardous waste disposal site on completion of the project and not to permanently discontinue such operation, management or supervision of the site without the approval of the department.

(c) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to protect the environment, and the health, safety and welfare of the people of this state.

(d) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

(e) Restore, to the extent reasonably practicable, the site to its original condition when use of the area is terminated as a site.

(f) Maintain a cash bond or other equivalent financial assurance in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure, to secure performance of license require-

ments and to provide for any remedial action by the state necessary to protect the public health, welfare and safety and the environment following site closure. The financial assurance shall remain on deposit for the duration of the license and until the end of the post-closure period, except as the assurance may be released or modified by the department.

(g) Report periodically on the volume of material received at the site and the fees collected therefor.

(h) Maintain other plans and exhibits pertaining to the site and its operation as determined by the department to be reasonably necessary to protect the public health, welfare or safety or the environment.

(i) In addition to the requirement of subsection (l) of this section, grant to the Environmental Quality Commission the first opportunity to purchase the hazardous waste disposal facility or site if the licensee offers the site for sale. [Formerly 459.590]

466.155 Acquisition by condemnation.

The commission may acquire real property for the disposal of hazardous wastes by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35. [Formerly 459.595]

466.160 Site license fees; disposition; withdrawal by licensee. (1) The hazardous waste collection, treatment or disposal site license shall require a fee based either on the volume of material accepted at the site or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the site use period a sum sufficient to:

- (a) Secure performance of license requirements;
- (b) Close the site;
- (c) Provide for any monitoring or security of the site after closure; and
- (d) Provide for any remedial action by the state necessary after closure to protect the public health, welfare and safety and the environment.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the licensee together with the earnings thereon equals the amount of the financial assurance required under ORS 466.150 (2)(f), the licensee shall be allowed to withdraw the financial assurance.

(3) If the site is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced

portion of the financial assurance may be withdrawn. [Formerly 459.600]

466.165 Annual fees; use. An annual fee may be required of every generator, air or water transporter and licensee under ORS 466.005 to 466.385 and 466.890. The fee shall be in an amount determined by the commission to be adequate, less any federal funds budgeted therefor by legislative action, to carry on the monitoring, inspection and surveillance program established under ORS 466.195 and to cover related administrative costs. All such fees are continuously appropriated to the department to pay the cost of the program under ORS 466.195. [Formerly 459.610]

466.170 Revocation of licenses; judicial review. The commission may revoke any license issued under ORS 466.005 to 466.385 and 466.890 after public hearing upon a finding that the licensee has violated any provision of ORS 466.005 to 466.385 and 466.890 or rules adopted pursuant thereto or any material condition of the license, subject to review under ORS 183.310 to 183.550. [Formerly 459.620]

466.175 Disposition of site or facility after revocation of license; acquisition of site by department. (1) If the commission revokes a license under ORS 466.170, the commission may:

- (a) Close an existing hazardous waste disposal site or facility; or
- (b) Direct the department to acquire an existing facility or site for the disposal or treatment of hazardous waste according to the provisions of subsection (2) of this section.

(2) The department may, upon direction of the commission and upon payment of just compensation, acquire and own an existing facility or site for use in the disposal or treatment of hazardous waste. In order to secure such a site, the commission may modify or waive any of the requirements of ORS chapter 459 and ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2), but not ORS 469.375 or 469.525, if it finds that such waiver or modification:

- (a) Is necessary to make operation of the facility or site economically feasible; and
- (b) Will not endanger the public health and safety or the environment. [Formerly 459.635]

466.180 Department authority to limit disposal or treatment. (1) The department may limit, prohibit or otherwise restrict the treatment or disposal of certain hazardous waste at a hazardous waste treatment or disposal site if appropriate to protect public health, welfare or

safety or the environment or to prolong the useful life of the hazardous waste disposal site.

(2) The department shall monitor the origin and volume of hazardous waste received at a hazardous waste treatment or disposal site and may curtail or reduce the volume of the wastes that may be accepted for disposal as necessary to prolong the useful life of the site. [Formerly 459.640]

466.185 Investigation upon complaint; hearings; orders. (1) The department shall investigate any complaint made to it by any person that the operation of any generator, air or water transporter or hazardous waste disposal, collection or treatment site is unsafe or that the operation is in violation of the provisions of ORS 466.005 to 466.385 and 466.890 or the rules adopted under ORS 466.005 to 466.385 and 466.890.

(2) If, after making an investigation under subsection (1) of this section, the department is satisfied that sufficient grounds exist to justify a hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at the hearing. A copy of the complaint shall be furnished by the department to the respondent. Both the complainant and the respondent are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at the hearing.

(3) The commission or a hearings examiner appointed by the commission shall hear the matter. Within 30 days after the date of the hearing and after considering all evidence and testimony submitted, the commission shall make a specific order as it considers necessary. Any order issued by the commission under this subsection shall be subject to judicial review in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking judicial review. [Formerly 459.650]

466.190 Investigation upon motion of department; findings and orders. (1) Whenever the department believes that the operation of any hazardous waste generator, air or water transporter or disposal, collection or treatment site is unsafe, or in violation of ORS 466.005 to 466.385 and 466.890 or not in compliance with rules or orders, the department may, upon its own motion, investigate the operation of the site.

(2) The department may, after it has made an investigation under subsection (1) of this section, without notice and hearing, make such findings and orders as it considers necessary from the results of its investigation.

(3) The findings and orders made by the department under subsection (2) of this section may:

(a) Require changes in operations conducted, practices utilized and operating procedures found to be in violation of ORS 466.005 to 466.385 and 466.890 or the rules adopted thereunder.

(b) Require compliance with the provisions of the license.

(4) The department shall deliver a certified copy of all orders issued by it under subsection (2) of this section to the respondent or the respondent's duly authorized representative at the address furnished to the department in the license application. The order shall take effect 20 days after the date of its issuance, unless the respondent requests a hearing on the order before the commission before the 20-day period has expired. The request for a hearing shall be submitted in writing and shall include the reasons for requesting the hearing. At the conclusion of the hearing, the commission may affirm, modify or reverse the original order.

(5) All hearings before the commission shall be in compliance with applicable provisions of ORS 183.310 to 183.550. Judicial review of all orders entered after hearing or where no hearing is requested shall be in accordance with the applicable provisions of ORS 183.310 to 183.550 for judicial review of contested cases. [Formerly 459.660]

466.195 Monitoring, inspection and surveillance program; licensees' duties.

The department shall establish and operate a monitoring, inspection and surveillance program over all hazardous waste generators, air or water transporters and disposal, collection and treatment sites or may contract with any qualified public or private agency to do so. Owners and operators of these facilities must allow necessary access to the air or water transportation facility, the site of hazardous waste generation, disposal, storage or treatment and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [Formerly 459.670]

466.200 Procedure for emergencies.

(1) Whenever, in the judgment of the department from the results of monitoring or surveillance of operation of any generator, air or water transporter or hazardous waste disposal, collection or treatment site, there is reasonable cause to believe that a clear and immediate danger to the public health, welfare or safety or to the environment exists from the continued operation of the site, without hearing or prior notice, the

department shall order the operation of the site halted by service of the order on the site superintendent.

(2) Within 24 hours after the order is served, the department must appear in the appropriate circuit court to petition for the equitable relief required to protect the public health, welfare or safety of the environment and may begin proceedings to revoke the license if grounds for revocation exist. [Formerly 459.680]

466.205 Liability for improper disposal of waste; costs; lien for department expenditures. (1) Any person having the care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted, who causes or permits any disposal of such waste or substance in violation of law or otherwise than as reasonably intended for normal use or handling of such waste or substance, including but not limited to accidental spills thereof, shall be liable for the damages to person or property, public or private, caused by such disposition.

(2) It shall be the obligation of such person to collect, remove or treat such waste or substance immediately, subject to such direction as the department may give.

(3) If such person fails to collect, remove or treat such waste or substance when under an obligation to do so as provided by subsection (2) of this section, the department is authorized to take such actions as are necessary to collect, remove or treat such waste or substance.

(4) The director shall keep a record of all necessary expenses incurred in carrying out any cleanup projects or activities authorized under subsection (3) of this section, including reasonable charges for services performed and equipment and materials utilized.

(5) Any person who fails to collect, remove or treat such waste or substance immediately, when under an obligation to do so as provided in subsection (2) of this section, shall be responsible for the necessary expenses incurred by the state in carrying out a cleanup project or activity authorized under subsections (3) and (4) of this section.

(6) If the amount of state-incurred expenses under subsections (3) and (4) of this section are not paid to the department within 15 days after receipt of notice that such expenses are due and owing, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in any court of competent juris-

dition to recover the amount specified in the final order of the director.

(7) The expenditures covered by this section shall constitute a general lien upon the real and personal property of the person under an obligation to collect, remove or treat the hazardous waste or substance described in subsection (1) of this section.

(8) Within seven days after the department begins any cleanup activities under subsections (3) and (4) of this section, the department shall file a notice of potential lien on real property to be charged with a lien under subsection (7) of this section with the recording officer of each county in which the real property is located and shall file a notice of potential lien on personal property to be charged with a lien under subsection (7) of this section with the Secretary of State. The lien shall attach and become enforceable on the day on which the state begins the clean-up projects or activities authorized by subsection (3) of this section if within 120 days after such date, the state files a notice of claim of lien on real property with the recording officer of each county in which the real property charged with the lien is located and files a notice of claim of lien on personal property with the Secretary of State. The notice of lien claim shall contain:

- (a) A true statement of the demand;
- (b) The name of the parties against whom the lien attaches;
- (c) A description of the property charged with the lien sufficient for identification; and
- (d) A statement of the failure of the person to perform the cleanup or disposal as required.

(9) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property. [Formerly 459.685]

466.210 Actions or proceedings to enforce compliance. Whenever it appears to the department that any person is engaged or about to engage in any acts or practices which constitute a violation of ORS 466.005 to 466.385 and 466.890 or the rules and orders adopted thereunder or of the terms of the license, without prior administrative hearing, the department may institute actions or proceedings for legal or equitable remedies to enforce compliance therewith or to restrain further violations thereof. [Formerly 459.690]

459.215 Post-closure license for disposal site; fee. (1) At the time a hazardous waste disposal site is closed, the person licensed

under ORS 466.110 to 466.170 to operate the site, must obtain a post-closure license from the department.

(2) A post-closure license issued under this section must be maintained until the end of the post-closure period established by the commission by rule.

(3) In order to obtain a post-closure license the licensee must provide post-closure care which shall include at least the following:

(a) Monitoring and security of the hazardous waste disposal site; and

(b) Any remedial action necessary to protect the environment and the public health, welfare and safety.

(4) The commission may by rule establish a post-closure license application fee. [Formerly 459.695]

(PCB Disposal Facilities)

466.250 Definition of "PCB disposal facility". As used in ORS 466.250, 466.255 (2) and (3) and 466.260 to 466.350, "PCB disposal facility" includes a facility for the treatment or disposal of PCB. [1985 c.670 §13]

466.255 Disposal of PCB restricted; license required for PCB disposal facility.

(1) No new PCB disposal facility shall be constructed on or after January 1, 1985, without first complying with ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.

(2) No person shall treat or dispose of any PCB anywhere in this state except at a PCB disposal facility licensed pursuant to ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.

(3) No person shall establish, construct or operate a PCB disposal facility without a license therefor issued under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. [1985 c.670 §§14, 43]

466.260 Duties of department. The department shall:

(1) Provide for the administration, enforcement and implementation of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 and may perform all functions necessary:

(a) To regulate the operation and construction of a PCB disposal facility; and

(b) For the licensing of a PCB disposal facility in consultation with the appropriate county governing body or city council.

(2) Coordinate and supervise all functions of state and local governmental agencies engaged in activities subject to the provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. [1985 c.670 §15]

466.265 Rules for regulation of PCB disposal. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission shall:

(1) Adopt rules and issue orders, including but not limited to establishing minimum requirements for the disposal of PCB, minimum requirements for operation, maintenance, monitoring, reporting and supervision of disposal facilities, and requirements and procedures for selection of such facilities.

(2) Adopt rules and issue orders relating to the procedures of the department with respect to hearings, filing of reports, submission of plans and the issuance, revocation and modification of licenses issued under ORS 466.505 to 466.530. [1985 c.670 §16]

466.270 Criteria for rules; study of disposal methods. (1) In adopting rules under ORS 466.265 regulating the disposal of PCB including, but not limited to, rules for the operation and maintenance of a PCB disposal facility, the commission shall provide for the best practicable disposal of the PCB in a manner that will minimize the possibility of adverse effects on the public health and safety or environment.

(2) The department shall investigate and analyze in detail the disposal methods and procedures required to be adopted by rule under subsection (1) of this section and ORS 466.265 and shall report its findings and recommendations to the commission. [1985 c.670 §17]

466.275 License application for PCB disposal facility. License applications submitted to the department for managing, operating, constructing, developing or establishing a PCB disposal facility must contain the following:

(1) The management program for the operation of the facility including the person to be responsible for the operation of the facility and a resume of the person's qualifications, the proposed method of disposal, the proposed method of pretreatment or decontamination of the facility, if any, and the proposed emergency measures to be provided at the facility.

(2) A description of the size and type of facility to be constructed, including the height and type of fencing to be used, the size and construction of structures or buildings, warning signs, notices and alarms to be used, the type of

drainage and waste treatment facilities and maximum capacity of such facilities, the location and source of each water supply to be used and the location and the type of fire control facilities to be provided at the facility.

(3) A preliminary engineering sketch and flow chart showing proposed plans and specifications for the construction and development of the disposal facility and the waste treatment and water supply facilities, if any, to be used at the facility.

(4) The exact location and place where the applicant proposes to operate and maintain the PCB disposal facility, including the legal description of the lands included within the facility.

(5) A geologist's survey report indicating land formation, location of water resources and direction of the flows thereof and the geologist's opinion relating to the potential of contamination of water resources including but not limited to possible sources of such contamination.

(6) The names and addresses of the applicant's current or proposed insurance carriers, including copies of insurance policies then in effect. [1985 c.670 §18]

466.280 Copies of license to be sent to affected state agencies. Upon receipt of an application for a PCB disposal facility license, the department shall cause copies of the application to be sent to affected state agencies, including the Health Division, the Public Utility Commissioner, the State Fish and Wildlife Commission and the Water Resources Director. Each agency shall respond within the period specified by the department by making a written recommendation as to whether the license application should be granted. Recommendation from other agencies shall be considered in determining whether to grant the license. [1985 c.670 §19]

466.285 Notice of hearings on application. (1) Prior to holding hearings on a PCB disposal facility license application, the commission shall cause notice to be given in the county or counties where the proposed facility is to be located in a manner reasonably calculated to notify interested and affected persons of the license application.

(2) The notice shall contain information regarding the approximate location of the facility and the type and amount of PCB intended for disposal at the facility, and shall fix a time and place for a public hearing. In addition, the notice shall contain a statement that any person interested in or affected by the proposed PCB disposal facility shall have opportunity to testify at the hearing. [1985 c.670 §20]

466.290 Public hearing in area of proposed facility required. The commission shall conduct a public hearing in the county or counties where a proposed PCB disposal facility is located and may conduct hearings at other places as the department considers suitable. At the hearing the applicant may present the application and the public may appear or be represented in support of or in opposition to the application. [1985 c.670 §21]

466.295 Examination of license applications; recommendation to commission; decision as to issuance; notice to applicant. (1) At the close of the application period under ORS 466.040, the department shall examine and review all PCB disposal facility license applications submitted to the commission and make such investigations as the department considers necessary, and make a recommendation to the commission as to whether to issue the license.

(2) After reviewing the department's recommendations under subsection (1) of this section, the commission shall decide whether or not to issue the license. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated in the application. The decision of the commission is subject to judicial review under ORS 183.480. [1985 c.670 §22]

466.300 Restrictions on commission authority to issue license. The Environmental Quality Commission may not issue a license under ORS 466.295 for any facility designed to dispose of PCB by incineration unless:

(1) The facility is also equipped to incinerate hazardous waste; and

(2) The applicant has received all federal and state licenses required to operate a hazardous waste incinerator. [1985 c.670 §23]

466.305 Investigation of complaints; hearing; order. (1) The department shall investigate any complaint made to it by any person that the operation of any PCB disposal facility is unsafe or that the operation is in violation of a condition of the operator's license or any provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.340 or the rules adopted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. Upon receiving a complaint, the department shall furnish a copy of the complaint to the person holding the license to operate the PCB disposal facility.

(2) If, after making an investigation under subsection (1) of this section, the department is satisfied that sufficient grounds exist to justify a

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hearing upon the complaint, it shall give 10 days' written notice of the time and place of the hearing and the matters to be considered at the hearing. Both the complainant and the respondent are entitled to be heard, produce evidence and offer exhibits and to require the attendance of witnesses at the hearing.

(3) The commission or a hearings examiner appointed by the commission shall hear the matter. Within 30 days after the date of the hearing and after considering all evidence and testimony submitted, the commission shall make a specific order as it considers necessary. Any order issued by the commission under this subsection shall be subject to judicial review in the manner provided by ORS 183.480 for judicial review of orders in contested cases. The costs of reporting and of transcribing the hearing for the purpose of judicial review shall be paid by the party seeking judicial review. [1985 c.670 §24]

466.310 Monitoring, inspection and surveillance program; access to facility and records. The department shall establish and operate a monitoring, inspection and surveillance program over all PCB disposal facilities or may contract with any qualified public or private agency other than the owner or licensee to do so. Owners and operators of a PCB disposal facility must allow necessary access to the PCB disposal facility and to its records, including those required by other public agencies, for the monitoring, inspection and surveillance program to operate. [1985 c.670 §25]

466.315 Procedure for emergency. (1) Whenever, in the judgment of the department, there is reasonable cause to believe that a clear and immediate danger to the public health or safety or to the environment exists from the continued operation of the facility, without hearing or prior notice, the department shall order the operation of the facility halted by service of the order on the facility operator or an agent of the operator.

(2) Within 24 hours after the order is served, the department must appear in the appropriate circuit court to petition for the equitable relief required to protect the public health or safety or the environment and may begin proceedings to revoke the license if grounds for revocation exist. [1985 c.670 §26]

466.320 Conveyance to state of real property used as landfill for PCB; conditions for holding license. (1) As a condition of issuance of a PCB disposal facility license, if PCB waste disposal is to be by landfilling, the licensee must deed to the state the real property in or

upon which the PCB waste will be permanently landfilled. If the state is required to pay the licensee just compensation for the real property deeded to it, the licensee shall pay the state annually a fee in an amount determined by the department to be sufficient to make the real property self-supporting and self-liquidating.

(2) In addition to the requirement under subsection (1) of this section, each PCB disposal facility licensee under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 shall be required to do the following as a condition to holding the license:

(a) Proceed expeditiously with and complete the project in accordance with the plans and specifications approved and the rules adopted under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350.

(b) Commence operation, management or supervision of the PCB disposal facility on completion of the project and not to permanently discontinue the operation, management or supervision of the facility without the approval of the department.

(c) Maintain sufficient liability insurance or equivalent financial assurance in such amounts as determined by the department to be reasonably necessary to compensate for damage to the public health and safety and environment.

(d) Establish emergency procedures and safeguards necessary to prevent accidents and reasonably foreseeable risks.

(e) Restore, to the extent reasonably practicable, the area of the facility to its original condition when use of the area is terminated as a facility.

(f) Maintain a cash bond or other equivalent financial assurance in the name of the state and in an amount estimated by the department to be sufficient to cover any costs of closing the facility and monitoring it or providing for its security after closure, to secure performance of license requirements and to provide for any remedial action by the state necessary to protect the public health and safety and the environment following facility closure. The financial assurance shall remain on deposit for the duration of the license and until the end of the post-closure period, except as the assurance may be released or modified by the department.

(g) Report periodically to the department on the volume and types of PCB received at the facility, their manner of disposition and the fees collected therefor.

(h) Maintain other plans and exhibits pertaining to the facility and its operation as deter-

mined by the department to be reasonably necessary to protect the public health or safety or the environment.

(i) Grant the commission the first opportunity to purchase the PCB disposal facility if the licensee offers the facility for sale.

(j) Maintain records of any PCB identified under provisions of ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 which is stored, treated or disposed of at the facility and the manner in which the PCB was stored, treated, transported or disposed of. The records shall be retained for the period of time determined by the commission.

(k) Assure that all personnel who are employed by the licensee are trained in proper procedures for handling, transfer, transport, treatment, disposal and storage of PCB including but not limited to familiarization with all contingency plans.

(L) If disposal is by incineration, the facility must also incinerate a reasonable ratio of hazardous waste. [1985 c.670 §27]

466.325 Annual fee. An annual fee may be required of every PCB disposal facility licensee under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350. The fee shall be in an amount determined by the commission to be adequate to carry on the monitoring, inspection and surveillance program established under ORS 466.310 and to cover related administrative costs. All such fees are continuously appropriated to the department to pay the cost of the program under ORS 466.310. [1985 c.670 §28]

466.330 Acquisition by state of real property for disposal of PCB. The commission may acquire real property for the disposal of PCB by instituting condemnation proceedings therefor to be conducted in accordance with ORS chapter 35. [1985 c.670 §29]

466.335 Consequences of revocation of license. (1) If the commission revokes a PCB disposal facility license under ORS 466.170, the commission may:

(a) Close the existing PCB disposal site or facility; or

(b) Direct the department to acquire an existing facility or site for the disposal or treatment of PCB according to the provisions of subsection (2) of this section.

(2) The department may, upon direction from the commission and after payment of just compensation, acquire and own an existing facility for use in the disposal of PCB. In order to

secure such a facility, the commission may modify or waive any of the requirements of ORS chapter 459 and ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2), but not ORS 469.375 or 469.525, if the commission finds that waiver or modification:

(a) Is necessary to make operation of the facility economically feasible; and

(b) Will not endanger the public health and safety or the environment. [1985 c.670 §30]

466.340 Restrictions on treatment or disposal of PCB at facility. (1) The department may limit, prohibit or otherwise restrict the treatment or disposal of PCB at a disposal facility if appropriate to protect public health and safety or the environment.

(2) The department shall monitor the origin and volume of PCB received at a disposal facility acquired and regulated under ORS 466.335, and may curtail or reduce the volume of the PCB that may be accepted for disposal as necessary to:

(a) Protect public health and safety or the environment; or

(b) Assure that the operation of the facility is economically feasible.

(3) The department shall not accept any PCB at a disposal facility owned by the state from a state that is not a party to the Northwest Interstate Compact on Low-Level Radioactive Waste Management as set forth in ORS 469.930. [1985 c.670 §31]

466.345 PCB facility license fee. (1) The PCB disposal facility license shall require a fee based either on the volume of PCB accepted at the facility or a percentage of the fee collected, or both. The fees shall be calculated in amounts estimated to produce over the facility use period a sum sufficient to:

(a) Secure performance of license requirements;

(b) Close the facility;

(c) Provide for any monitoring or security of the facility after closure; and

(d) Provide for any remedial action by the state necessary after closure to protect the public health and safety and the environment.

(2) The amount so paid shall be held in a separate account and when the amount paid in by the licensee together with the earnings thereon equals the amount of the financial assurance required under ORS 466.320 (2), the licensee shall be allowed to withdraw the financial assurance.

(3) If the facility is closed before the fees reach an amount equal to the financial assurance, appropriate adjustment shall be made and the reduced portion of the financial assurance may be withdrawn. [1985 c.670 §32]

466.350 Post-closure license; fee. (1) At the time a PCB disposal facility is closed, the person licensed under ORS 466.025 to 466.065, 466.250, 466.255 (2) and (3) and 466.260 to 466.350 to operate the facility must obtain a post-closure license from the department.

(2) A post-closure license issued under this section must be maintained until the end of the post-closure period established by the commission by rule.

(3) In order to obtain a post-closure license the licensee must provide post-closure care which shall include at least the following:

(a) Monitoring and security of the PCB disposal facility; and

(b) Any remedial action necessary to protect the public health and safety and environment.

(4) The commission may by rule establish a post-closure license application fee. [1985 c.670 §33]

NOTICE OF ENVIRONMENTAL HAZARDS

466.360 Policy. (1) The Legislative Assembly finds that:

(a) Disposal sites exist on certain lots or parcels of real property within Oregon that may restrict future land development or constitute a potential hazard to the health, safety and welfare of Oregon's citizens, particularly if present or future owners use or modify the parcels without taking into consideration the use restrictions or environmental hazards posed by the former disposal activity.

(b) Permits, licenses and approvals that have been or may be granted by the Environmental Quality Commission, the Department of Environmental Quality or the Energy Facility Siting Council authorizing disposal of waste upon real property protect the health, safety and welfare of Oregon citizens only if adequate notice of post-closure use restrictions is given to future purchasers of the real property.

(c) Disposal sites created prior to regulation may be potentially hazardous if use restrictions are not imposed.

(d) Proper precautions and maintenance cannot be taken and continued unless the location of the disposal site, the nature and extent of its potential hazard and use restrictions are known

to cities and counties and those who own and occupy the property.

(2) It is hereby declared to be the public policy of this state to give notice to local governments of potential hazardous disposal sites and to impose use restrictions on those sites. [1985 c.273 §2]

466.365 Commission authority to establish sites for which notice is required; rulemaking; report to Legislative Assembly. (1) The commission may establish by rule adopted under ORS 183.310 to 183.550:

(a) A list of sites for which environmental hazard notices must be given and use restrictions must be imposed. The list shall be consistent with the policy set forth in ORS 466.360 and may include any of the following sites that contain potential hazards to the health, safety and welfare of Oregon's citizens:

(A) A land disposal site as defined by ORS 459.005;

(B) A hazardous waste disposal site as defined by ORS 466.005; and

(C) A disposal site containing radioactive waste as defined by ORS 469.300 (17).

(b) The form and content of use restrictions to be imposed on the sites, which shall require at least that post-closure use of the site not disturb the integrity of the final cover, liners or any other components of any containment system or the function of the facility's monitoring systems, unless the department finds that the disturbance:

(A) Will not increase the potential hazard to human health or the environment; or

(B) Is necessary to reduce a threat to human health or the environment.

(c) The form and content of the environmental hazard notices to be filed with cities and counties.

(d) The circumstances allowing and procedures for removal or amendment of environmental hazard notices and use restrictions provided by the department.

(e) Any other provisions the commission considers necessary for the department to accomplish the purpose of ORS 466.360 to 466.385.

(2) Spills and releases cleaned up pursuant to ORS 466.205 and 468.795 shall not be listed as sites to be regulated under subsection (1) of this section.

(3) Before hearings on and adoption of rules under subsection (1) of this section, the department shall notify each person who owns a disposal site of the rulemaking proceedings.

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(4) The department shall report to each Legislative Assembly on any sites for which environmental hazard notices and use restrictions have been amended or removed as provided by rule adopted under paragraph (d) of subsection (1) of this section.

(5) The commission shall not list a site, spill or release under subsection (1) of this section, if the commission finds that within 90 days of receipt of notice under subsection (3) of this section, the owner cleaned up the site, spill or release so it is no longer a potential hazard to the health, safety and welfare of Oregon's citizens. [1985 c.273 §3]

466.370 Notice to owner; hearing; filing of notice if no objection. (1) The department shall notify by certified mail any person who owns a lot or parcel upon which a disposal site listed under ORS 466.365 exists. The notice shall:

(a) Describe the disposal site and potentially hazardous environmental conditions;

(b) Describe the use restrictions that will be imposed;

(c) Explain that an environmental hazard notice will be sent to the appropriate city or county under ORS 466.375; and

(d) Advise the person of the procedure for requesting a hearing under subsection (2) of this section.

(2) If any person receiving notice under subsection (1) of this section objects to the use restrictions, the person may request a hearing before the commission. The request shall be in writing and must be submitted to the department within 20 days after the person receives the notice under subsection (1) of this section. The hearing shall be conducted according to the provisions for a contested case hearing in ORS 183.413 to 183.497.

(3) If no hearing is requested within 20 days after receipt of the notice, the department shall file the environmental hazard notice with the appropriate city or county. [1985 c.273 §4]

466.375 Filing of notice; content of notice. The department shall file an environmental hazard notice with the city or county in which a site listed under ORS 466.365 (1) is located. The notice shall contain the following information:

(1) A description of the lot or parcel upon which the disposal site is located;

(2) The restrictions that apply to post-closure use of the property; and

(3) Information regarding the potential environment hazards posed by the disposal site to assist the city or county in complying with ORS 466.385. [1985 c.273 §5]

466.380 Interagency agreement for notices for radioactive waste disposal sites.

The Department of Environmental Quality and the Department of Energy shall enter into an interagency agreement providing for the implementation of the provisions of ORS 466.360 to 466.385 relating to radioactive waste disposal sites. [1985 c.273 §6]

466.385 Amendment of comprehensive plan and land use regulations; model language; appeal of land use decision related to site requiring notice. (1) By the first periodic review under ORS 197.640 after development of model language under subsection (2) of this section, the governing body of a city or county shall amend its comprehensive plan and land use regulations as provided in ORS 197.610 to 197.640 to establish and implement policies regarding potentially hazardous environmental conditions on sites listed under ORS 466.365. The land use regulations shall provide that:

(a) The city or county shall not approve any proposed use of a disposal site for which the city or county has received notice under ORS 466.370 until the Department of Environmental Quality has been notified and provided the city or county with comments on the proposed use; and

(b) Within 120 days of receipt of an environmental hazard notice from the Department of Environmental Quality, the city or county shall amend its zoning maps to identify the disposal site.

(2) The Department of Environmental Quality and the Department of Land Conservation and Development shall:

(a) Develop model language for comprehensive plans and land use regulations for use by cities and counties in complying with this section; and

(b) Provide technical assistance to cities and counties in complying with ORS 466.360 to 466.385.

(3) The Department of Environmental Quality may appeal to the Land Use Board of Appeals any final land use decision made by a city or county regarding any proposed use of a disposal site that has been identified under its comprehensive plan and land use regulations pursuant to this section. [1985 c.273 §7]

USE OF PCB

466.505 Definitions for ORS 466.505 to 466.530. As used in ORS 466.505 to 466.530:

(1) "PCB" means the class of chlorinated biphenyl, terphenyl, higher polyphenyl, or mixtures of these compounds, produced by replacing two or more hydrogen atoms on the biphenyl, terphenyl, or higher polyphenyl molecule with chlorine atoms. "PCB" does not include chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds, that have functional groups attached other than chlorine unless that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures thereof of these compounds, is determined to be dangerous to the public health under ORS 466.525.

(2) "Ppm" means parts per million. [Formerly 468.900]

466.510 Sale of items containing concentrations of PCB prohibited; exceptions.

(1) Except as provided in ORS 466.515, beginning January 1, 1980, a person shall not sell, manufacture for sale, or use in this state an item, product or material if the item, product or material contains a concentration of PCB equal to or greater than 100 ppm.

(2) The commission by rule may prescribe a lower maximum concentration of PCB for specific items, products or materials if it finds the 100 ppm concentration specified in subsection (1) of this section to be inadequate to protect the public health from the toxic dangers of the PCB contained in that item, product or material. However, an item, product or material for which a lower maximum concentration of PCB is prescribed by federal law, rule or regulation shall not be allowed a concentration of PCB higher than that federal maximum. [Formerly 468.903]

466.515 Electric transformers or capacitors exempted. Notwithstanding ORS 466.510:

(1) PCB or an item, product or material containing PCB may be sold for use or used in this state if it is used in a closed system as a dielectric fluid for an electric transformer or capacitor pursuant to rules of the commission to insure the public health. However, upon adequate documentation of the availability of reasonable substitutes which meet performance standards and environmental acceptability, the commission after public hearing by rule may modify these exclusions in whole or in part by requiring the phasing in of the substitute or substitutes.

(2) An item, product or material containing PCB may be manufactured for sale, sold for use or

used in this state pursuant to an exemption certificate issued by the department under ORS 466.520. [Formerly 468.906]

466.520 Exemption certificates; applications; conditions. (1) A person may make written application to the department for an exemption certificate on forms provided by the department. The department may require additional information or materials to accompany the application as it considers necessary for an accurate evaluation of the application.

(2) The department shall grant an exemption for residual amounts of PCB remaining in electric transformer cores after the PCB in a transformer is drained and the transformer is filled with a substitute approved under ORS 466.515.

(3) The department may grant an exemption for an item, product or material manufactured for sale, sold for use, or used by the person if the item, product or material contains incidental concentrations of PCB.

(4) In granting a certificate of exemption, the department shall impose conditions on the exemption in order that the exemption covers only incidental concentrations of PCB.

(5) As used in this section, "incidental concentrations of PCB" means concentrations of PCB which are beyond the control of the person and which are not the result of the person having:

(a) Exposed the item, product or material to concentrations of PCB.

(b) Failed to take reasonable measures to rid the item, product or material of concentrations of PCB.

(c) Failed to use a reasonable substitute for the item, product or material for which the exemption is sought. [Formerly 468.909]

466.525 Additional PCB compounds may be prohibited. The commission after hearing by rule may include as a PCB and regulate accordingly any chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds that have functional groups attached other than chlorine if that functional group on the chlorinated biphenyls, terphenyls, higher polyphenyls, or mixtures of these compounds is found to constitute a danger to public health. [Formerly 468.912]

466.530 Prohibited disposal of waste containing PCB. After October 4, 1977, a person shall not dispose of solid or liquid waste resulting from the use of PCB or an item, product or material containing or which has contained a concentration equal to or greater than 100 ppm of

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PCB except in conformity with rules of the commission adopted pursuant to ORS 466.005 to 466.385 and 466.890. [Formerly 468.921]

**SPILL RESPONSE AND CLEANUP OF
HAZARDOUS MATERIALS**

466.605 Definitions for ORS 466.605 to 466.690. As used in ORS 466.605 to 466.690, 466.880 (3) and (4) and 466.995 (3):

(1) "Barrel" means 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Cleanup" means the containment, collection, removal, treatment or disposal of oil or hazardous material; site restoration; and any investigations, monitoring, surveys, testing and other information gathering required or conducted by the department.

(3) "Cleanup costs" means all costs associated with the cleanup of a spill or release incurred by the state, its political subdivision or any person with written approval from the department when implementing ORS 466.205, 466.605 to 466.690, 466.880 (3) and (4) and 466.995 (3) or 468.800.

(4) "Commission" means the Environmental Quality Commission.

(5) "Department" means the Department of Environmental Quality.

(6) "Director" means the Director of the Department of Environmental Quality.

(7) "Hazardous material" means one of the following:

(a) A material designated by the commission under ORS 466.630.

(b) Hazardous waste as defined in ORS 466.005.

(c) Radioactive waste and material as defined in ORS 469.300 and 469.530 and radioactive substances as defined in ORS 453.005.

(d) Communicable disease agents as regulated by the Health Division under ORS chapters 431 and 433.

(e) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(8) "Oils" or "oil" includes gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(9) "Person" means an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any

agency or commission thereof and the Federal Government and any agency thereof.

(10) "Remedial action" means a permanent action taken to prevent or minimize the future spill or release of oil or hazardous material to prevent the oil or hazardous material from migrating and causing substantial danger to present or future public health, safety, welfare or the environment. "Remedial action" includes but is not limited to:

(a) Actions taken at the location of the spill or release such as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of spilled or released oil or hazardous materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavation, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure protection of the public health, safety, welfare or the environment.

(b) Offsite transport of oil or hazardous material.

(c) The storage, treatment, destruction or secure disposal offsite of oil or hazardous material under ORS 466.655.

(11) "Reportable quantity" means one of the following:

(a) A quantity designated by the commission under ORS 466.625.

(b) The lesser of:

(A) The quantity designated for hazardous substances by the United States Environmental Protection Agency pursuant to section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(B) The quantity designated for hazardous waste under ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2);

(C) Any quantity of radioactive material, radioactive substance or radioactive waste;

(D) If spilled into waters of the state, or escape into waters of the state is likely, any quantity of oil that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property with oil, but excluding normal discharges from properly operating marine engines; or

(E) If spilled on land, any quantity of oil over one barrel.

(c) Ten pounds unless otherwise designated by the commission under ORS 466.625.

(12) "Respond" or "response" means:

466.610**PUBLIC HEALTH AND SAFETY**

(a) Actions taken to monitor, assess and evaluate a spill or release or threatened spill or release of oil or hazardous material;

(b) First aid, rescue or medical services, and fire suppression; or

(c) Containment or other actions appropriate to prevent, minimize or mitigate damage to the public health, safety, welfare or the environment which may result from a spill or release or threatened spill or release if action is not taken.

(13) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air or into or on any land or waters of the state, as defined in ORS 468.700, except as authorized by a permit issued under ORS chapter 454, 459, 468 or 469, ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2) or federal law or while being stored or used for its intended purpose.

(14) "Threatened spill or release" means oil or hazardous material is likely to escape or be carried into the air or into or on any land or waters of the state. [1985 c.733 §1]

466.610 Department authority relating to cleanup of oil or hazardous material.

Subject to policy direction by the commission, the department may:

(1) Conduct and prepare independently or in cooperation with others, studies, investigations, research and programs pertaining to the containment, collection, removal or cleanup of oil and hazardous material.

(2) Advise, consult, participate and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to responses, remedial actions or cleanup of oil and hazardous material and financing of cleanup costs, including radioactive waste, materials and substances otherwise subject to ORS chapters 453 and 469.

(3) Employ personnel, including specialists, consultants and hearing officers, purchase materials and supplies and enter into contracts with public and private parties necessary to carry out the provisions of ORS 466.605 to 466.690, 466.880 (3) and (4) and 466.995 (3).

(4) Conduct and supervise educational programs about oil and hazardous material, including the preparation and distribution of information regarding the containment, collection, removal or cleanup of oil and hazardous material.

(5) Provide advisory technical consultation and services to units of local government and to state agencies.

(6) Develop and conduct demonstration programs in cooperation with units of local government.

(7) Perform all other acts necessary to carry out the duties, powers and responsibilities of the department under ORS 466.605 to 466.690, 466.880 (3) and (4) and 466.995 (3). [1985 c.733 §2]

466.615 Limit on commission and department authority over radioactive substances. Nothing in ORS 466.605 to 466.690, 466.880 (3) and (4) and 466.995 (3) is intended to grant the Environmental Quality Commission or the Department of Environmental Quality authority over any radioactive substance regulated by the Health Division under ORS chapter 453, or any radioactive material or waste regulated by the Department of Energy or Energy Facility Siting Council under ORS chapter 469. [1985 c.733 §3]

466.620 Emergency response plan; training programs. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt an oil and hazardous material emergency response master plan consistent with the plan adopted by the Interagency Hazard Communications Council pursuant to the provisions of ORS 453.317 (1) to (6), 453.510, 453.825 and 453.835, and after consultation with the Interagency Hazard Communications Council, the Oregon State Police, the Oregon Fire Chiefs Association and any other appropriate agency or organization.

(2) The master plan adopted under subsection (1) of this section shall include but need not be limited to provisions for ongoing training programs for local government and state agency employees involved in response to spills or releases of oil and hazardous material. The department may coordinate its training programs with emergency response training programs offered by local, state and federal agencies, community colleges and institutes of higher education and private industry in order to reach the maximum number of employees, avoid unnecessary duplication and conserve limited training funds. [1985 c.733 §4]

466.625 Rulemaking. In accordance with applicable provisions of ORS 183.310 to 183.550, the commission may adopt rules including but not limited to:

(1) Provisions to establish that quantity of oil or hazardous material spilled or released which

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shall be reported under ORS 466.635. The commission may determine that one single quantity shall be the reportable quantity for any oil or hazardous material, regardless of the medium into which the oil or hazardous material is spilled or released.

(2) Establishing procedures for the issuance, modification and termination of permits, orders, collection of recoverable costs and filing of notifications.

(3) Any other provision consistent with the provisions of ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) and 468.070 that the commission considers necessary to carry out ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) and 468.070. [1985 c.733 §5]

466.630 Commission designation of substance as hazardous material. (1) By rule, the commission may designate as a hazardous material any element, compound, mixture, solution or substance which when spilled or released into the air or into or on any land or waters of the state may present a substantial danger to the public health, safety, welfare or the environment.

(2) Before designating a substance as hazardous material, the commission must find that the hazardous material, because of its quantity, concentration or physical or chemical characteristics may pose a present or future hazard to human health, safety, welfare or the environment when spilled or released. [1985 c.733 §6]

466.635 Report of spill or release of reportable quantity of hazardous material.

Any person owning or having control over any oil or hazardous material who has knowledge of a spill or release shall immediately notify the Emergency Management Division as soon as that person knows the spill or release is a reportable quantity. [1985 c.733 §7]

466.640 Strict liability for spill or release; exceptions. Any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the spill or release of oil or hazardous material was caused by:

- (1) An act of war or sabotage or an act of God.
- (2) Negligence on the part of the United States Government or the State of Oregon.

(3) An act or omission of a third party without regard to whether any such act or omission was or was not negligent. [1985 c.733 §8]

466.645 Cleanup; failure to complete cleanup. (1) Any person liable for a spill or release or threatened spill or release under ORS 466.640 shall immediately clean up the spill or release under the direction of the department. The department may require the responsible person to undertake such investigations, monitoring, surveys, testing and other information gathering as the department considers necessary or appropriate to:

(a) Identify the existence and extent of the spill or release;

(b) Identify the source and nature of oil or hazardous material involved; and

(c) Evaluate the extent of danger to the public health, safety, welfare or the environment.

(2) If any person liable under ORS 466.640 does not immediately commence and promptly and adequately complete the cleanup, the department may clean up, or contract for the cleanup of the spill or release or the threatened spill or release.

(3) Whenever the department is authorized to act under subsection (2) of this section, the department directly or by contract may undertake such investigations, monitoring, surveys, testing and other information gathering as it may deem appropriate to identify the existence and extent of the spill or release, the source and nature of oil or hazardous material involved and the extent of danger to the public health, safety, welfare or the environment. In addition, the department directly or by contract may undertake such planning, fiscal, economic, engineering and other studies and investigations it may deem appropriate to plan and direct clean up actions, to recover the costs thereof and legal costs and to enforce the provisions of ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) and 468.070. [1985 c.733 §9]

466.650 Variance for remedial actions.

(1) If the commission finds that a proposed remedial action cannot meet any of the requirements of ORS chapter 459 or 468, ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2) or any rule adopted under ORS chapter 459 or 468 or ORS 466.005 to 466.385, 466.880 (1) and (2), 466.890 and 466.995 (1) and (2) or the commission may issue a variance.

(2) The commission may issue a variance under subsection (1) of this section if:

(a) Special conditions exist that render strict compliance unreasonable, burdensome or impractical;

(b) Strict compliance would result in substantial delay or preventing a remedial action from being undertaken; or

(c) The public health, safety, welfare and the environment would be protected. [1985 c.733 §10]

466.655 Alternative, treatment of off-site oil or hazardous material in lieu of other remedial action. The director may allow a person to store, treat, destroy or dispose of offsite oil or hazardous material in lieu of other remedial action if the director determines that:

(1) Such actions are more cost effective than other remedial actions; or

(2) Are necessary to protect the public health, safety, welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of oil or hazardous material. [1985 c.733 §11]

466.660 Required information relating to oil or hazardous material; departmental access to records; inspection. (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) and 468.070, or enforcing the provisions of ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) and 468.070, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of the department:

(a) Furnish information relating to the oil or hazardous material; and

(b) Permit the department at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section, the department may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present. [1985 c.733 §12]

466.665 Local access to records and information; inspection. (1) In order to determine the need for response to a spill or release or threatened spill or release under ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) and 468.070, any person who prepares, manufactures, processes, packages, stores, transports, handles, uses, applies, treats or disposes of oil or hazardous material shall, upon the request of any

authorized local government official, permit the official at all reasonable times to have access to and copy, records relating to the type, quantity, storage locations and hazards of the oil or hazardous material.

(2) In order to carry out subsection (1) of this section a local government official may enter to inspect at reasonable times any establishment or other place where oil or hazardous material is present.

(3) As used in this section, "local government official" includes but is not limited to an officer, employe or representative of a county, city, fire department, fire district or police agency. [1985 c.733 §13]

466.670 Oil and Hazardous Material Emergency Response and Remedial Action Fund. (1) The Oil and Hazardous Material Emergency Response and Remedial Action Fund is established separate and distinct from the General Fund in the State Treasury. As permitted by federal court decisions, federal statutory requirements and administrative decisions, after payment of associated legal expenses, moneys not to exceed \$2.5 million received by the State of Oregon from the Petroleum Violation Escrow Fund of the United States Department of Energy that is not obligated by federal requirements to existing energy programs shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer shall invest and reinvest moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund in the manner provided by law.

(3) The moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund are appropriated continuously to the Department of Environmental Quality to be used in the manner described in ORS 466.675. [1985 c.733 §14]

466.675 Use of moneys in Oil and Hazardous Material Emergency Response and Remedial Action Fund. Moneys in the Oil and Hazardous Material Emergency Response and Remedial Action Fund may be used by the Department of Environmental Quality for the following purposes:

(1) Training local government employes involved in response to spills or releases of oil and hazardous material.

(2) Training of state agency employes involved in response to spills or releases of oil and hazardous material.

(3) Funding actions and activities authorized by ORS 466.645, 466.205, 468.800 and 468.805.

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(4) Providing for the general administration of ORS 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) including the purchase of equipment and payment of personnel costs of the department or any other state agency related to the enforcement of ORS 401.025, 466.605 to 466.690, 466.880 (3) and (4), 466.995 (3) and 468.070. [1985 c.733 §15]

466.680 Responsibility for expenses of cleanup; record; damages; order; appeal.

(1) If a person required to clean up oil or hazardous material under ORS 466.645 fails or refuses to do so, the person shall be responsible for the reasonable expenses incurred by the department in carrying out ORS 466.645.

(2) The department shall keep a record of all expenses incurred in carrying out any cleanup projects or activities authorized under ORS 466.645, including charges for services performed and the state's equipment and materials utilized.

(3) Any person who does not make a good faith effort to clean up oil or hazardous material when obligated to do so under ORS 466.645 shall be liable to the department for damages not to exceed three times the amount of all expenses incurred by the department.

(4) Based on the record compiled by the department under subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (1) or (3) of this section for the amount of damages, not to exceed treble damages, and the expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed in the manner provided for appeal of a contested case order under ORS 183.310 to 183.550.

(5) If the amount of state incurred expenses and damages under this section are not paid by the responsible person to the department within 15 days after receipt of notice that such expenses are due and owing, or, if an appeal is filed within 15 days after the court renders its decision if the decision affirms the order, the Attorney General, at the request of the director, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount specified in the notice of the director. [1985 c.733 §16]

466.685 Monthly fee; suspension of fees; notice of suspension or resumption of fees. (1) Except as provided by subsection (2) of this section, beginning on January 1, 1986, every person who operates a facility for the purpose of disposing of hazardous waste or PCB that is subject to interim status or a license issued under

ORS 466.005 to 466.385 and 466.890 shall pay a monthly hazardous waste management fee by the 45th day after the last day of each month in the amount of \$10 per dry-weight ton of hazardous waste or PCB brought into the facility for treatment by incinerator or for disposal by landfill at the facility. Fees under this section shall be calculated in the same manner as provided in section 231 of the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended.

(2) When the balance in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund established in ORS 466.690 reaches \$500,000 minus any moneys approved for obligation under ORS 466.690 (3), payment of fees under subsection (1) of this section shall be suspended. Payment of fees shall resume upon approval of funds by the Legislative Assembly or the Emergency Board to the department sufficient to decrease the balance in the fund to \$150,000 or lower.

(3) If payment of fees is to be suspended or resumed under subsection (2) of this section, the department shall give reasonable notice of the suspension or resumption to every person obligated to pay a fee under subsection (1) of this section. [1985 c.733 §19]

466.690 Comprehensive Environmental Response, Compensation and Liability Act Matching Fund. (1) The Comprehensive Environmental Response, Compensation and Liability Act Matching Fund is established separate and distinct from the General Fund in the State Treasury. All fees received by the Department of Environmental Quality under ORS 466.685 shall be paid into the State Treasury and credited to the fund.

(2) The State Treasurer may invest and reinvest moneys in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund in the manner provided by law.

(3) The moneys in the Comprehensive Environmental Response, Compensation and Liability Act Matching Fund are appropriated continuously to the department to be used as provided in subsection (4) of this section and for providing the required state match for planned remedial actions financed by the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended, subject to site by site approval by the Legislative Assembly or the Emergency Board.

(4) Up to 15 percent of the moneys appropriated under subsection (3) of this section may be used for investigating and monitoring potential

and existing sites which are or could be subject to remedial action under the federal Comprehensive Environmental Response, Compensation and Liability Act, P.L. 96-510, as amended. [1985 c.733 §20]

CIVIL PENALTIES

466.880 Civil penalties. (1) In addition to any other penalty provided by law, any person who violates ORS 466.005 to 466.385 and 466.890, a license condition or any commission rule or order pertaining to the generation, treatment, storage, disposal or transportation by air or water of hazardous waste, as defined by ORS 466.005, shall incur a civil penalty not to exceed \$10,000 for each day of the violation.

(2) The civil penalty authorized by subsection (1) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed and collected under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and ORS chapter 468.

(3) In addition to any other penalty provided by law, any person who violates a provision of ORS 466.605 to 466.690, or any rule or order entered or adopted under ORS 466.605 to 466.690, may incur a civil penalty not to exceed \$10,000. Each day of violation shall be considered a separate offense.

(4) The civil penalty authorized by subsection (3) of this section shall be established, imposed, collected and appealed in the same manner as civil penalties are established, imposed, collected and appealed under ORS 468.090 to 468.125, except that a penalty collected under this section shall be deposited to the fund established in ORS 466.670. [Formerly 459.995; (3) and (4) enacted by 1985 c.733 §17]

466.890 Penalties for damage to wildlife resulting from contamination of food or water supply. (1) Any person who has care, custody or control of a hazardous waste or a substance which would be a hazardous waste except for the fact that it is not discarded, useless or unwanted shall incur a civil penalty according to the schedule set forth in subsection (2) of this section for the destruction, due to contamination of food or water supply by such waste or substance, of any of the wildlife referred to in subsection (2) of this section that are the property of the state.

(2) The penalties referred to in subsection (1) of this section shall be as follows:

(a) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.

(b) Each mountain sheep or mountain goat, \$3,500.

(c) Each elk, \$750.

(d) Each silver gray squirrel, \$10.

(e) Each game bird other than wild turkey, \$10.

(f) Each wild turkey, \$50.

(g) Each game fish other than salmon or steelhead trout, \$5.

(h) Each salmon or steelhead trout, \$125.

(i) Each fur-bearing mammal other than bobcat or fisher, \$50.

(j) Each bobcat or fisher, \$350.

(k) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this subsection, \$25.

(3) The civil penalty imposed under this section shall be in addition to other penalties prescribed by law. [1985 c.685 §2]

CRIMINAL PENALTIES

466.995 Criminal penalties. (1) Penalties provided in this section are in addition to and not in lieu of any other remedy specified in ORS 459.005 to 459.105, 459.205 to 459.245, 459.255 to 459.285, 466.005 to 466.385 or 466.890.

(2) Violation of ORS 466.005 to 466.385 or 466.890 or of any rule or order entered or adopted under those sections is punishable, upon conviction, by a fine of not more than \$10,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation shall be deemed a separate offense.

(3) Violation of a provision of ORS 401.025, 466.605 to 466.690 and 468.070 or of any rule or order entered or adopted under ORS 401.025, 466.605 to 466.690 and 468.070 is punishable, upon conviction, by a fine of not more than \$10,000 or by imprisonment in the county jail for not more than one year or both. Each day of violation shall be considered a separate offense. [Formerly 459.992; (3) enacted by 1985 c.733 §18]

GENERAL ADMINISTRATION

468.005 Definitions. As used in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter, unless the context requires otherwise:

(1) "Commission" means the Environmental Quality Commission.

(2) "Department" means the Department of Environmental Quality.

(3) "Director" means the Director of the Department of Environmental Quality.

(4) "Order" has the same meaning as given in ORS 183.310.

(5) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the Federal Government and any agencies thereof.

(6) "Rule" has the same meaning as given in ORS 183.310.

(7) "Standard" or "standards" means such measure of quality or purity for air or for any waters in relation to their reasonable or necessary use as may be established by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. [Formerly 449.001]

468.010 Environmental Quality Commission; appointment; confirmation; term; compensation and expenses. (1) There is created an Environmental Quality Commission. The commission shall consist of five members, appointed by the Governor, subject to confirmation by the Senate as provided in ORS 171.562 and 171.565.

(2) The term of office of a member shall be four years, but the members of the commission may be removed by the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor to assume the duties of the Governor on July 1 next following. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [Formerly 449.016]

468.015 Functions of commission. It is the function of the commission to establish the policies for the operation of the department in a manner consistent with the policies and purposes of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. In addition, the commission shall perform any other duty vested in it by law. [1973 c.835 §4]

468.020 Rules and standards. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission shall adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard prior to its adoption. The hearing may be before the commission, any designated member thereof or any person designated by and acting for the commission. [Formerly 449.173; 1977 c.38 §1]

468.030 Department of Environmental Quality. There is hereby established in the executive-administrative branch of the government of the state under the Environmental Quality Commission a department to be known as the Department of Environmental Quality. The department shall consist of the director of the department and all personnel employed in the department. [Formerly 449.032]

468.035 Functions of department. (1) Subject to policy direction by the commission, the department:

(a) Shall encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in restoring and preserving the quality and purity of the air and the waters of the state in accordance with rules and standards established by the commission.

(b) May conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs pertaining to the quality and purity of the air or the waters of the state and to the treatment and disposal of wastes.

(c) Shall advise, consult, and cooperate with other agencies of the state, political subdivisions, other states or the Federal Government, in respect to any proceedings and all matters pertaining to control of air or water pollution or for the formation and submission to the legislature of interstate pollution control compacts or agreements.

(d) May employ personnel, including specialists, consultants and hearing officers, pur-

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chase materials and supplies, and enter into contracts necessary to carry out the purposes set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(e) Shall conduct and supervise programs of air and water pollution control education, including the preparation and distribution of information regarding air and water pollution sources and control.

(f) Shall provide advisory technical consultation and services to units of local government and to state agencies.

(g) Shall develop and conduct demonstration programs in cooperation with units of local government.

(h) Shall serve as the agency of the state for receipt of moneys from the Federal Government or other public or private agencies for the purposes of air and water pollution control, studies or research and to expend moneys after appropriation thereof for the purposes given.

(i) Shall make such determination of priority of air or water pollution control projects as may be necessary under terms of statutes enacted by the Congress of the United States.

(j) Shall seek enforcement of the air and water pollution laws of the state.

(k) Shall institute or cause to be instituted in a court of competent jurisdiction, proceedings to compel compliance with any rule or standard adopted or any order or permit, or condition thereof, issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(L) Shall encourage the formulation and execution of plans in conjunction with air and water pollution control agencies or with associations of counties, cities, industries and other persons who severally or jointly are or may be the source of air or water pollution, for the prevention and abatement of pollution.

(m) May determine, by means of field studies and sampling, the degree of air or water pollution in various regions of the state.

(n) May perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the department as set forth in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) Nothing in this section shall affect the authority of the Health Division to make and enforce rules:

(a) Regarding the quality of water for human or animal consumption pursuant to ORS 448.115 to 448.325, 624.010 to 624.120 and 624.310 to 624.440; and

(b) Regarding the quality of water for public swimming places pursuant to ORS 431.110. [Formerly 449.082; 1983 c.740 §181]

468.040 Director; salary. The commission shall appoint a director who shall hold office at the pleasure of the commission. The salary of the director shall be fixed by the commission unless otherwise provided by law. [Formerly 449.026]

468.045 Functions of director; delegation. (1) Subject to policy direction by the commission, the director shall

(a) Be administrative head of the department;

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign, and coordinate personnel of the department;

(c) Administer and enforce the laws of the state concerning environmental quality; and

(d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning environmental quality.

(2) In addition to duties otherwise required by law, the director shall prescribe regulations for the government of the department, the conduct of its employes, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) The director may delegate to any of the employes of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of any such person so acting in the director's name and by the authority of the director shall be considered to be an official act of the director. [Formerly 449.028]

468.050 Deputy director. (1) With the approval of the commission, the director may appoint a deputy director in the unclassified service who shall serve at the pleasure of the director. The deputy director shall have full authority to act for the director, subject to directions of the director. The appointment of the deputy director shall be by written order, filed with the Secretary of State.

(2) The deputy director shall receive such salary as may be provided by law or, if not so

provided, as may be fixed by the director, and shall be reimbursed for all expenses actually and necessarily incurred by the deputy director in the performance of the official duties of the deputy director. [1973 c.291 §2]

Note: 468.050 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.055 Contracts with Health Division. In addition to the authority granted under ORS 190.003 to 190.110 when authorized by the commission and the Health Division, the director and the Assistant Director for Health may contract on behalf of their respective agencies for the purposes of carrying out the functions of either agency, defining areas of responsibility, furnishing services or employees by one to the other and generally providing cooperative action in the interests of public health and the quality of the environment in Oregon. Each contracting agency is directed to maintain liaison with the other and to cooperate with the other in all matters of joint concern or interest. [Formerly 449.062]

468.060 Enforcement of rules by health agencies. On its own motion after public hearing, the commission may grant specific authorization to the Health Division or to any county, district or city board of health to enforce any rule of the commission relating to air or water pollution or solid wastes. [Formerly 449.064]

468.065 Issuance of permits; content; fees; use. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter:

(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be made in a form prescribed by the department. Any permit issued by the department shall specify its duration, and the conditions for compliance with the rules and standards, if any, adopted by the commission pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) By rule and after hearing, the commission may establish a schedule of permit fees for permits issued pursuant to ORS 459.205, 468.310, 468.315, 468.555 and 468.740. The permit fees contained in the schedule shall be based upon the anticipated cost of filing and investigating the application, of issuing or denying the requested permit, and of an inspection program to deter-

mine compliance or noncompliance with the permit. The permit fee shall accompany the application for the permit.

(3) The department may require the submission of plans, specifications and corrections and revisions thereto and such other reasonable information as it considers necessary to determine the eligibility of the applicant for the permit.

(4) The department may require periodic reports from persons who hold permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The report shall be in a form prescribed by the department and shall contain such information as to the amount and nature or common description of the pollutant, contaminant or waste and such other information as the department may require.

(5) Any fee collected under this section shall be deposited in the State Treasury to the credit of an account of the department. Such fees are continuously appropriated to meet the administrative expenses of the program for which they are collected. The fees accompanying an application to a regional air pollution control authority pursuant to a permit program authorized by the commission shall be retained by and shall be income to the regional authority. Such fees shall be accounted for and expended in the same manner as are other funds of the regional authority. However, if the department finds after hearing that the permit program administered by the regional authority does not conform to the requirements of the permit program approved by the commission pursuant to ORS 468.555, such fees shall be deposited and expended as are permit fees submitted to the department. [Formerly 449.733; 1975 c.445 §7; 1983 c.144 §2; 1983 c.740 §182]

468.070 Denial, modification, suspension or revocation of permits. (1) At any time, the department may refuse to issue, modify, suspend, revoke or refuse to renew any permit issued pursuant to ORS 468.065 if it finds:

(a) A material misrepresentation or false statement in the application for the permit.

(b) Failure to comply with the conditions of the permit.

(c) Violation of any applicable provisions of this chapter or ORS 466.605 to 466.690, 466.990 (3) and (4) and 466.995 (3).

(d) Violation of any applicable rule, standard or order of the commission.

(2) The department may modify any permit issued pursuant to ORS 468.065 if it finds that modification is necessary for the proper admin-

istration, implementation or enforcement of the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, 466.605 to 466.690 and this chapter.

(3) The procedure for modification, suspension, revocation or refusal to issue or renew shall be the procedure for a contested case as provided in ORS 183.310 to 183.550. [1973 c.835 §14; 1979 c.184 §1; 1985 c.733 §22]

468.075 Revolving fund; uses. (1) On written request of the director of the department or the authorized representative of the director, the Executive Department shall draw warrants on amounts appropriated to the department for operating expenses for use by the department as a revolving fund. The revolving fund shall not exceed the aggregate sum of \$10,000 including unreimbursed advances. The revolving fund shall be deposited with the State Treasurer to be held in a special account against which the department may draw checks.

(2) The revolving fund may be used by the department to pay for travel expenses, or advances therefor, for employes of the department and for any consultants or advisers for whom payment of travel expenses is authorized by law or for purchases required from time to time or for receipt or disbursement of federal funds available under federal law.

(3) All claims for reimbursement of amounts paid from the revolving fund shall be approved by the department and by the Executive Department. When such claims have been approved, a warrant covering them shall be drawn in favor of the department and charged against the appropriate fund or account, and shall be used to reimburse the revolving fund. [Formerly 449.034; 1977 c.704 §7]

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468.090 Complaint procedure. (1) In case any written substantiated complaint is filed with the department which it has cause to believe, or in case the department itself has cause to believe, that any person is violating any rule or standard adopted by the commission or any permit issued by the department by causing or permitting water pollution or air pollution or air contamination, the department shall cause an investigation thereof to be made. If it finds after such investigation that such a violation of any rule or standard of the commission or of any permit issued by the department exists, it shall by conference, conciliation and persuasion endeavor to eliminate the source or cause of the pollution or contamination which resulted in such violation.

(2) In case of failure to remedy the violation, the department shall commence enforcement proceedings pursuant to the procedures set forth in ORS 183.310 to 183.550 for a contested case. [Formerly 449.815]

468.095 Investigatory authority; entry on premises; status of records. (1) The department shall have the power to enter upon and inspect, at any reasonable time, any public or private property, premises or place for the purpose of investigating either an actual or suspected source of water pollution or air pollution or air contamination or to ascertain compliance or non-compliance with any rule or standard adopted or order or permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter. The commission shall also have access to any pertinent records relating to such property, including but not limited to blueprints, operation and maintenance records and logs, operating rules and procedures.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, other than emission data, if made public, would divulge a secret process, device or method of manufacturing or production entitled to protection as trade secrets of such person, the director shall classify such record, report or information, or particular part thereof, other than emission data, confidential and such confidential record, report or information, or particular part thereof, other than emission data, shall not be made a part of any public record or used in any public hearing unless it is determined by a circuit court that evidence thereof is necessary to the determination of an issue or issues being decided at a public hearing. [Formerly 449.169; 1975 c.173 §1]

468.100 Enforcement procedures; powers of regional authorities; status of procedures. (1) Whenever the commission has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter, or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425,

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454.505 to 454.535, 454.605 to 454.745 and this chapter, the commission may institute actions or proceedings for legal or equitable remedies to enforce compliance thereto or to restrain further violations.

(2) The proceedings authorized by subsection (1) of this section may be instituted without the necessity of prior agency notice, hearing and order, or during said agency hearing if it has been initially commenced by the commission.

(3) A regional authority formed under ORS 468.505 may exercise the same functions as are vested in the commission by this section in so far as such functions relate to air pollution control and are applicable to the conditions and situations of the territory within the regional authority. The regional authority shall carry out these functions in the manner provided for the commission to carry out the same functions.

(4) The provisions of this section are in addition to and not in substitution of any other civil or criminal enforcement provisions available to the commission or a regional authority. The provisions of this section shall not prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances brought by any other person, or by the state on relation of any person without prior order of the commission. [1973 c.826 §2; 1979 c.284 §153]

468.105 [Repealed by 1974 s.s. c.36 §28]

468.110 Appeal; power of court to stay enforcement. Any person adversely affected or aggrieved by any order of the commission may appeal from such order in accordance with the provisions of ORS 183.310 to 183.550. However, notwithstanding ORS 183.480 (3), relating to a stay of enforcement of an agency order and the giving of bond or other undertaking related thereto, any reviewing court before it may stay an order of the commission shall give due consideration to the public interest in the continued enforcement of the commission's order, and may take testimony thereon. [Formerly 449.090]

468.115 Enforcement in cases of emergency. (1) Whenever it appears to the department that water pollution or air pollution or air contamination is presenting an imminent and substantial endangerment to the health of persons, at the direction of the Governor the department shall, without the necessity of prior administrative procedures or hearing, enter an order against the person or persons responsible for the pollution or contamination requiring the person or persons to cease and desist from the action causing the pollution or contamination. Such order shall be effective for a period not to

exceed 10 days and may be renewed thereafter by order of the Governor.

(2) The state and local police shall cooperate in the enforcement of any order issued pursuant to subsection (1) of this section and shall require no further authority or warrant in executing and enforcing such an order.

(3) If any person fails to comply with an order issued pursuant to subsection (1) of this section, the circuit court in which the source of water pollution or air pollution or air contamination is located shall compel compliance with the order in the same manner as with an order of that court. [Formerly 449.980]

468.120 Public hearings; subpoenas, oaths, depositions. (1) The commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions in the circuit court. [Formerly 449.048]

468.125 Notice of violation. (1) No civil penalty prescribed under ORS 468.140 shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the department or the regional air quality control authority, specifying the violation and stating that a penalty will be imposed if a violation continues or occurs after the five-day period, or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed.

(2) No advance notice shall be required under subsection (1) of this section if:

(a) The violation is intentional or consists of disposing of solid waste or sewage at an unauthorized disposal site or constructing a sewage disposal system without the department's permit.

(b) The water pollution, air pollution or air contamination source would normally not be in existence for five-days, including but not limited to open burning.

(c) The water pollution, air pollution or air contamination source might leave or be removed from the jurisdiction of the department or regional air quality control authority, including but not limited to ships.

(d) The penalty to be imposed is for a violation of ORS 466.005 to 466.385. [Formerly 449.967; 1977 c.317 §2; 1983 c.703 §17; 1986 c.735 §3]

468.130 Schedule of civil penalties; factors to be considered in imposing civil penalties. (1) The commission shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. Except as provided in ORS 468.140 (3), no civil penalty shall exceed \$500 per day. Where the classification involves air pollution, the commission shall consult with the regional air quality control authorities before adopting any classification or schedule.

(2) In imposing a penalty pursuant to the schedule or schedules authorized by this section, the commission and regional air quality control authorities shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to water or air pollution or air contamination or solid waste disposal.

(c) The economic and financial conditions of the person incurring a penalty.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the commission or regional authority considers proper and consistent with the public health and safety.

(4) The commission may by rule delegate to the department, upon such conditions as deemed necessary, all or part of the authority of the commission provided in subsection (3) of this section to remit or mitigate civil penalties. [Formerly 449.970; 1977 c.317 §3]

468.135 Procedures to collect civil penalties. (1) Subject to the advance notice provisions of ORS 468.125, any civil penalty imposed under ORS 468.140 shall become due and payable when the person incurring the penalty receives a notice in writing from the director of the department, or from the director of

a regional air quality control authority, if the violation occurs within its territory. The notice referred to in this section shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the commission or before the board of directors of a regional air quality control authority.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) All penalties recovered under ORS 468.140 shall be paid into the State Treasury and credited to the General Fund, or in the event the penalty is recovered by a regional air quality control authority, it shall be paid into the county treasury of the county in which the violation occurred. [Formerly 449.973]

468.140 Civil penalties for specified violations. (1) In addition to any other penalty provided by law, any person who violates any of the following shall incur a civil penalty for each day of violation in the amount prescribed by the schedule adopted under ORS 468.130:

(a) The terms or conditions of any permit required or authorized by law and issued by the department or a regional air quality control authority.

(b) Any provision of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(c) Any rule or standard or order of the commission adopted or issued pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255,

454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, ORS chapter 467 and this chapter.

(d) Any term or condition of a variance granted by the commission or department pursuant to ORS 467.035.

(e) Any rule or standard or order of a regional authority adopted or issued under authority of ORS 468.535 (1).

(2) Each day of violation under subsection (1) of this section constitutes a separate offense.

(3)(a) In addition to any other penalty provided by law, any person who intentionally or negligently causes or permits the discharge of oil into the waters of the state shall incur a civil penalty not to exceed the amount of \$20,000 for each violation.

(b) In addition to any other penalty provided by law, any person who violates the terms or conditions of a permit authorizing waste discharge into the air or waters of the state or violates any law, rule, order or standard in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter relating to air or water pollution shall incur a civil penalty not to exceed the amount of \$10,000 for each day of violation.

(4) Paragraphs (c) and (e) of subsection (1) of this section do not apply to violations of motor vehicle emission standards which are not violations of standards for control of noise emissions.

(5) Notwithstanding the limits of ORS 468.130 (1) and in addition to any other penalty provided by law, any person who intentionally or negligently causes or permits open field burning contrary to the provisions of ORS 468.450, 468.455 to 468.480, 476.380 and 478.960 shall be assessed by the department a civil penalty of at least \$20 but not more than \$40 for each acre so burned. Any fines collected by the department pursuant to this subsection shall be deposited with the State Treasurer to the credit of the General Fund and shall be available for general governmental expense. [Formerly 449.993; 1975 c.559 §14; 1977 c.511 §5; 1979 c.353 §1]

POLLUTION CONTROL FACILITIES TAX CREDIT

468.150 Field sanitation and straw utilization and disposal methods as "pollution control facilities." After alternative methods for field sanitation and straw utilization and disposal are approved by the committee and the department, "pollution control facility," as defined in ORS 468.155, shall include such

approved alternative methods and persons purchasing and utilizing such methods shall be eligible for the benefits allowed by ORS 468.155 to 468.190. [1975 c.559 §15]

Note: 468.150 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.155 Definitions for ORS 468.155 to 468.190. (1)(a) As used in ORS 468.155 to 468.190, unless the context requires otherwise, "pollution control facility" or "facility" means any land, structure, building, installation, excavation, machinery, equipment or device, or any addition to, reconstruction of or improvement of, land or an existing structure, building, installation, excavation, machinery, equipment or device reasonably used, erected, constructed or installed by any person if:

(A) The principal purpose of such use, erection, construction or installation is to comply with a requirement imposed by the department, the federal Environmental Protection Agency or regional air pollution authority to prevent, control or reduce air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil; or

(B) The sole purpose of such use, erection, construction or installation is to prevent, control or reduce a substantial quantity of air, water or noise pollution or solid or hazardous waste or to recycle or provide for the appropriate disposal of used oil.

(b) Such prevention, control or reduction required by this subsection shall be accomplished by:

(A) The disposal or elimination of or redesign to eliminate industrial waste and the use of treatment works for industrial waste as defined in ORS 468.700;

(B) The disposal or elimination of or redesign to eliminate air contaminants or air pollution or air contamination sources and the use of air cleaning devices as defined in ORS 468.275;

(C) The substantial reduction or elimination of or redesign to eliminate noise pollution or noise emission sources as defined by rule of the commission;

(D) The use of a resource recovery process which obtains useful material or energy resources from material that would otherwise be solid waste as defined in ORS 459.005, hazardous waste as defined in ORS 459.410, or used oil as defined in ORS 468.850. For the purposes of ORS 468.155 to 468.190, "solid waste facility" shall also include

pledge, lease, sublease, agreement and mortgage made for the benefit or security of any of the bonds shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made have been fully paid.

[1974 s.s. c.34 §5]

Note: See note under 468.263.

468.268 Enforcement of bond obligation. (1) The proceedings authorizing any bonds and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by suit, mandamus or by the appointment of a receiver with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage by foreclosure of any mortgage or by any one or more remedies specified in the proceedings.

(2) Such proceedings or mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. [1974 s.s. c.34 §6]

Note: See note under 468.263.

468.269 Trustees; powers. The proceedings authorizing the issuance of bonds may provide for the appointment of one or more trustees for the protection of the holders of the bonds, whether or not a mortgage is entered into as security for such bonds. A bank with trust powers or a trust company within or without the State of Oregon may be appointed as trustee and shall be located in the United States, and shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank, including the trustee, which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued under ORS 468.263 to 468.272 to the same extent as if it were not such trustee. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, or of any insurance policy or of any condemnation award shall be deposited with the trustee and applied as provided in the proceedings. [1974 s.s. c.34 §7]

Note: See note under 468.263.

468.270 Tax status of leasehold interest in facilities. Nothing in ORS 468.263 to 468.272 is intended to exempt from taxation or assessment the leasehold interest of any lessee in any facility nor are ORS 468.263 to 468.272 intended to affect any exemption or credit from taxation which might otherwise be available to any lessee under the laws of the State of Oregon. Such leasehold interest is classified for purposes of taxation as having the same value as the fee interest in that property. [1974 s.s. c.34 §8]

Note: See note under 468.263.

468.271 Effect on procedure of awarding contracts; construction. (1) The construction, reconstruction or improvement of any facilities shall be completed in the manner determined by the governing body and shall be free from any requirement of competitive bidding or any other restriction imposed on the procedure for award of contracts with public bodies.

(2) Nothing in ORS 468.263 to 468.272 is intended as a restriction or limitation upon any other powers which a county might otherwise have under the laws of this state, but shall be construed as cumulative.

(3) If any provision of ORS 468.263 to 468.272 or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions of ORS 468.263 to 468.272 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 468.263 to 468.272 are declared to be severable. [1974 s.s. c.34 §9]

Note: See note under 468.263.

468.272 Application of other laws relating to bonds. Any restrictions, limitations, conditions or procedures provided by other statutes relating to the issuance and sale of bonds or other obligations including, but not limited to, any restrictions, limitations, conditions or procedures set forth in ORS 288.320, do not apply to the issuance and sale of bonds authorized by ORS 468.263 to 468.272. [1974 s.s. c.34 §10]

Note: See note under 468.263.

AIR POLLUTION CONTROL

468.275 Definitions for air pollution control laws. As used in this chapter, unless the context requires otherwise:

(1) "Air-cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants prior to their discharge in the atmosphere.

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(2) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter or any combination thereof.

(3) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(4) "Air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant, regardless of who the person may be who owns or operates the building, premises or other property in, at or on which such source is located, or the facility, equipment or other property by which the emission is caused or from which the emission comes.

(5) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants, or any combination thereof, in sufficient quantities and of such characteristics and of a duration as are or are likely to be injurious to public welfare, to the health of human, plant or animal life or to property or to interfere unreasonably with enjoyment of life and property throughout such area of the state as shall be affected thereby.

(6) "Area of the state" means any city or county or portion thereof or other geographical area of the state as may be designated by the commission.

(7) "Woodstove" means a wood fired appliance with a closed fire chamber which maintains an air-to-fuel ratio of less than 30 during the burning of 90 percent or more of the fuel mass consumed in the low firing cycle. The low firing cycle means less than or equal to 25 percent of the maximum burn rate achieved with doors closed or the minimum burn achievable. [Formerly 449.760; 1983 c.333 §1]

468.280 Policy. (1) In the interest of the public health and welfare of the people, it is declared to be the public policy of the State of Oregon:

(a) To restore and maintain the quality of the air resources of the state in a condition as free from air pollution as is practicable, consistent with the overall public welfare of the state.

(b) To provide for a coordinated state-wide program of air quality control and to allocate between the state and the units of local government responsibility for such control.

(c) To facilitate cooperation among units of local government in establishing and supporting air quality control programs.

(2) The program for the control of air pollution in this state shall be undertaken in a progressive manner, and each of its successive objectives shall be sought to be accomplished by cooperation and conciliation among all the parties concerned. [Formerly 449.765]

468.285 Purpose. It is the purpose of the air pollution laws contained in ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter to safeguard the air resources of the state by controlling, abating and preventing air pollution under a program which shall be consistent with the declaration of policy in this section and with ORS 468.280. [Formerly 449.770]

468.290 Application of air pollution laws. Except as provided in this section and in ORS 468.450, 476.380 and 478.960, the air pollution laws contained in this chapter do not apply to:

(1) Agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150, 468.455 to 468.480 and this section;

(2) Use of equipment in agricultural operations in the growth of crops or the raising of fowls or animals, except field burning which shall be subject to regulation pursuant to ORS 468.140, 468.150, 468.455 to 468.480 and this section;

(3) Barbecue equipment used in connection with any residence;

(4) Agricultural land clearing operations or land grading;

(5) Heating equipment in or used in connection with residences used exclusively as dwellings for not more than four families, except woodstoves which shall be subject to regulation under this section and ORS 468.630 to 468.655;

(6) Fires set or permitted by any public agency when such fire is set or permitted in the performance of its official duty for the purpose of weed abatement, prevention or elimination of a fire hazard, or instruction of employes in the methods of fire fighting, which in the opinion of the agency is necessary;

(7) Fires set pursuant to permit for the purpose of instruction of employes of private industrial concerns in methods of fire fighting, or for civil defense instruction; or

(8) The propagation and raising of nursery stock, except boilers used in connection with the propagation and raising of nursery stock. [Formerly 449.775; 1975 c.559 §3; 1983 c.333 §2; 1983 c.730 §3]

468.295 Air purity standards; air quality standards. (1) By rule the commission may establish areas of the state and prescribe the degree of air pollution or air contamination that may be permitted therein, as air purity standards for such areas.

(2) In determining air purity standards, the commission shall consider the following factors:

(a) The quality or characteristics of air contaminants or the duration of their presence in the atmosphere which may cause air pollution in the particular area of the state;

(b) Existing physical conditions and topography;

(c) Prevailing wind directions and velocities;

(d) Temperatures and temperature inversion periods, humidity, and other atmospheric conditions;

(e) Possible chemical reactions between air contaminants or between such air contaminants and air gases, moisture or sunlight;

(f) The predominant character of development of the area of the state, such as residential, highly developed industrial area, commercial or other characteristics;

(g) Availability of air-cleaning devices;

(h) Economic feasibility of air-cleaning devices;

(i) Effect on normal human health of particular air contaminants;

(j) Effect on efficiency of industrial operation resulting from use of air-cleaning devices;

(k) Extent of danger to property in the area reasonably to be expected from any particular air contaminants;

(L) Interference with reasonable enjoyment of life by persons in the area which can reasonably be expected to be affected by the air contaminants;

(m) The volume of air contaminants emitted from a particular class of air contamination source;

(n) The economic and industrial development of the state and continuance of public enjoyment of the state's natural resources; and

(o) Other factors which the commission may find applicable.

(3) The commission may establish air quality standards including emission standards for the entire state or an area of the state. The standards shall set forth the maximum amount of air pollution permissible in various categories of air con-

taminants and may differentiate between different areas of the state, different air contaminants and different air contamination sources or classes thereof. [Formerly 449.785]

468.300 When liability for violation not applicable. The several liabilities which may be imposed pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter upon persons violating the provisions of any rule, standard or order of the commission pertaining to air pollution shall not be so construed as to include any violation which was caused by an act of God, war, strife, riot or other condition as to which any negligence or wilful misconduct on the part of such person was not the proximate cause. [Formerly 449.825]

468.305 General comprehensive plan. Subject to policy direction by the commission, the department shall prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of new air pollution in any area of the state in which air pollution is found already existing or in danger of existing. The plan shall recognize varying requirements for different areas of the state. [Formerly 449.782]

468.310 Permits. By rule the commission may require permits for air contamination sources classified by type of air contaminants, by type of air contamination source or by area of the state. The permits shall be issued as provided in ORS 468.065. [Formerly 449.727]

468.315 Activities prohibited without permit; limit on activities with permit. (1) Without first obtaining a permit pursuant to ORS 468.065, no person shall:

(a) Discharge, emit or allow to be discharged or emitted any air contaminant for which a permit is required under ORS 468.310 into the outdoor atmosphere from any air contamination source.

(b) Construct, install, establish, develop, modify, enlarge or operate any air contamination source for which a permit is required under ORS 468.310.

(2) No person shall increase in volume or strength discharges or emissions from any air contamination source for which a permit is required under ORS 468.310 in excess of the permissive discharges or emission specified under an existing permit. [Formerly 449.731]

468.320 Classification of air contamination sources; registration and reporting of sources. (1) By rule the commis-

sion may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the department and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution. [Formerly 449.707]

468.325 Notice prior to construction of new sources; order authorizing or prohibiting construction; effect of no order; appeal.

(1) The commission may require notice prior to the construction of new air contamination sources specified by class or classes in its rules or standards relating to air pollution.

(2) Within 30 days of receipt of such notice, the commission may require, as a condition precedent to approval of the construction, the submission of plans and specifications. After examination thereof, the commission may request corrections and revisions to the plans and specifications. The commission may also require any other information concerning air contaminant emissions as is necessary to determine whether the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto.

(3) If the commission determines that the proposed construction is in accordance with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto, it shall enter an order approving such construction. If the commission determines that the construction does not comply with the provisions of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter and applicable rules or standards adopted pursuant thereto, it shall notify the applicant and enter an order prohibiting the construction.

(4) If within 60 days of the receipt of plans, specifications or any subsequently requested revi-

sions or corrections to the plans and specifications or any other information required pursuant to this section, the commission fails to issue an order, the failure shall be considered a determination that the construction may proceed. The construction must comply with the plans, specifications and any corrections or revisions thereto or other information, if any, previously submitted.

(5) Any person against whom the order is directed may, within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the director of the department. The hearing shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(6) The commission may delegate its duties under subsections (2) to (4) of this section to the Director of the Department of Environmental Quality. If the commission delegates its duties under this section, any person against whom an order of the director is directed may demand a hearing before the commission as provided in subsection (5) of this section.

(7) For the purposes of this section, "construction" includes installation and establishment of new air contamination sources. Addition to or enlargement or replacement of an air contamination source, or any major alteration or modification therein that significantly affects the emission of air contaminants shall be considered as construction of a new air contamination source. [Formerly 449.712; 1985 c.275 §1]

468.330 Duty to comply with laws, rules and standards. Any person who complies with the provisions of ORS 468.325 and receives notification that construction may proceed in accordance therewith is not thereby relieved from complying with any other applicable law, rule or standard. [Formerly 449.739]

468.335 Furnishing copies of rules and standards to building permit issuing agencies. Whenever under the provisions of ORS 468.320 to 468.340 rules or standards are adopted by either the commission or a regional authority, the commission or regional authority shall furnish to all building permit issuing agencies within its jurisdiction copies of such rules and standards. [Formerly 449.722]

468.340 Measurement and testing of contamination sources. (1) Pursuant to rules adopted by the commission, the department shall establish a program for measurement and testing of contamination sources and may perform such sampling or testing or may require any person in

control of an air contamination source to perform the sampling or testing, subject to the provisions of subsections (2) to (4) of this section. Whenever samples for air or air contaminants are taken by the department of analysis, a duplicate of the analytical report shall be furnished promptly to the person owning or operating the air contamination source.

(2) The department may require any person in control of an air contamination source to provide necessary holes in stacks or ducts and proper sampling and testing facilities, as may be necessary and reasonable for the accurate determination of the nature, extent, quantity and degree of air contaminants which are emitted as the result of operation of the source.

(3) All sampling and testing shall be conducted in accordance with methods used by the department or equivalent methods of measurement acceptable to the department.

(4) All sampling and testing performed under this section shall be conducted in accordance with applicable safety rules and procedures established by law. [Formerly 449.702]

468.345 Variances from air contamination rules and standards; delegation to local governments; notices. (1) The commission may grant specific variances which may be limited in time from the particular requirements of any rule or standard to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may consider necessary to protect the public health and welfare. The commission shall grant such specific variance only if it finds that strict compliance with the rule or standard is inappropriate because:

(a) Conditions exist that are beyond the control of the persons granted such variance; or

(b) Special circumstances render strict compliance unreasonable, burdensome or impractical due to special physical conditions or cause; or

(c) Strict compliance would result in substantial curtailment or closing down of a business, plant or operation; or

(d) No other alternative facility or method of handling is yet available.

(2) The commission may delegate the power to grant variances to legislative bodies of local units of government or regional air quality control authorities in any area of the state on such general conditions as it may find appropriate. However, if the commission delegates authority to grant variances to a regional authority, the commission shall not grant similar authority to

any city or county within the territory of the regional authority.

(3) A copy of each variance granted, renewed or extended by a local governmental body or regional authority shall be filed with the commission within 15 days after it is granted. The commission shall review the variance and the reasons therefor within 60 days of receipt of the copy and may approve, deny or modify the variance terms. Failure of the commission to act on the variance within the 60-day period shall be considered a determination that the variance granted by the local governmental body or regional authority is approved by the commission.

(4) In determining whether or not a variance shall be granted, the commission or the local governmental body or regional authority shall consider the equities involved and the advantages and disadvantages to residents and to the person conducting the activity for which the variance is sought.

(5) A variance may be revoked or modified by the grantor thereof after a public hearing held upon not less than 10 days' notice. Such notice shall be served upon all persons who the grantor knows will be subjected to greater restrictions if such variance is revoked or modified, or are likely to be affected or who have filed with such grantor a written request for such notification. [Formerly 449.810]

468.350 Air and water pollution control permit for geothermal well drilling and operation; enforcement authority of director. (1) Upon issuance of a permit pursuant to ORS 522.115, the director shall accept applications for such appropriate permits under air and water pollution control laws as are necessary for the drilling of a geothermal well for which the permit has been issued and shall, within 30 days, act upon such application.

(2) The director shall continue to exercise enforcement authority over a permit issued pursuant to this section; and shall have primary responsibility in carrying out the policy set forth in ORS 468.280, 468.710 and rules adopted pursuant to ORS 468.725, for air and water pollution control at geothermal wells which have been unlawfully abandoned, unlawfully suspended, or completed. [1975 c.552 §34]

468.355 Open burning of vegetative debris; local government authority. (1) The Environmental Quality Commission shall establish by rule periods during which open burning of vegetative debris from residential yard cleanup shall be allowed or disallowed based on

daily air quality and meteorological conditions as determined by the department.

(2) After June 30, 1982, the commission may prohibit residential open burning in areas of the state if the commission finds:

(a) Such prohibition is necessary in the area affected to meet air quality standards; and

(b) Alternate disposal methods are reasonably available to a substantial majority of the population in the affected area.

(3)(a) Nothing in this section prevents a local government from taking any of the following actions if that governmental entity otherwise has the power to do so:

(A) Prohibiting residential open burning;

(B) Allowing residential open burning on fewer days than the number of days on which residential open burning is authorized by the commission; or

(C) Taking other action that is more restrictive of residential open burning than a rule adopted by the commission under this section.

(b) Nothing in this section affects any local government ordinance, rule, regulation or provision that:

(A) Is more restrictive of residential open burning than a rule adopted by the commission under this section; and

(B) Is in effect on August 21, 1981.

(c) As used in this subsection, "local government" means a city, county, other local governmental subdivision or a regional air quality control authority established under ORS 468.505. [1981 c.765 §2]

MOTOR VEHICLE POLLUTION CONTROL

468.360 Definitions for ORS 468.360 to 468.405. As used in ORS 468.360 to 468.405:

(1) "Certified system" means a motor vehicle pollution control system for which a certificate of approval has been issued under ORS 468.375 (3).

(2) "Factory-installed system" means a motor vehicle pollution control system installed by the manufacturer which meets criteria for emission of pollutants in effect under federal laws and regulations applicable on September 9, 1971, or which meets criteria adopted pursuant to ORS 468.375 (1), whichever criteria are stricter.

(3) "Motor vehicle" includes any self-propelled vehicle used for transporting persons or commodities on public roads and highways, but

does not include a vehicle of special interest as that term is defined in ORS 401.605, if the vehicle is maintained as a collector's item and used for exhibitions, parades, club activities and similar uses but not used primarily for the transportation of persons or property.

(4) "Motor vehicle pollution control system" means equipment designed for installation on a motor vehicle for the purpose of reducing the pollutants emitted from the vehicle, or a system or engine adjustment or modification which causes a reduction of pollutants emitted from the vehicle. [Formerly 449.949; 1975 c.670 §4; 1983 c.338 §932]

468.365 Legislative findings. For purposes of ORS 468.360 to 468.405, the Legislative Assembly finds:

(1) That the emission of pollutants from motor vehicles is a significant cause of air pollution in many portions of this state.

(2) That the control and elimination of such pollutants are of prime importance for the protection and preservation of the public health, safety and well-being and for the prevention of irritation to the senses, interference with visibility, and damage to vegetation and property.

(3) That the state has a responsibility to establish procedures for compliance with standards which control or eliminate such pollutants.

(4) That the Oregon goal for pure air quality is the achievement of an atmosphere with no detectable adverse effect from motor vehicle air pollution on health, safety, welfare and the quality of life and property. [Formerly 449.951]

468.370 Motor vehicle emission and noise standards; copy to Motor Vehicles Division. (1) After public hearing and in accordance with the applicable provisions of ORS 183.310 to 183.550, the commission may adopt motor vehicle emission standards. For the purposes of this section, the commission may include, as a part of such standards, any standards for the control of noise emissions adopted pursuant to ORS 467.030.

(2) The commission shall furnish a copy of standards adopted pursuant to this section to the Motor Vehicles Division and shall publish notice of the standards in a manner reasonably calculated to notify affected members of the public. [Formerly 449.957; 1974 s.s. c.73 §1]

468.375 Certification of motor vehicle pollution control systems and inspection of motor vehicles. The commission shall:

(1) Determine and adopt by rule criteria for certification of motor vehicle pollution control

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described in subsection (1) of this section if such aerosol spray is intended to be used for a legitimate medical purpose in the treatment of asthma or any respiratory disorder; or such aerosol spray is intended to be used for a legitimate medical purpose and the State Board of Pharmacy determines by administrative rule that the use of the aerosol spray is essential to such intended use. [1975 c.366 §2; 1977 c.18 §1; 1977 c.206 §1; 1983 c.148 §1]

Note: See note under 468.600.

468.610 Wholesale transactions permitted. Nothing in ORS 468.605 shall prevent wholesale transactions, including but not limited to the transportation, warehousing, sale, and delivery of any aerosol spray described in ORS 468.605 (1). [1977 c.206 §4]

468.615 Temporary exceptions to prohibition on sale; rules. As of March 1, 1977, the Director of Commerce may adopt rules as provided in ORS 183.310 to 183.550 permitting the sale of an aerosol spray described in ORS 468.605 (1), if such aerosol spray is intended to be used in the manufacture, installation, testing, repair, maintenance or modification of dental, electric, electronic or telephone equipment, in the application of a pesticide in inclosed spaces, if such pesticide is not intended for domestic use or uses relating to industrial cleaning, equipment operation, repair and maintenance, and other industrial uses, and the director affirmatively finds that the use of the aerosol spray is essential to such intended use. However, after January 1, 1980, no aerosol spray shall be certified or sold under the rules adopted pursuant to this section. [1977 c.206 §2]

468.620 Labeling of exceptions to prohibition on sale; rules; federal pre-emption. The Director of Commerce, not later than January 1, 1978, shall adopt rules as provided in ORS 183.310 to 183.550, requiring labeling of any aerosol spray described in ORS 468.605 (2) or 468.615. This section shall be in full force and effect until the Federal Government adopts and places into effect requirements for nationwide labeling of aerosol sprays. [1977 c.206 §3]

WOODSTOVE EMISSIONS CONTROL

468.630 Policy. In the interest of the public health and welfare it is declared to be the public policy of the state to control, reduce and prevent air pollution caused by woodstove emissions. The Legislative Assembly declares it to be the public policy of the state to reduce woodstove emissions by encouraging the Department of Environmental Quality to continue efforts to educate the public about the effects of woodstove

emissions and the desirability of achieving better woodstove emission performance and heating efficiency. [1983 c.333 §4]

468.635 Prohibited acts relating to uncertified and unlabeled woodstove. On and after July 1, 1986, a person may not advertise to sell, offer to sell or sell a new woodstove in Oregon unless:

(1) The woodstove has been tested to determine its emission performance and heating efficiency;

(2) The woodstove is certified by the department under the program established under ORS 468.655 (1); and

(3) An emission performance and heating efficiency label is attached to the woodstove. [1983 c.333 §8]

468.640 Evaluation of woodstove emission performance; fee. (1) After July 1, 1984, a woodstove manufacturer or dealer may request the department to evaluate the emission performance of a new woodstove.

(2) The commission shall establish by rule the amount of the fee that a manufacturer or dealer must submit to the department with each request to evaluate a woodstove.

(3) A new woodstove may be certified at the conclusion of an evaluation and before July 1, 1986, if:

(a) The department finds that the emission levels of the woodstove comply with the emission standards established by the commission; and

(b) The woodstove manufacturer or dealer submits the application for certification fee established by the commission under ORS 468.655 (1).

(4) As used in this section, "evaluate" means to review a woodstove's emission levels as determined by an independent testing laboratory, and compare the emission levels of the woodstove to the emission standards established by the commission under ORS 468.655 (1). [1983 c.333 §7]

468.645 Used woodstoves exempt from prohibition on sale. (1) The provisions of ORS 468.275, 468.290 and 468.630 to 468.655 do not apply to a used woodstove.

(2) As used in this section, "used woodstove" means any woodstove that has been sold, bargained, exchanged, given away or has had its ownership transferred from the person who first acquired the woodstove from the manufacturer or the manufacturer's dealer or agency, and so used to have become what is commonly known as

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second hand" within the ordinary meaning of the term. [1983 c.333 §9]

468.650 Use of net emission reductions airshed. The commission shall use a portion of the net emission reductions in an airshed achieved by the woodstove certification program to provide room in the airshed for emissions associated with commercial and industrial woodstoves. [1983 c.333 §10]

468.655 Standards and certification program; fee; advisory committee. (1) Before July 1, 1984, the commission shall establish by rule:

(a) Emission performance standards for new woodstoves;

(b) Criteria and procedures for testing a new woodstove for compliance with the emission performance standards;

(c) A program administered by the department to certify a new woodstove that complies with the emission performance standards when tested by an independent testing laboratory, according to the criteria and procedures established in paragraph (b) of this subsection;

(d) A program, including testing criteria and procedures to rate the heating efficiency of a new woodstove;

(e) The form and content of the emission performance and heating efficiency label to be attached to a new woodstove; and

(f) The application fee to be submitted to the department by a manufacturer, dealer or seller applying for certification of a woodstove.

(2) To aid and advise the commission in the adoption of emission performance standards and testing criteria, the commission may establish an advisory committee. The members of the advisory committee shall include, but need not be limited to, representatives from Oregon woodstove manufacturers. [1983 c.333 §§5, 6]

WATER POLLUTION CONTROL

468.700 Definitions for water pollution control laws. As used in the laws relating to water pollution, unless the context requires otherwise:

(1) "Disposal system" means a system for disposing of wastes, either by surface or underground methods and includes municipal sewerage systems, domestic sewerage systems, treatment works, disposal wells and other systems.

(2) "Industrial waste" means any liquid, gaseous, radioactive or solid waste substance or a combination thereof resulting from any process

of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.

(3) "Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

(4) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "sewage" within the meaning of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(5) "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

(6) "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

(7) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.

(8) "Water" or "the waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. [Formerly 449.075]

468.705 Authority of commission over water pollution; construction. (1) Except as otherwise provided in ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930, in so far as the authority of the commission over water pollution granted by ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter is inconsistent with any other law, or authority granted to any other state agency, the authority of the commission shall be controlling.

(2) The water pollution control laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468.710. [Formerly 449.070]

468.710 Policy. Whereas pollution of the waters of the state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the problem of water pollution in this state is closely related to the problem of water pollution in adjoining states, it is hereby declared to be the public policy of the state:

(1) To conserve the waters of the state;

(2) To protect, maintain and improve the quality of the waters of the state for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, municipal, recreational and other legitimate beneficial uses;

(3) To provide that no waste be discharged into any waters of this state without first receiving the necessary treatment or other corrective action to protect the legitimate beneficial uses of such waters;

(4) To provide for the prevention, abatement and control of new or existing water pollution; and

(5) To cooperate with other agencies of the state, agencies of other states and the Federal Government in carrying out these objectives. [Formerly 449.077]

468.715 Prevention of pollution. (1) Pollution of any of the waters of the state is declared to be not a reasonable or natural use of such waters and to be contrary to the public policy of the State of Oregon, as set forth in ORS 468.710.

(2) In order to carry out the public policy set forth in ORS 468.710, the department shall take such action as is necessary for the prevention of new pollution and the abatement of existing pollution by:

(a) Fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state; and

(b) Requiring the use of all available and reasonable methods necessary to achieve the purposes of ORS 468.710 and to conform to the standards of water quality and purity established under ORS 468.735. [Formerly 449.095]

468.720 Prohibited activities. (1) Except as provided in ORS 468.740, no person shall:

(a) Cause pollution of any waters of the state or place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

(b) Discharge any wastes into the waters of the state if the discharge reduces the quality of such waters below the water quality standards established by rule for such waters by the commission.

(2) No person shall violate the conditions of any waste discharge permit issued under ORS 468.740.

(3) Violation of subsection (1) or (2) of this section is a public nuisance. [Formerly 449.079]

468.725 Effluent limitations. In relation to the waters of the state, the commission by rule may establish effluent limitations, as defined in Section 502 of the Federal Water Pollution Control Act, as amended by Public Law 92-500, October 18, 1972, and other minimum requirements for disposal of wastes, minimum requirements for operation and maintenance of disposal systems, and all other matters pertaining to standards of quality for the waters of the state. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act of October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. [Formerly 449.081]

468.730 Implementation of Federal Water Pollution Control Act. The commission may perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act, enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. The commis-

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sion may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.550, for the administration and implementation of this section. [1973 c.92 §3]

468.732 Certification of hydroelectric power project; comments of affected state agencies. The Director of the Department of Environmental Quality shall approve or deny certification of any federally licensed or permitted activity related to hydroelectric power development, under section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. In making a decision as to whether to approve or deny such certification, the director shall:

(1) Solicit and consider the comments of all affected state agencies relative to adverse impacts on water quality caused by the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) Approve or deny a certification only after making findings that the approval or denial is consistent with:

(a) Rules adopted by the Environmental Quality Commission on water quality;

(b) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(c) Standards established in ORS 469.371 and 543.017 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards; and

(d) Standards of other state and local agencies that are consistent with the standards of ORS 469.371 and 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended. [1985 c.569 §7]

468.734 Certification of change to hydroelectric power project; notification of federal agency. Within 60 days after the Department of Environmental Quality receives notice that any federal agency is considering a permit or license application related to a change to a hydroelectric project or proposed hydroelectric project that was previously certified by the Director of the Department of Environmental Quality according to section 401 (1) of the Federal Water Pollution Control Act P.L. 92-500, as amended:

(1) The director shall:

(a) Solicit and consider the comments of all affected state agencies relative to adverse impacts

on water quality caused by changes in the project, according to sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(b) Approve or deny a certification of the proposed change after making findings that the approval or denial is consistent with:

(A) Rules adopted by the Environmental Quality Commission on water quality;

(B) Provisions of sections 301, 302, 303, 306 and 307 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(C) Standards established in ORS 469.371 and 543.017 and rules adopted by the Water Resources Commission and the Energy Facility Siting Council implementing such standards; and

(D) Standards of other state and local agencies that are consistent with the standards of ORS 469.371 and 543.017 and that the director determines are other appropriate requirements of state law according to section 401 of the Federal Water Pollution Control Act, P.L. 92-500, as amended.

(2) On the basis of the evaluation and determination under subsection (1) of this section, the director shall notify the appropriate federal agency that:

(a) The proposed change to the project is approved; or

(b) There is no longer reasonable assurance that the project as changed complies with the applicable provisions of the Federal Water Pollution Control Act, P.L. 92-500, as amended, because of changes in the proposed project since the director issued the construction license or permit certification. [1985 c.569 §8]

468.735 Standards of quality and purity; factors to be considered; meeting standards. (1) The commission by rule may establish standards of quality and purity for the waters of the state in accordance with the public policy set forth in ORS 468.710. In establishing such standards, the commission shall consider the following factors:

(a) The extent, if any, to which floating solids may be permitted in the water;

(b) The extent, if any, to which suspended solids, settleable solids, colloids or a combination of solids with other substances suspended in water may be permitted;

(c) The extent, if any, to which organisms of the coliform group, and other bacteriological organisms or virus may be permitted in the waters;

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(d) The extent of the oxygen demand which may be permitted in the receiving waters;

(e) The minimum dissolved oxygen content of the waters that shall be maintained;

(f) The limits of other physical, chemical, biological or radiological properties that may be necessary for preserving the quality and purity of the waters of the state;

(g) The extent to which any substance must be excluded from the waters for the protection and preservation of public health; and

(h) The value of stability and the public's right to rely upon standards as adopted for a reasonable period of time to permit institutions, municipalities, commerce, industries and others to plan, schedule, finance and operate improvements in an orderly and practical manner.

(2) Standards established under this section shall be consistent with policies and programs for the use and control of water resources of the state adopted by the Water Resources Commission under ORS 536.220 to 536.540.

(3) Subject to the approval of the department, any person responsible for complying with the standards of water quality or purity established under this section shall determine the means, methods, processes, equipment and operation to meet the standards. [Formerly 449.086; 1985 c.673 §178]

468.740 When permit required. Without first obtaining a permit from the director, which permit shall specify applicable effluent limitations and shall not exceed five years in duration, no person shall:

(1) Discharge any wastes into the waters of the state from any industrial or commercial establishment or activity or any disposal system.

(2) Construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto.

(3) Increase in volume or strength any wastes in excess of the permissive discharges specified under an existing permit.

(4) Construct, install, operate or conduct any industrial, commercial or other establishment or activity or any extension or modification thereof or addition thereto, the operation or conduct of which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized.

(5) Construct or use any new outlet for the discharge of any wastes into the waters of the state. [Formerly 449.083]

468.742 Plan approval required; exemptions. (1) Except as provided in subsection (3) of this section, all plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems, shall be submitted to the Department of Environmental Quality for its approval or rejection pursuant to rules of the commission.

(2) No construction, installation or modification of the type described in subsection (1) of this section shall be commenced until the plans and specifications submitted to the department under subsection (1) of this section are approved. Any construction, installation or modification must be in accordance with the plans and specifications approved by the department.

(3) By rule, the commission may exempt from the requirement of subsection (1) of this section the class or classes of disposal systems, treatment works and sewerage systems for which the commission finds plan submittal and approval unnecessary or impractical. [Formerly 454.415; 1979 c.98 §1]

468.745 Liability for damage to fish or wildlife or habitat; agency to which damages payable. (1) Where the injury, death, contamination or destruction of fish or other wildlife or injury or destruction of fish or wildlife habitat results from pollution or from any violation of the conditions set forth in any permit or of the orders or rules of the commission, the person responsible for the injury, death, contamination or destruction shall be strictly liable to the state for the value of the fish or wildlife so injured or destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration.

(2) In addition to the penalties provided for by law, the state may seek recovery of such damages in any court of competent jurisdiction in this state if the person responsible under subsection (1) of this section fails or refuses to pay for the value of the fish or wildlife so destroyed and for all costs of restoring fish and wildlife production in the affected areas, including habitat restoration, within a period of 60 days from the date of mailing by registered or certified mail of written demand therefor.

(3) Any action or suit for the recovery of damages described in subsection (1) of this section shall be brought in the name of the State of Oregon upon relation of the Department of Environmental Quality or State Department of Fish and Wildlife or the Attorney General. Amounts recovered under this section shall be

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paid to the state agency having jurisdiction over the fish or wildlife or fish or wildlife production for which damages were recovered. [Formerly 449.103; 1979 c.584 §1]

468.750 When motor vehicle parts may be placed in waters of state. (1) The commission shall adopt rules as to the beneficial use of chassis, bodies, shells, and tires of motor vehicles in the waters of the state, including the means and methods of placing them in the waters of the state. In adopting such rules the commission shall consider, among other things:

- (a) The possibility of pollution;
- (b) The esthetics of such use;
- (c) The utility of such use in reclamation projects;
- (d) The degradation of the waters, stream beds or banks; and
- (e) The nature of the waters such as tide-water, slough or running stream.

(2) In the manner described in ORS 468.065, the commission may issue a permit to an applicant to place chassis, bodies, shells or tires of motor vehicles in the waters of this state subject to the rules adopted under this section. [Formerly 449.111; 1975 c.172 §1]

468.755 Prohibited activities for certain municipalities. (1) No municipality shall:

- (a) Dump polluting substances into any public or private body of water that empties directly or indirectly into any navigable body of water in or adjacent to a municipality, except by permit issued by the department.
- (b) Dump polluting substances into any open dump or sanitary landfill where by drainage or seepage any navigable body of water in or adjacent to a municipality may be affected adversely unless:

(A) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(B) The commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(C) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery.

(2) As used in this section:

(a) "Municipality" means any city having a population of 250,000 or more or any home-rule county having a population of 350,000 or more.

(b) "Polluting substances" means dead animal carcasses, excrement, and putrid, nauseous, noisome, decaying, deleterious or offensive substances including refuse of any kind or description.

(3) Any municipality found by the commission to have performed any of the actions prohibited by subsection (1) of this section shall be ineligible for any grants or loans to which it would otherwise be eligible from the Pollution Control Fund pursuant to ORS 468.195 to 468.245 unless:

(a) The municipality is operating a sanitary landfill in accordance with the terms and conditions of a valid permit;

(b) The commission finds the municipality is improving for other purposes each section of the landfill as it is completed; and

(c) The commission finds the municipality is continuously developing and implementing, where feasible, improvements in its solid waste disposal program that incorporate new and alternative methods, including recycling, reuse and resource recovery. [Formerly 449.113]

468.760 Regulation of synthetic cleansing agent. (1) No synthetic cleansing agent shall be sold for use in this state unless the agent will normally decompose when acted upon by biological means or will degrade in a secondary sewage treatment plant.

(2) All synthetic cleansing agents that are sold in this state must be labeled with the percent of phosphorous by weight, including equivalency in grams of phosphorous per recommended use level.

(3) The commission shall adopt rules governing the labeling requirements imposed by subsection (2) of this section. [Formerly 449.137]

468.765 Definitions for ORS 468.770. For the purposes of ORS 468.770, the term:

(1) "Buildings or structures" shall also include but is not limited to floating buildings and structures, houseboats, moorages, marinas, or any boat used as such.

(2) "Sewage" means human excreta as well as kitchen, bath and laundry wastes.

(3) "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and serving of food. [Formerly 449.140]

468.770 Prohibitions relating to garbage or sewage dumping into waters of state. (1) No garbage or sewage shall be discharged into or in any other manner be allowed to enter the waters of the state from any building or

structure unless such garbage or sewage has been treated or otherwise disposed of in a manner approved by the department. All plumbing fixtures in buildings or structures, including prior existing plumbing fixtures from which waste water or sewage is or may be discharged, shall be connected to and all waste water or sewage from such fixtures in buildings or structures shall be discharged into a sewerage system, septic tank system or other disposal system approved by the department pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, (1973 Replacement Part), 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter.

(2) The department may extend the time of compliance for any person, class of persons, municipalities or businesses upon such conditions as it may deem necessary to protect the public health and welfare if it is found that strict compliance would be unreasonable, unduly burdensome or impractical due to special physical conditions or cause or because no other alternative facility or method of handling is yet available. [Formerly 449.150]

468.775 Depositing motor vehicles into water prohibited. Subject to ORS 468.750, no person, including a person in the possession or control of any land, shall deposit, discard or place any chassis, body or shell of a motor vehicle as defined by ORS 801.360 or of any vehicle as defined by ORS 801.590, or parts and accessories thereof, including tires, into the waters of the state for any purpose, or deposit, discard or place such materials in a location where they may be likely to escape or be carried into the waters of the state by any means. [Formerly 449.109; 1983 c.338 §937]

468.777 Permit authorized for discharge of shrimp and crab processing by-products; conditions. (1) The department may issue a permit to discharge shrimp and crab processing by-products into the waters of an Oregon estuary under ORS 468.740 for the purpose of enhancing aquatic life production. The permit shall impose the following conditions:

(a) No toxic substances shall be present in the by-products discharged.

(b) The oxygen content of the estuarine waters shall not be reduced.

(c) The discharge shall not create a public nuisance.

(d) Other beneficial uses of the estuary shall not be adversely affected.

(2) The department shall consult the State Department of Fish and Wildlife and obtain its approval before issuing a permit under this section. [1979 c.617 §2]

468.778 Use of sludge on agricultural, horticultural or silvicultural land. The Environmental Quality Commission shall adopt by rule requirements for the use of sludge on agricultural, horticultural or silvicultural land including, but not limited to:

(1) Procedure and criteria for selecting sludge application sites, including providing the opportunity for public comment and public hearing;

(2) Requirements for sludge treatment and processing before sludge is applied;

(3) Methods and minimum frequency for analyzing sludge and soil to which sludge is applied;

(4) Records that a sludge applicator must keep;

(5) Restrictions on public access to and cropping of land on which sludge has been applied; and

(6) Any other requirement necessary to protect surface water, ground water, public health and soil productivity from any adverse effects resulting from sludge application. [1983 c.257 §2]

Note: 468.778 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OIL SPILLAGE REGULATION

468.780 Definitions for ORS 468.780 to 468.815. As used in ORS 468.020, 468.095, 468.140 (3) and 468.780 to 468.815, unless the context requires otherwise:

(1) "Oils" or "oil" means oil, including gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse and any other petroleum related product.

(2) "Person having control over oil" includes but is not limited to any person using, storing or transporting oil immediately prior to entry of such oil into the waters of the state, and shall specifically include carriers and bailees of such oil.

(3) "Ship" means any boat, ship, vessel, barge or other floating craft of any kind. [Formerly 449.155]

468.785 Entry of oil into waters of state prohibited; exception. (1) It shall be unlawful for oil to enter the waters of the state from any ship or any fixed or mobile facility or installation located offshore or onshore, whether publicly or privately operated, regardless of the cause of the entry or the fault of the person having control over the oil, or regardless of whether the entry is the result of intentional or

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negligent conduct, accident or other cause. Such entry constitutes pollution of the waters of the state.

(2) Subsection (1) of this section shall not apply to the entry of oil into the waters of the state under the following circumstances:

(a) The person discharging the oil was expressly authorized to do so by the department, having obtained a permit therefor required by ORS 468.740; or

(b) The person having control over the oil can prove that the entry thereof into the waters of the state was caused by:

(A) An act of war or sabotage or an act of God.

(B) Negligence on the part of the United States Government, or the State of Oregon.

(C) An act or omission of a third party without regard to whether any such act or omission was or was not negligent. [Formerly 449.157]

468.790 Liability for violation of ORS 468.785. (1) Any person owning oil or having control over oil which enters the waters of the state in violation of ORS 468.785 shall be strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by such entry. However, in any action to recover damages, the person shall be relieved from strict liability without regard to fault if the person can prove that the oil to which the damages relate, entered the waters of the state by causes set forth in ORS 468.785 (2).

(2) Nothing in this section shall be construed as limiting the right of a person owning or having control of oil to maintain an action for the recovery of damages against another person for an act or omission of such other person resulting in the entry of oil into the waters of the state for which the person owning or having control of such oil is liable under subsection (1) of this section. [Formerly 449.159]

468.795 Duty to collect and remove oil; dispersal of oil. (1) In addition to any other liability or penalty imposed by law, it shall be the obligation of any person owning or having control over oil which enters the waters of the state in violation of ORS 468.785 to collect and remove the oil immediately.

(2) If it is not feasible to collect and remove the oil, the person shall take all practicable actions to contain, treat and disperse the oil.

(3) The director shall prohibit or restrict the use of any chemicals or other dispersant or treatment materials proposed for use under this sec-

tion whenever it appears to the director that use thereof would be detrimental to the public interest. [Formerly 449.161]

468.800 Action by state; liability for state expense; order; appeal. (1) If any person fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468.795, the department is authorized, itself or by contract with outside parties, to take such actions as are necessary to collect, remove, treat, contain or disperse oil which enters into the waters of the state.

(2) The director shall keep a record of all necessary expenses incurred in carrying out any action authorized under this section, including a reasonable charge for costs incurred by the state, including state's equipment and materials utilized.

(3) The authority granted under this section shall be limited to actions which are designed to protect the public interest or public property.

(4) Any person who fails to collect, remove, treat, contain or disperse oil immediately when under the obligation imposed by ORS 468.795, shall be responsible for the necessary expenses incurred by the state in carrying out actions authorized by this section.

(5) Based on the record compiled by the director pursuant to subsection (2) of this section, the commission shall make a finding and enter an order against the person described in subsection (4) of this section for the necessary expenses incurred by the state in carrying out the action authorized by this section. The order may be appealed pursuant to ORS 183.310 to 183.550 but not as a contested case. [Formerly 449.163]

468.802 Director's right of entry in response to oil spill; state liability for damages. (1) The director shall have the power to enter upon any public or private property, premises or place for the purpose of controlling, collecting, removing, treating, containing or dispersing oil which reasonably appears to the director to threaten imminent and unlawful entry into the waters of the state, when the person responsible for an oil spill or an owner of property on which oil has been spilled fails to act to restrain or to remove the oil.

(2) Damages, other than those caused by the oil spill, suffered from the actions of the director pursuant to subsection (1) of this section shall be the responsibility of the state. [1977 c.222 §§2, 3]

468.805 Action to collect costs. (1) If the amount of state-incurred expenses under ORS 468.800 is not paid by the responsible per-

son to the commission at the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the violation may have taken place to recover the amount specified in the order of the commission.

(2) Payment must be made within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court renders its decision if the decision affirms the order. [Formerly 449.165]

468.810 [Formerly 449.167; 1977 c.704 §11; repealed by 1985 c.733 §23]

468.815 Effect of federal regulations of oil spillage. Nothing in ORS 468.020, 468.095, 468.140 (3) and 468.780 to 468.815 or the rules adopted thereunder shall require or prohibit any act if such requirement or prohibition is in conflict with any applicable federal law or regulation. [Formerly 449.175]

USED OIL RECYCLING

468.850 Definitions for ORS 468.850 to 468.871. As used in ORS 468.850 to 468.871 unless the context requires otherwise:

(1) "Commission" means the Environmental Quality Commission.

(2) "Department" means the Department of Environmental Quality.

(3) "Recycle" means to prepare used oil for reuse as a petroleum product by refining, rerefining, reclaiming, reprocessing or other means or to use used oil in a manner that substitutes for a petroleum product made from new oil, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(4) "Person" means any individual, private or public corporation, partnership, cooperative association, estate, municipality, political or jurisdictional subdivision or governmental agency or instrumentality.

(5) "Used oil" means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties. [1977 c.483 §2]

Note: 468.850 to 468.871 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 468 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

468.853 Legislative findings. The Legislative Assembly finds that:

(1) Millions of gallons of used oil are generated each year in the state;

(2) Used oil is a valuable petroleum resource which can be recycled; and

(3) In spite of this potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the waters, land and air and endanger the public health and welfare. [1977 c.483 §3]

Note: See note under 468.850.

468.856 Used oil to be collected and recycled. The Legislative Assembly declares that used oil shall be collected and recycled to the maximum extent possible, by means which are economically feasible and environmentally sound, in order to conserve irreplaceable petroleum resources, preserve and enhance the quality of natural and human environments, and protect public health and welfare. [1977 c.483 §4]

Note: See note under 468.850.

468.859 Used oil information center; public education. The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and preserve the environment. As part of this program, the department shall:

(1) Establish, maintain and publicize a used oil information center that will explain local, state and federal laws and regulations governing used oil and will inform holders of quantities of used oil on how and where used oil may be properly disposed of; and

(2) Encourage the establishment of voluntary used oil collection and recycling programs and provide technical assistance to persons organizing such programs. [1977 c.483 §5]

Note: See note under 468.850.

468.862 Recycling information to be posted. The commission shall adopt rules, in accordance with the provisions of ORS 468.020, requiring sellers of more than 500 gallons of lubrication or other oil annually, in containers for use off the premises, to post and maintain at or near the point of sale durable and legible signs, unless otherwise prohibited by law, informing the public of the importance of proper collection and disposal of used oil, and how and where used oil may be properly disposed of, including locations and hours of operation of conveniently located collection facilities. [1977 c.483 §6]

Note: See note under 468.850.

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Unless permitted pursuant to ORS 468.740, no person shall dispose of used oil by discharge into sewers, drainage systems or the waters of this state as defined by ORS 468.700 (8), or by incineration other than for energy generating purposes. [1977 c.483 §7]

Note: See note under 468.850.

468.868 Enforcement powers of commission. The commission shall have the power to enforce compliance with or restrain violation of ORS 468.865 or any rule adopted under ORS 468.862 in the same manner provided for enforcement proceedings under this chapter. [1977 c.483 §8]

Note: See note under 468.850.

468.871 Short title. ORS 468.850 to 468.868 may be cited as the "Used Oil Recycling Act." [1977 c.483 §1]

Note: See note under 468.850.

468.900 [1977 c.867 §23; 1983 c.740 §183; renumbered 466.505]

LEAKING UNDERGROUND STORAGE TANKS

468.901 Definitions for ORS 468.901 to 468.917. As used in ORS 468.901 to 468.917: (1) "Industrial chemical" means:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (P. L. 96-510 and P. L. 98-80); and

(b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(2) "Underground storage tank" means any tank and underground pipes connected to a tank used to contain an accumulation of industrial chemicals the volume of which, including the volume of the underground pipes connected to the tank, is 10 percent or more beneath the surface of the ground. [1985 c.737 §2]

468.902 Purpose. ORS 468.901 to 468.917 are enacted to enable the Environmental Quality Commission to adopt a state-wide program to govern the prevention, reporting and cleanup of leaks and spills from underground storage tanks. The state-wide program shall establish uniform procedures and standards providing reasonable safeguards for health, safety, welfare, comfort and security of the residents of this state in the prevention, reporting

and cleanup of leaks and spills from underground storage tanks. [1985 c.737 §3]

468.903 [1977 c.867 §24; renumbered 466.510]

468.904 Applicability of state-wide underground storage tank program. The state-wide underground storage tank program shall be applicable and uniform throughout this state and in all cities and counties, and no city or county shall enact or enforce any ordinance, rule or regulation relating to the same matters encompassed by the state program but which provides different requirements unless authorized by the Environmental Quality Commission. The commission's authorization shall not be considered an amendment to the state underground storage tank program. [1985 c.737 §4]

468.905 Responsibilities of person owning or controlling underground storage tank. In addition to any other duty imposed by law, it shall be the responsibility of any person owning or having control over underground storage tanks to take the following actions as they pertain to an underground storage tank owned by or under the control of such person:

- (1) Prevent spills or leaks that may pollute ground water or surface water;
- (2) Report any spills or leaks to the department as soon as they are detected;
- (3) Take prompt action to stop and clean up spills and leaks; and
- (4) Pay all costs of investigating, testing, preventing, reporting, stopping and cleaning up a spill or leak. [1985 c.737 §5]

468.906 [1977 c.867 §25; renumbered 466.515]

468.907 Inspection of inventory records; tests to determine leaks or spills from storage tanks; authority to enter and inspect premises. (1) To aid the department in finding spills or leaks that may be contributing to an identified ground water or surface water pollution problem, the department may, after giving reasonable notice, require the owner or person in control of underground storage tanks to make available to the department for inspection product inventory records.

(2) The department may also require the owner or person in control of underground storage tanks to make tests to determine if there are spills or leaks from the underground storage tanks that are contributing to an identified ground water or surface water pollution problem.

(3) The department shall have the power to enter and inspect at any reasonable time any public or private property, premises or place for

the purpose of investigating reported leaks or spills of industrial chemicals that may pollute ground water or surface water. [1985 c.737 §6]

468.908 Rulemaking. The commission shall establish by rule:

(1) Procedures for carrying out the responsibilities imposed by ORS 468.905; and

(2) Testing procedures to be used under ORS 468.907 that are the most appropriate and economically feasible. [1985 c.737 §7]

468.909 [1977 c.867 §26; renumbered 466.520]

468.910 Public inspection of information about underground storage tanks; protection of trade secrets. (1) Except as provided in subsection (2) of this section, any information filed or submitted under ORS 468.907 shall be made available for public inspection and copying during regular office hours of the department at the expense of any person requesting copies.

(2) Unless classified by the director as confidential, any records, reports or information obtained under ORS 468.901 to 468.917 shall be available to the public. Upon a showing satisfactory to the director by any person that records, reports or information, or particular parts thereof, if made public, would divulge methods, processes or information entitled to protection as trade secrets under ORS 192.500, the director shall classify as confidential such record, report or information, or particular part thereof. However, such record, report or information may be disclosed to any other officer, medical or public safety employe or authorized representative of the state concerned with carrying out ORS 468.901 to 468.917 or when relevant in any proceeding under ORS 468.901 to 468.917. [1985 c.737 §8]

468.911 Exemptions from underground storage tank regulation. ORS 468.901 to 468.917 shall not apply to a:

(1) Farm or residential tank or tanks used for storing motor fuel, each of which has a capacity of 10,000 or fewer gallons.

(2) Tank used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tank.

(4) Pipeline facility including gathering lines regulated under:

(a) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671); or

(b) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001).

(5) Surface impoundment, pit, pond or lagoon.

(6) Storm water or waste water collection system.

(7) Flow-through process tank.

(8) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) Storage tank situated in an underground area if the storage tank is situated upon or above the surface of a floor.

(10) Pipe connected to any tank described in subsections (1) to (8) of this section. [1985 c.737 §9]

468.912 [1977 c.867 §27; renumbered 466.525]

468.913 Authority of commission and department to obtain authorization for state underground storage tank regulatory program. The commission and the department are authorized to perform or cause to be performed any act necessary to gain interim and final authorization of a state program for the regulation of underground storage tanks under the provisions of Section 9004 of the Federal Resource Conservation and Recovery Act, P.L. 94-580 as amended and P. L. 98-616, and federal regulations and interpretive and guidance documents issued pursuant to P.L. 94-580 as amended and P.L. 98-616. The commission may adopt, amend or repeal any rule necessary to implement ORS 468.901 to 468.917. [1985 c.737 §10]

468.914 Reimbursement of costs of investigating identifiable spill; consequences of failure to pay costs. (1) The owner or person in control of an underground storage tank which is found to be the source of a spill or leak shall reimburse the department for all costs incurred by the department and other underground storage tank owners in the investigation of the identifiable spill or leak from the underground storage tank, including tests performed by other underground storage tank owners.

(2) Payment of costs to the department under subsection (1) of this section must be made to the department within 15 days after the end of the appeal period or, if an appeal is filed, within 15 days after the court or the commission renders its decision, if the decision affirms the order. The department shall reimburse the underground storage tank owners within a reasonable period after collection of their costs as provided in subsection (1) of this section.

(3) If the amount of state-incurred expenses under subsection (1) of this section is not paid by

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the owner or person in control of the underground storage tank to the department within the time provided in subsection (2) of this section, the Attorney General, upon the request of the director, shall bring action in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of any other county in which the spill or leak may have taken place to recover the amount specified in the order of the department.

(4) In addition to any other penalty provided by law, if reasonable prevention measures are not used, or if the spill or leak is not reported promptly, the commission or the court may award double the sum of money sufficient to compensate for the costs of investigating the spill or leak. [1985 c.737 §11]

468.915 [1977 c.867 §28; repealed by 1979 c.32 §1]

468.916 Revolving fund to finance investigations of spills or leaks from underground storage tanks. (1) When requested in writing by the Director of the Department of Environmental Quality, the Executive Department shall draw a warrant on amounts appropriated to the department for operating expenses in favor of the Department of Environmental Quality for use as a revolving fund. Warrants drawn to establish or increase the revolving fund, rather than to reimburse it, may not exceed the aggregate sum of \$75,000. The State Treasurer shall hold the revolving fund in special account against which the Department of Environmental Quality may draw checks.

(2) The Department of Environmental Quality may use the revolving fund created in subsection (1) of this section only to finance investigations authorized by ORS 468.907 into spills or leaks from underground storage tanks pending the recovery of costs from the responsible party.

(3) All claims for reimbursement of advances paid from the revolving fund are subject to approval by the Director of the Department of Environmental Quality and by the Executive Department. When such claims have been approved, a warrant covering them shall be drawn in favor of the Department of Environmental Quality, charged against the appropriate funds and accounts, and used to reimburse the revolving fund. [1985 c.737 §12]

468.917 Uses of revolving fund. All moneys received by the department under ORS 468.914 shall be paid into the General Fund in the State Treasury and credited to the revolving fund created in ORS 468.916. All moneys in the revolving account are appropriated continuously to the Department of Environmental Quality for carry-

ing out the purposes of ORS 468.901 to 468.917. [1985 c.737 §13]

468.918 [1977 c.867 §29; repealed by 1979 c.32 §1]

468.921 [1977 c.867 §30; renumbered 466.530]

RECLAIMED PLASTIC PRODUCT TAX CREDIT

468.925 Definitions for ORS 468.925 to 468.965. As used in ORS 468.925 to 468.965:

(1) "Capital investment" means the amount of money a person invests to acquire or construct equipment or machinery necessary to manufacture a reclaimed plastic product.

(2) "Qualifying business" means a manufacturing business that manufactures a reclaimed plastic product in Oregon.

(3) "Reclaimed plastic" means plastic that originates within Oregon from industrial consumers or post-consumer waste and is intended to be used to manufacture a nonmedical or nonfood plastic product.

(4) "Reclaimed plastic product" means a plastic product for which the majority of the plastic used in the product is reclaimed plastic. [1985 c.684 §3]

468.930 Policy. In the interest of the public peace, health and safety, it is the policy of the State of Oregon to assist in the prevention, control and reduction of solid waste in this state by providing tax relief to Oregon businesses that make capital investments in order to manufacture a reclaimed plastic product. [1985 c.684 §2]

468.935 Application for certification of capital investment to manufacture reclaimed plastic product. (1) Any person may apply to the commission for certification under ORS 468.940 of a capital investment made by the person in Oregon to allow the person to manufacture a reclaimed plastic product if the investment was made on or after January 1, 1986, and before January 1, 1989.

(2) The application shall be made in writing in a form prescribed by the department and shall contain information on the actual capital investment including a description of the materials incorporated therein, all machinery and equipment made a part thereof, the existing or proposed operational procedure thereof, and a statement of the purpose of manufacturing a reclaimed plastic product and the portion of the actual cost properly allocable to the process of manufacturing such reclaimed plastic product as set forth in ORS 468.960.

investment properly allocable to the process that allows a person to manufacture a reclaimed plastic product.

(2) The portion of actual costs properly allocable shall be from zero to 100 percent in increments of one percent. If zero percent the commission shall issue an order denying certification.

(3) The commission may adopt rules establishing methods to be used to determine the portion of costs properly allocable to the manufacture of a reclaimed plastic product. [1985 c.684 §9]

468.965 Limit on costs certified by commission for tax credit. (1) The total of all costs of capital investments that receive a preliminary certification from the commission for tax credits in any calendar year shall not exceed \$1,500,000. If the applications exceed the \$1,500,000 limit, the commission, in the commission's discretion, shall determine the dollar amount certified for any capital investments and the priority between applications for certification based upon the criteria contained in ORS 468.925 to 468.965.

(2) Not less than \$500,000 of the \$1,500,000 annual certification limit shall be allocated to capital investments having a certified cost of \$100,000 or less for any qualifying business.

(3) With respect to the balance of the annual certification limit, the maximum cost certified for any capital investments shall not exceed \$500,000. However, if the applications certified in any calendar year do not total \$1,000,000, the commission may increase the certified costs above the \$500,000 maximum for previously certified capital investments. The increases shall be allocated according to the commission's determination of how the previously certified capital investments meet the criteria of ORS 468.925 to 468.965. The increased allocation to previously certified capital investments under this subsection shall not include any of the \$500,000 reserved under subsection (2) of this section. [1985 c.684 §10]

PENALTIES

468.990 Penalties. (1) Wilful or negligent violation of ORS 468.720 or 468.740 is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than \$25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Violation of ORS 468.775 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(3) Violation of ORS 468.760 (1) or (2) is a Class A misdemeanor.

(4) Violation of ORS 454.415 or 454.425 is a Class A misdemeanor.

(5) Violation of ORS 468.770 is a Class A misdemeanor. [1973 c.835 §28; subsection (5) formerly part of 448.990, enacted as 1973 c.835 §177a]

468.992 Penalties for pollution offenses. (1) Wilful or negligent violation of any rule, standard or order of the commission relating to water pollution is a misdemeanor and a person convicted thereof shall be punishable by a fine of not more than \$25,000 or by imprisonment in the county jail for not more than one year, or by both. Each day of violation constitutes a separate offense.

(2) Refusal to produce books, papers or information subpoenaed by the commission or the regional air quality control authority or any report required by law or by the department or a regional authority pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter is a Class A misdemeanor.

(3) Violation of the terms of any permit issued pursuant to ORS 468.065 is a Class A misdemeanor. Each day of violation constitutes a separate offense. [1973 c.835 §26]

468.995 Penalties for air pollution offenses. (1) Violation of any rule or standard adopted or any order issued by a regional authority relating to air pollution is a Class A misdemeanor.

(2) Unless otherwise provided, each day of violation of any rule, standard or order relating to air pollution constitutes a separate offense.

(3) Violation of ORS 468.475 or of any rule adopted pursuant to ORS 468.460 is a Class A misdemeanor. Each day of violation constitutes a separate offense.

(4) Violation of the provisions of ORS 468.605 is a Class A misdemeanor. [1973 c.835 §27; subsection (6) enacted as 1975 c.366 §3; 1983 c.338 §938]

468.997 Joinder of certain offenses. Where any provision of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 and this chapter provides that each day of violation of ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745 or a section of this chapter constitutes a separate offense, violations of that section that occur within the same court jurisdiction may be joined in one indictment, or com-

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plaint, or information, in several counts. [Formerly
449.992]

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(D) To secure approval of the commission before applying for federal assistance for pollution abatement, in order to maximize the amounts of such assistance received or to be received for all projects in Oregon; and

(E) To provide for the payment of the municipality's share of the cost of the project.

(2) The commission may adopt rules necessary for making and enforcing contracts hereunder and establishing procedures to be followed in applying for state grants authorized by ORS 454.515 as shall be necessary for the effective administration of ORS 454.505 to 454.535.

(3) All contracts entered into pursuant to this section shall be subject to approval by the Attorney General as to form. All payments by the state pursuant to such contracts shall be made after audit and upon warrant on vouchers approved by the commission. [Formerly 449.475]

454.535 Sewage Treatment Works Construction Account. There is established in the General Fund of the State Treasury a Sewage Treatment Works Construction Account. All moneys in the Sewage Treatment Works Construction Account are appropriated continuously for and shall be used by the Environmental Quality Commission in carrying out the purposes of ORS 454.505 to 454.535. [Formerly 449.485]

REGULATION OF SUBSURFACE SEWAGE DISPOSAL

454.605 Definitions for ORS 454.605 to 454.745. As used in ORS 454.605 to 454.745, unless the context requires otherwise:

(1) "Absorption facility" means a system of open-jointed or perforated piping, alternate distribution units or other seepage systems for receiving the flow from septic tanks or other treatment units and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

(2) "Alternative sewage disposal system" means a system incorporating all of the following:

(a) Septic tank or other sewage treatment or storage unit; and

(b) Disposal facility or method consisting of other than an absorption facility but not including discharge to public waters of the State of Oregon.

(3) "Building sewer" means that part of the system of drainage piping which conveys sewage

into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates.

(4) "Cesspool" means a receptacle which receives the discharge of sewage from a sanitary drainage system and which is so designed and constructed as to separate solids from liquids, digest organic matter during a period of detention and allow the liquids to flow into the soil within the zone of aeration through perforations in the side wall of the receptacle.

(5) "Construction" includes installation, alteration, repair or extension.

(6) "Effluent sewer" means that part of the system of drainage piping that conveys treated sewage from a septic tank or other treatment facility into an absorption facility.

(7) "Governmental unit" means the state or any county, municipality or other political subdivision, or any agency thereof.

(8) "Nonwater-carried sewage disposal facility" includes, but is not limited to, pit privies, vault privies and chemical toilets.

(9) "Public health hazard" means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals and radioactive isotopes.

(10) "Seepage pit" is a type of absorption facility which is a covered pit with open-jointed lining through which septic tank effluent may seep or leach into surrounding ground.

(11) "Septic tank" means a watertight receptacle which receives the discharge of sewage from a sanitary drainage system and which is so designed and constructed as to separate solids from liquids, digest organic matter during a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption facility.

(12) "Sewage" means water-carried human and animal wastes, including kitchen, bath and laundry wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration, surface waters or industrial waste as may be present.

(13) "Sewage disposal service" means:

(a) The construction of subsurface sewage disposal systems, alternative sewage disposal systems or any part thereof.

(b) The pumping out or cleaning of subsurface sewage disposal systems, alternative sewage

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disposal systems or nonwater-carried sewage disposal facilities.

(c) The disposal of materials derived from the pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems or nonwater-carried sewage disposal facilities.

(d) Grading, excavating and earth-moving work connected with the operations described in paragraph (a) of this subsection, except streets, highways, dams, airports or other heavy construction projects and except earth-moving work performed under the supervision of a builder or contractor in connection with and at the time of the construction of a building or structure.

(e) The construction of drain and sewage lines from five feet outside a building or structure to the service lateral at the curb or in the street or alley or other disposal terminal holding human or domestic sewage.

(14) "Subsurface sewage disposal system" means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption facility.

(15) "Zone of aeration" means the unsaturated zone that occurs below the ground surface and the point at which the upper limit of the water table exists. [1973 c.835 §208; 1975 c.167 §1; 1977 c.828 §1]

454.610 Regulation of grey water discharge. (1) As used in this section "grey water" means any household sewage other than toilet and garbage wastes, including shower and bath waste water, kitchen waste water and laundry wastes.

(2) Nothing in ORS 454.605 to 454.745 except ORS 454.645 shall prohibit the discharge of grey water if:

(a) Soil and site conditions for such grey water conform to the rules of the Department of Environmental Quality regarding standard subsurface sewage disposal systems except that such system may use two-thirds the normal size surface area for a drainfield and shall be preceded by a pretreatment facility such as, but not limited to, a septic tank; or

(b) Such grey water is discharged into an existing subsurface sewage system which is functioning satisfactorily or a public sewage system which serves the dwelling from which such grey water is derived. [1977 c.523 §6]

454.615 Standards for sewage disposal systems and disposal facilities. The Environmental Quality Commission shall by September 1, 1975, adopt by rule standards

which:

(1) Prescribe minimum requirements for the design and construction of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof including grading, excavating and earth-moving work connected therewith, and allow for use of alternative systems and component materials consistent with the minimum requirements. Requirements prescribed under this section may vary in different areas or regions of the state.

(2) Prescribe minimum requirements for the operation and maintenance of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof.

(3) Prescribe requirements for the pumping out or cleaning of subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities or parts thereof, for the disposal of material derived from such pumping out or cleaning, for sewage pumping equipment, for sewage tank trucks and for the identification of sewage tank trucks and workmen.

(4) Prescribe requirements for handling kitchen, bath and laundry wastes as opposed to human and animal wastes which recognize the possibility for separate treatment of different types of waste. [1973 c.835 §209; 1975 c.167 §2]

454.625 Rules. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Environmental Quality Commission shall adopt such rules as it considers necessary for the purpose of carrying out ORS 454.605 to 454.745. [1973 c.835 §210]

454.635 Notice of violation; service; request for hearing; conduct of hearing; order. (1) Whenever the Department of Environmental Quality has reasonable grounds for believing that any subsurface sewage disposal system, alternative sewage disposal system or nonwater-carried sewage disposal facility or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 454.625, it shall give written notice to the person or persons in control of such system or facility.

(2) The notice required under subsection (1) of this section shall include the following:

(a) Citation of the rule allegedly violated;

(b) The manner and extent of the alleged violation; and

(c) A statement of the party's right to request a hearing.

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(3) The notice shall be served personally or by registered or certified mail and shall be accompanied by an order of the department requiring remedial action which, if taken within the time specified in the order, will effect compliance with the rule allegedly violated. The order shall become final unless a request for hearing is made by the party receiving the notice within 10 days from the date of personal service or the date of mailing of the notice.

(4) The form of petition for hearing and the procedures employed in the hearing shall be consistent with the requirements of ORS 183.310 to 183.550 and shall be in accordance with rules adopted by the Environmental Quality Commission.

(5) The order shall be affirmed or reversed by the commission after hearing. A copy of the commission's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon him. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case. [1973 c.835 §211; 1975 c.167 §3]

454.640 County enforcement of standards. (1) In order to protect the health, safety and welfare of its citizens, a county may enforce, consistent with state enforcement, standards for subsurface sewage disposal systems, alternative sewage disposal systems and nonwater-carried sewage disposal facilities established in ORS 454.605 to 454.745 or in rules of the Environmental Quality Commission.

(2) Nothing in this section is intended to prohibit contractual arrangements between a county and the Department of Environmental Quality under ORS 454.725. [1981 c.147 §2]

454.645 Enforcement when health hazard exists. (1) Whenever a subsurface sewage disposal system, alternative sewage disposal system or a nonwater-carried sewage disposal facility or part thereof presents or threatens to present a public health hazard creating an emergency requiring immediate action to protect the public health, safety and welfare, the Department of Environmental Quality may institute an action. The action may be commenced without the necessity of prior administrative procedures, or at any time during such administrative proceedings, if such proceedings have been commenced. The action shall be in the name of the State of Oregon and may petition for a mandatory injunction compelling the person or governmental unit in control of the system or facility to cease and desist operation or to make such im-

provements or corrections as are necessary to remove the public health hazard or threat thereof.

(2) Cases filed under provisions of this section or any appeal therefrom shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(3) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisances or for recovery of damages brought by private persons or by the state on relation of any person. [1973 c.835 §212; 1975 c.167 §4; 1979 c.284 §148]

454.655 Permit required for construction; application; time limit; special application procedure for septic tank installation on parcel of 10 acres or more. (1) Except as otherwise provided in ORS 454.675, without first obtaining a permit from the Department of Environmental Quality, no person shall construct or install a subsurface sewage disposal system, alternative sewage disposal system or part thereof. However, a person may undertake emergency repairs of a subsurface or alternative sewage disposal system without first obtaining a permit if he obtains a permit within three days after the emergency repairs are begun.

(2) A permit required by subsection (1) of this section shall be issued only to a person licensed under ORS 454.695, or to an owner or contract purchaser in possession of the land. However, a permit issued to an owner or contract purchaser carries the condition that the owner or purchaser or his regular employes or a person licensed under ORS 454.695 perform all labor in connection with the construction of the subsurface or alternative sewage disposal system.

(3) The applications for a permit required by this section must be accompanied by the nonrefundable permit fee prescribed in ORS 454.745.

(4) After receipt of an application and permit fee, subject to ORS 454.685, the department shall issue a permit if it finds that the proposed construction will be in accordance with the rules of the Environmental Quality Commission. No permit shall be issued if a community or area-wide sewerage system is available which will satisfactorily accommodate the proposed sewage discharge.

(5)(a) Unless weather conditions or distance and unavailability of transportation prevent the issuance of a permit within 20 days of the receipt of the application and permit fee by the department, the department shall issue or deny the permit within 20 days after such date. If such

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conditions prevent issuance or denial within 20 days, the department shall notify the applicant in writing of the reason for the delay and shall issue or deny the permit within 60 days after such notification.

(b) If within 20 days of the date of the application the department fails to issue or deny the permit or to give notice of conditions preventing such issuance or denial, the permit shall be considered to have been issued.

(c) If within 60 days of the date of the notification referred to in paragraph (a) of this subsection, the department fails to issue or deny the permit, the permit shall be considered to have been issued.

(6) Upon request of any person, the department may issue a report, described in ORS 454.755 (1), of evaluation of site suitability for installation of a subsurface or alternative sewage disposal system. The application for such report must be accompanied by the nonrefundable fee prescribed in ORS 454.755.

(7) With respect to an application for a permit for the construction and installation of a septic tank and necessary effluent sewer and absorption facility for a single family residence or for a farm related activity on a parcel of 10 acres or more described in the application by the owner or contract purchaser of the parcel, the Department of Environmental Quality:

(a) Within the period allowed by paragraph (a) of subsection (5) of this section after receipt by it of the application, shall issue the permit or deliver to the applicant a notice of intent to deny the issuance of the permit;

(b) In any notice of intent to deny an application, shall specify the reasons for the intended denial based upon the rules of the Environmental Quality Commission for the construction and installation of a septic tank and necessary effluent sewer and absorption facility or based upon the factors included in ORS 454.685 (2)(a) to (j);

(c) Upon request of the applicant, shall conduct a hearing in the manner provided in ORS 454.635 (4) and (5) on the reasons specified in a notice of intent to deny the application with the burden of proof upon the department to justify the reasons specified; and

(d) In the case of issuance of a permit, may include as a condition of the permit that no other permit for a subsurface sewage disposal system or alternative sewage disposal system shall be issued for use on the described parcel while the approved septic tank, effluent sewer and absorption facility are in use on the de-

scribed parcel. [1973 c.835 §213; 1974 s.s. c.30 §2; 1975 c.167 §5; 1975 c.794 §1]

454.657 Variance; conditions; hearing. (1) After hearing the Environmental Quality Commission may grant to applicants for permits required under ORS 454.655 specific variances from the particular requirements of any rule or standard pertaining to subsurface sewage disposal systems for such period of time and upon such conditions as it may consider necessary to protect the public health and welfare and to protect the waters of the state, as defined in ORS 468.700. The commission shall grant such specific variance only where after hearing it finds that strict compliance with the rule or standard is inappropriate for cause or because special physical conditions render strict compliance unreasonable, burdensome or impractical.

(2) The commission shall adopt rules for granting variances from rules or standards pertaining to subsurface sewage disposal systems in cases of extreme and unusual hardship. The rules shall provide for consideration of the following factors in reviewing applications for variances due to hardship:

(a) Advanced age or bad health of applicants;

(b) Relative insignificance of the environmental impact of granting a variance; and

(c) The need of applicants to care for aged, incapacitated or disabled relatives.

(3) The department shall strive to aid and accommodate the needs of applicants for variances due to hardship.

(4) Variances granted due to hardship may contain conditions such as permits for the life of the applicant, limiting the number of permanent residents using a subsurface sewage disposal system and use of experimental systems for specified periods of time. [1975 c.309 §2; 1979 c.591 §4]

454.660 Delegation of variance powers; appeal; qualification of officers; hearing and decision. (1) The Environmental Quality Commission shall delegate on such general conditions as it may find appropriate the power to grant variances to special variance officers appointed by the Director of the Department of Environmental Quality. Decisions of the variance officers to grant variances may be appealed to the Environmental Quality Commission.

(2) Variance officers appointed under this section shall be persons qualified in soil sciences

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form reasonably calculated to notify interested persons in the affected area.

(2) In issuing an order authorized by subsection (1) of this section, the commission shall consider the following factors for the proposed affected area:

(a) Present and projected density of population.

(b) Size of building lots.

(c) Topography.

(d) Porosity and absorbency of soil.

(e) Any geological formations which may adversely affect the disposal of sewage effluent by subsurface means.

(f) Ground and surface water conditions and variations therein from time to time.

(g) Climatic conditions.

(h) Present and projected availability of water from unpolluted sources.

(i) Type of and proximity to existing domestic water supply sources.

(j) Type of and proximity to existing surface waters.

(k) Capacity of existing subsurface sewage disposal systems. [1973 c.835 §216; 1975 c.167 §8]

454.695 License required to perform sewage disposal services; application; permit required for certain services. (1) Except as provided in subsection (3) of this section, no person shall perform sewage disposal services or advertise or purport to be in the business of performing such services without first obtaining a license from the Department of Environmental Quality.

(2) Application for a license required by subsection (1) of this section shall be made in writing in a form prescribed by the department and shall include the following information:

(a) The name and address of the applicant and of the person responsible for supervising the services;

(b) The location of the business of the applicant and the name under which the business is conducted; and

(c) Such other information as the department considers necessary to determine the eligibility of the applicant for the license.

(3) Any person licensed under the provisions of this section or under ORS 447.010 to 447.160 or registered for residential work only under ORS 701.055 to 701.135 may install building sewers after obtaining a permit for plumbing inspection under ORS 447.095.

(4) Application for a license required under subsection (1) of this section must be accompanied by the nonrefundable license fee prescribed in ORS 454.745 and by the bond described in ORS 454.705.

(5) Unless suspended or revoked at an earlier date, all licenses issued under this section expire on July 1 next following the date of issuance. [1973 c.835 §217; 1977 c.828 §2; 1983 c.616 §3]

454.705 Bond; content; action on bond; limit on surety's liability; notice of bond. (1) An applicant for a license required by ORS 454.695 shall execute a bond in the penal sum of \$2,500 in favor of the State of Oregon. The bond shall be executed by the applicant as principal and by a surety company authorized to transact a surety business within the State of Oregon as surety.

(2) The bond shall be filed with the Department of Environmental Quality and shall provide that:

(a) In performing sewage disposal services, the applicant shall comply with the provisions of ORS 454.605 to 454.745 and with the rules of the Environmental Quality Commission regarding sewage disposal services; and

(b) Any person injured by a failure of the applicant to comply with ORS 454.605 to 454.745 and with the rules of the commission regarding sewage disposal services shall have a right of action on the bond in his own name, provided that written claim of such right of action shall be made to the principal or the surety company within two years after the services have been performed; and

(c) The maximum aggregate liability of the surety on the bond shall be \$2,500.

(3) Every person licensed pursuant to ORS 454.695 shall deliver to each person for whom he performs services requiring such license, prior to the completion of such services, a written notice of the name and address of the surety company which has executed the bond required by this section and of the rights of the recipient of such services as provided by subsection (2) of this section. [1973 c.835 §218; 1975 c.171 §1]

454.710 Deposit in lieu of bond. In lieu of the surety bond required by ORS 454.705, an applicant for a license required by ORS 454.695 may deposit, under the same terms and conditions as when a bond is filed, the equivalent value in cash or negotiable securities of a character approved by the State Treasurer. The deposit is to be made in a bank or trust company for the benefit of the department. Interest on deposited

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funds or securities shall accrue to the depositor. [1981 c.148 §2]

454.715 Suspension or revocation of license. Subject to ORS 183.310 to 183.550, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds:

- (1) A material misrepresentation or false statement in the application for the license.
- (2) Failure to comply with the applicable provisions of this chapter.
- (3) Violation of any rule of the Environmental Quality Commission regarding sewage disposal services. [1973 c.835 §219]

454.725 Contracts with local governments; disbursement of fees to local governments. (1) The Department of Environmental Quality may enter into agreements with local units of government for the local units to perform the duties of the department under ORS 454.635, 454.655, 454.665 and 454.695.

(2) If a fee is collected by a local unit of government performing duties under subsection (1) of this section, the department may disburse all or part thereof to the local unit.

(3) The Department of Environmental Quality may enter into agreements with local units of government when the local units so request for the local units to perform the variance duties of the department under ORS 454.657 and 454.660 subject to variance criteria specified in the agreement by the department. Each county performing variance duties under an agreement may set and collect a nonrefundable variance application fee as provided in ORS 454.662. A fee collected by a county under this subsection shall not exceed the county's cost of performing the variance duties of the department. [1973 c.835 §219a; 1975 c.167 §9; 1975 c.309 §5; 1979 c.591 §3]

454.735 Designation of local official to receive applications and fees. The Department of Environmental Quality shall designate an appropriate official in each county who shall be authorized to receive applications and fees required by ORS 454.605 to 454.745. Such receipt shall be considered the official receipt of the application by the department. [1973 c.835 §219b]

454.745 Permit, service and license fees; maximum fees; refund. (1) Fees, not exceeding the following amounts, are established for services rendered and for permits and licenses issued under ORS 454.655 and 454.695 in accordance with the following schedule:

Subsurface or Alternative Sewage Disposal System	Maximum Fee
New Site Evaluation; first lot	\$120
Each additional lot evaluated while on site	\$100
Construction Installation Permit (with favorable evaluation report)	\$40
Alteration Permit.....	\$25
Repair Permit.....	\$25
Extension Permit.....	\$25
Sewage Disposal Service Business License.....	\$100
Pumper Truck Inspection	\$25
Evaluation of Existing System Adequacy.....	\$40
Annual Evaluation of Alternative System (where required)	\$40
Annual Evaluation of Temporary Mobile Home	\$25

(2) No fee shall be charged for an evaluation report requested on any proposed repair, alteration or extension of an existing subsurface sewage disposal system, alternative sewage disposal system or part thereof.

(3) Notwithstanding any other provision of this section, no contract provided for under ORS 454.725 shall be entered into or continued when the total amount of fees collected by the local unit of government exceeds the total cost of the program for providing the services rendered and permits and licenses issued under this section.

(4) Notwithstanding the maximum fees established in subsection (1) of this section, the Environmental Quality Commission, upon request of the director or of any county which pursuant to ORS 454.725 has entered into an agreement with the Department of Environmental Quality, may by rule increase maximum fees effective July 1, 1980, above the maximum levels established in subsection (1) of this section. Fee increases permitted by the commission shall be based upon actual costs for efficiently conducted minimum services as developed by the director or contract county. In addition to the fees listed in subsection (1) of this section, with approval of the Environmental Quality Commission, any agreement county may adopt fee schedules for services related to this program which are not specifically listed in subsection (1) of this section.

(5) Notwithstanding the requirements of ORS 454.655 (3), the department or its contract agent may refund a fee accompanying an application for a permit pursuant to ORS 454.655 or for a report pursuant to ORS 454.755 if the

SEWAGE TREATMENT AND DISPOSAL SYSTEMS**454.780**

applicant withdraws his application before the department or its contract agent has done any field work or other substantial review of the application. [1973 c.835 §220; 1974 s.s. c.30 §3; 1975 c.167 §10; 1975 c.607 §33; 1979 c.591 §2]

454.755 Fees for certain reports on sewage disposal. (1) Any person, upon application for any of the following actions by the Department of Environmental Quality, shall pay to the department a nonrefundable fee in the amount required for each lot or parcel:

(a) A report of evaluation of site suitability for a subsurface sewage disposal system, alternative sewage disposal system or a part thereof, pursuant to ORS 454.655; or

(b) A report of evaluation of adequacy of a sewage disposal method required prior to the approval of a plat of a subdivision, pursuant to ORS 92.090 (5)(c).

(2) Any person may request an evaluation report on any proposed repair, alteration or extension of an existing subsurface sewage disposal system, alternative sewage disposal system or part thereof, including but not limited to any repair, alteration or extension described in ORS 454.675. The department shall conduct such evaluation and issue a report of its findings without charge to the person requesting such evaluation.

(3) The fee paid for a report of evaluation of site suitability pursuant to paragraph (a) of subsection (1) of this section shall entitle the applicant to as many site inspections as is necessary within 90 days from the date of the first site inspection to determine site suitability for a single home site. The department may require

separate fees if it determines that the site inspections are for the purpose of determining site suitability for more than one home site. [1974 s.s. c.30 §2; 1974 s.s. c.74 §4; 1975 c.167 §11; 1975 c.607 §34]

ONSITE DISPOSAL ALTERNATIVES

454.775 Policy. It is the public policy of the State of Oregon to encourage development and application of alternatives to the septic tank and drainfield system for onsite disposal of sewage consistent with protection of the public health and safety and waters of the state. [1979 c.189 §1]

454.780 Recirculating sand filter permitted; commission rules. Notwithstanding ORS 454.615, the Environmental Quality Commission shall adopt rules permitting the installation of the recirculating sand filter, or variations thereof, as a standard alternative to the septic tank and drainfield, not later than January 1, 1980. Such rules shall provide standards for construction, installation, maintenance and periodic inspection of such systems, consistent with the public health and safety and protection of the waters of the state. [1979 c.189 §2]

454.785 [1974 s.s. c.30 §4; repealed by 1975 c.309 §6]

CHAPTER 455
[Reserved for expansion]

HIGHWAY BEAUTIFICATION; MOTORIST SIGNS**377.105****TREES**

377.010 [Amended by 1959 c.382 §1; repealed by 1981 c.153 §79]

377.020 [Repealed by 1981 c.153 §79]

377.030 Destruction or removal of trees on state highways without permission prohibited. No person shall dig up, cut down, injure, destroy or in any manner remove any trees growing upon the right of way of any state highway without first procuring the written consent of the Department of Transportation.

377.040 Application to department to remove trees along state highways. Whenever any person, firm or corporation, including any public, municipal or private corporation and any privately or publicly owned utility or cooperative association, desires to dig up, cut down, injure, destroy or in any manner remove any trees growing upon the right of way of any state highway, such person shall file with the Department of Transportation an application in writing, setting forth the reasons and purpose for the removal or destruction of the trees.

377.050 Consent of department for removal of trees along state highways. (1) Upon the filing of the application mentioned in ORS 377.040 the Department of Transportation may, in its judgment and discretion the destruction or removal of the trees will not mar or in any way affect the scenic beauty of or otherwise harm, injure or affect the highway, issue a permit authorizing the cutting down, digging up, removal or destruction of the trees under such conditions and in such manner as the department may in such permit designate.

(2) Such permits may be granted when it becomes necessary to cut or remove brush and tree growth which otherwise would be hazardous to the operation or maintenance of lines for the transmission of electric energy or communication, or which would impair the efficiency of the service of such lines to the public, but such cutting or removal shall be done in such manner as not substantially to impair the scenic beauty of the highway.

HISTORIC AND SCENIC HIGHWAYS

377.100 Study of highway system; designation of historic and scenic highways; disapproval by Legislative Assembly. (1) The Oregon Transportation Commission shall conduct a study of the histor-

ic, scenic and cultural values of the state highway system. The study required by this subsection is subject to the following:

(a) In developing the study the commission shall appoint a volunteer citizen advisory committee to advise the commission on the study.

(b) The study shall identify and evaluate areas of the state highway system for their historic, recreational or scenic significance.

(c) The study shall designate highways, portions of highways or highway related structures as historic and scenic highways.

(2) Upon designation under the study required by this section, a highway, portion of a highway or highway related structure shall be an historic and scenic highway for purposes of ORS 377.105. The designation of an historic and scenic highway under this section shall not become effective until the day following the adjournment sine die of the regular session of the Legislative Assembly next following the date of the designation or that was in session when the designation was made. The Legislative Assembly, by joint resolution, may disapprove any such designation or part thereof, and in that event the designation, or part thereof, so disapproved shall not become effective. [1983 c.552 §1]

377.105 Effect of designation as historic and scenic highway. When a highway, portion of a highway or highway related structure is designated as an historic and scenic highway under ORS 377.100, the Oregon Transportation Commission and the Department of Transportation:

(1) Shall provide for the rehabilitation, restoration, maintenance and preservation of those features of the highway or structure that have historical, engineering, recreational, scenic or tourist related significance, whenever prudent and feasible.

(2) Shall consult with the state historic preservation officer, state historic organizations and other appropriate groups or organizations to determine how to best rehabilitate, restore, maintain and preserve the significant features of the highway or structure.

(3) In all highway planning and funding considerations, shall provide for the continuance of the significant features of the highway or structure, whenever prudent and feasible.

(4) As the commission determines appropriate, may arrange for and provide for posting of signs, consistent with ORS 377.700 to 377.840 and 487.850, to inform the traveling public of the location and significant features of the highway or structure, whenever prudent and feasible.

377.105

HIGHWAYS, ROADS, BRIDGES AND FERRIES

(5) Shall not dismantle, destroy, allow to deteriorate, abandon, significantly transform or sell the highway or structure or any portion thereof or take any other action that will adversely affect the preservation of the highway or structure as an historic and scenic highway.

(6) May provide for bypass highways to divert damaging traffic from use of the highway or structure or provide other means of limiting or diverting use of the highway or structure by damaging traffic.

(7) Are directed to seek and may accept and use for the purposes of this section and ORS 377.100 contributions, gifts, grants and moneys from any source, public or private.

(8) Shall hold hearings that have been given state-wide notification before any subsequent action is taken relating to a highway, portion of a highway or highway related structure that is so designated.

(9) Shall consider aesthetics and environmental effects when the only alternative to rehabilitation or restoration is to replace a portion of a highway or highway related structure so designated. [1983 c.552 §2]

- 377.110 [1955 c.541 §1; repealed by 1959 c.309 §22]
- 377.115 [1959 c.309 §1; 1965 c.219 §1; repealed by 1971 c.770 §31]
- 377.120 [1955 c.541 §2; repealed by 1959 c.309 §22]
- 377.125 [1959 c.309 §2; 1963 c.400 §1; 1965 c.219 §2; repealed by 1971 c.770 §31]
- 377.130 [1955 c.541 §3; repealed by 1959 c.309 §22]
- 377.135 [1959 c.309 §3; 1965 c.219 §3; repealed by 1971 c.770 §31]
- 377.140 [1955 c.377 §1; 1959 c.94 §1; repealed by 1959 c.309 §22]
- 377.145 [1959 c.309 §4; 1965 c.219 §4; repealed by 1971 c.770 §31]
- 377.150 [1955 c.541 §4; repealed by 1959 c.309 §22]
- 377.155 [1959 c.309 §5; 1965 c.219 §5; repealed by 1971 c.770 §31]
- 377.160 [1955 c.541 §5; repealed by 1959 c.309 §22]
- 377.165 [1959 c.309 §6; repealed by 1971 c.770 §31]
- 377.170 [1955 c.541 §15; repealed by 1959 c.309 §22]
- 377.175 [1959 c.309 §7; 1965 c.219 §6; repealed by 1971 c.770 §31]
- 377.178 [1965 c.219 §13; repealed by 1971 c.770 §31]
- 377.180 [1955 c.541 §6; repealed by 1959 c.309 §22]
- 377.181 [1961 c.615 §18; 1965 c.219 §7; repealed by 1971 c.770 §31]
- 377.185 [1959 c.309 §8; 1961 c.615 §9; 1965 c.219 §8; repealed by 1971 c.770 §31]
- 377.190 [1955 c.541 §7; repealed by 1959 c.309 §22]
- 377.195 [1959 c.309 §9; 1961 c.615 §10; 1965 c.219 §9; repealed by 1971 c.770 §31]
- 377.200 [1955 c.541 §8; repealed by 1959 c.309 §22]
- 377.205 [1959 c.309 §10; 1961 c.615 §11; repealed by 1965 c.219 §10 (377.206 enacted in lieu of 377.205)]
- 377.206 [1965 c.219 §11 (enacted in lieu of 377.205); repealed by 1971 c.770 §31]
- 377.210 [1955 c.541 §9; repealed by 1959 c.309 §22]
- 377.215 [1959 c.309 §11; 1963 c.400 §2; 1965 c.219 §14; repealed by 1971 c.770 §31]
- 377.220 [1955 c.541 §10; repealed by 1959 c.309 §22]
- 377.225 [1959 c.309 §12; 1963 c.400 §3; 1965 c.219 §15; repealed by 1971 c.770 §31]
- 377.230 [1955 c.541 §11; repealed by 1959 c.309 §22]
- 377.235 [1959 c.309 §13; 1963 c.400 §4; 1965 c.219 §16; repealed by 1971 c.770 §31]
- 377.240 [1955 c.541 §12; repealed by 1959 c.309 §22]
- 377.245 [1959 c.309 §14; 1963 c.400 §5; 1965 c.219 §17; repealed by 1971 c.770 §31]
- 377.250 [1955 c.541 §16; repealed by 1959 c.309 §22]
- 377.255 [1959 c.309 §15; 1961 c.615 §14; 1963 c.400 §6; 1965 c.219 §18; repealed by 1971 c.770 §31]
- 377.260 [1955 c.541 §18; repealed by 1959 c.309 §22]
- 377.265 [1959 c.309 §16; 1963 c.400 §7; 1965 c.219 §19; repealed by 1971 c.770 §31]
- 377.270 [1955 c.541 §17; repealed by 1959 c.309 §22]
- 377.275 [1959 c.309 §17; 1963 c.400 §8; 1965 c.219 §20; repealed by 1971 c.770 §31]
- 377.280 [1955 c.541 §13; 1957 c.465 §2; repealed by 1959 c.309 §22]
- 377.285 [1959 c.309 §18; 1961 c.615 §15; 1963 c.400 §9; 1965 c.219 §21; repealed by 1971 c.770 §31]
- 377.295 [1959 c.309 §19; 1963 c.400 §10; 1965 c.219 §22; repealed by 1971 c.770 §31]
- 377.305 [1959 c.309 §20; 1963 c.400 §11; repealed by 1971 c.770 §31]
- 377.310 [Repealed by 1953 c.335 §1]
- 377.320 [Repealed by 1953 c.335 §1]
- 377.330 [Repealed by 1953 c.335 §1]
- 377.340 [Repealed by 1971 c.770 §31]
- 377.350 [Repealed by 1971 c.770 §31]
- 377.360 [Amended by 1957 c.663 §3; repealed by 1971 c.770 §31]
- 377.405 [1961 c.615 §1; 1963 c.400 §12; repealed by 1971 c.770 §31]
- 377.410 [1961 c.615 §5; 1963 c.400 §13; repealed by 1971 c.770 §31]
- 377.415 [1961 c.615 §§7, 16; repealed by 1971 c.770 §31]

HIGHWAY BEAUTIFICATION; MOTORIST SIGNS**377.605**

377.420 [1961 c.615 §2, 4; repealed by 1971 c.770 §31]

377.425 [1961 c.615 §3; 1963 c.400 §14; repealed by 1971 c.770 §31]

377.430 [1961 c.615 §4; repealed by 1971 c.770 §31]

SCENIC AREAS

377.505 Definitions for ORS 377.505 to 377.545. As used in ORS 377.505 to 377.545:

(1) "Public highway" means the entire width between the boundary lines of every state highway as defined in ORS 366.005.

(2) "Scenic area" means an area adjacent to or along a segment of a public highway that is within a federal or state park, is a site of historical significance or affords a view of unusual natural beauty, and has been established as a scenic area under the provisions of ORS 377.505 to 377.545 (1975 Replacement Part). [1961 c.614 §1; 1963 c.400 §15; 1965 c.219 §23; 1967 c.590 §13; 1977 c.578 §3; 1979 c.186 §15]

377.510 Signs visible from public highways regulated; junkyards prohibited; exceptions. (1) No sign which is visible from a public highway shall be erected or maintained in an area which has been established by final order as a scenic area except:

(a) Directional or other official signs or notices.

(b) Signs advertising the sale or lease of the property upon which they are located.

(c) Signs advertising only the name or nature of the business being conducted on, or the products, facilities, goods or services being sold, supplied or distributed on or from the premises on which the signs are located.

(d) Signs approved by the State Highway Engineer, or his authorized representative, erected and maintained by a public utility for the purpose of giving warning of the location of an underground cable or other installations.

(2) Unless adequately screened as provided in ORS 377.620 (3)(a) or unless located within a zoned industrial area, no junkyard shall be established which is visible from a public highway where the area immediately adjacent to the public highway has been established by final order as a scenic area. [1961 c.614 §7; 1965 c.219 §24; 1967 c.590 §14]

377.515 Removal of nonconforming signs deferred. Any sign lawfully maintained in a scenic area prior to the establishment of the area as a scenic area and not included within the

exceptions of ORS 377.510, shall be removed by the owner thereof prior to seven years following the establishment of the area as a scenic area, unless the sign is required to be removed at an earlier date, pursuant to other state laws. [1961 c.614 §8; 1965 c.219 §25; 1967 c.590 §15]

377.520 [1961 c.614 §2; 1963 c.400 §16; 1965 c.219 §26; repealed by 1977 c.578 §5]

377.521 Status of previously designated scenic areas. All scenic areas designated prior to October 4, 1977, shall continue to retain their designation as scenic areas. [1977 c.578 §2]

Note: 377.521 was enacted into law by the Legislative Assembly but was not added to ORS 377.505 to 377.545 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

377.525 [1961 c.614 §4; 1963 c.400 §17; 1969 c.314 §30; repealed by 1977 c.578 §5]

377.530 [1961 c.614 §5; 1963 c.400 §18; repealed by 1977 c.578 §5]

377.535 [1961 c.614 §6; 1963 c.400 §19; repealed by 1977 c.578 §5]

377.540 State Highway Engineer to enforce orders and render administrative assistance. The engineer shall take appropriate action for the administration and enforcement of orders issued under the provisions of ORS 377.505 to 377.545 (1975 Replacement Part). [1961 c.614 §10; 1963 c.400 §20; 1977 c.578 §4]

377.545 Costs of administration. The cost of administering ORS 377.505 to 377.545 shall be paid from the State Highway Fund. [1961 c.614 §9]

JUNKYARDS

377.605 Definitions for ORS 377.605 to 377.645. As used in ORS 377.605 to 377.645, unless the context requires otherwise:

(1) "Department" means the Department of Transportation.

(2) "Engineer" means the State Highway Engineer or a duly authorized representative of the State Highway Engineer.

(3) "Federal-aid primary system" means the system of state highways described in section 103(b), title 23, United States Code, as selected and designated by the department.

(4) "Interstate System" means every state highway that is part of the National System of Interstate and Defense Highways established by the department in compliance with section 103(d) of title 23, United States Code.

PARKS; RECREATION PROGRAMS; WATERWAYS; TRAILS 390.050**OUTDOOR RECREATION
RESOURCES**

390.010 Policy of state toward outdoor recreation resources. The Legislative Assembly recognizes and declares:

(1) It is desirable that all Oregonians of present and future generations and visitors who are lawfully present within the boundaries of this state be assured adequate outdoor recreation resources. It is desirable that all levels of government and private interests take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of all the people.

(2) The economy and well-being of the people are in large part dependent upon proper utilization of the state's outdoor recreation resources for the physical, spiritual, cultural, scientific and other benefits which such resources afford.

(3) It is in the public interest to increase outdoor recreation opportunities commensurate with the growth in need through necessary and appropriate actions, including, but not limited to, the following:

(a) Protection of existing and needed open spaces for appreciation, use and enjoyment of Oregon's scenic landscape.

(b) Provision of adequate land for outdoor recreation.

(c) Preservation and restoration for public enjoyment and education of structures, objects, facilities and resources which are examples of Oregon history, archeology and natural science.

(d) Development of a system of scenic roads to enhance recreational travel and sightseeing.

(e) Encouragement of outdoor activities such as festivals, fairs, and events relating to music, dance, drama, art and sports.

(f) Expansion of facilities for camping, picnicking and lodging in or near recreational areas and along routes of travel.

(g) Provision of tourist hospitality centers, which may include informational services, sanitary facilities, camping and picnicking areas at points near major highway entrances into the state.

(h) Provision of trails for horseback riding, hiking, bicycling and motorized trail vehicle riding.

(i) Development of waterways, land and water facilities for recreational boating, hunting and fishing.

(j) Development of all recreation potentials of the several river basins, compatible with programs of water use enunciated by the Water Policy Review Board.

(k) Provision for access to public lands and waters having recreational values.

(L) Encouragement of the development of winter sports facilities.

(m) Encouragement of programs for recreational enjoyment of mineral resources.

(4) It is in the public interest that all efforts be made through research, education and enforcement to the end that Oregon's outdoor recreation resources will be used under the highest standards of conduct.

(5) It shall be the policy of the State of Oregon to supply those outdoor recreation areas, facilities and opportunities which are clearly the responsibility of the state in meeting growing needs; and to encourage all agencies of government, voluntary and commercial organizations, citizen recreation groups and others to work cooperatively and in a coordinated manner to assist in meeting total recreation needs through exercise of their appropriate responsibilities.
[Formerly 184.310]

INFRACTIONS

390.050 Park and recreation infractions; enforcement; disposition of fines and costs. (1) The park and recreation infractions that are established by this chapter are infractions that are subject to ORS 8.665, 153.110 to 153.310 and 153.990. Except as otherwise specifically provided in this chapter any offense that is designated as a park and recreation infraction is subject to citation and enforcement as provided under ORS 8.665, 153.110 to 153.310 and 153.990.

(2) In addition to any other persons permitted to enforce infractions under ORS 8.665, 153.110 to 153.310 and 153.990, the Administrator of the Parks and Recreation Division and any employe of the Parks and Recreation Division specifically designated by the administrator have jurisdiction of and may enforce park and recreation infractions established under this chapter in the manner provided under ORS 8.665, 153.110 to 153.310 and 153.990 for the enforcement of infractions.

(3) All fines and court costs recovered from violations of park and recreation infractions shall be paid to the clerk of the court involved. The clerk, after deductions of court costs provided by law for the proceeding, shall pay the re-

390.110**HIGHWAYS, ROADS, BRIDGES AND FERRIES**

mainder of the money to the Parks and Recreation Division of the Department of Transportation for deposit in the separate account established for the Parks and Recreation Division under ORS 366.512. Except as otherwise provided in this section the moneys shall be used as are other moneys in that account.

(4) Notwithstanding subsection (3) of this section, the moneys collected under ORS 390.990 for violation of any rule adopted under ORS 390.845 shall be used only for purposes of maintenance, enhancement or protection of the natural and scenic beauty of scenic waterways consistent with ORS 390.905 to 390.925. [1981 c.692 §2; 1981 c.798 §35]

STATE PARKS AND RECREATION DIVISION

390.110 Acquisition and development by Department of Transportation of scenic or historic places. (1) The Department of Transportation may acquire by purchase, agreement, donation or by exercise of the power of eminent domain real property, or any right or interest therein, deemed necessary for the culture of trees and the preservation of scenic or historic places and other objects of attraction or scenic value adjacent to, along or in close proximity to state highways, or which may be conveniently reached from or by a public highway. The department may in like manner acquire land and ground necessary for the development and maintenance of parks, parking places, auto camps, campsites, roadside development, recreational grounds or resorts, forest or timbered areas or other places of attraction and scenic or historic value which in the judgment of the department are necessary for the convenience of the public, and which will contribute to the general welfare and pleasure of the motoring public or road user.

(2) The department may develop, construct, improve, operate and maintain the places named in subsection (1) of this section to such an extent and in such manner as will best afford to the motoring public and road users necessary conveniences and accommodations, and as will contribute to the general welfare of the people of the state or the members of the motoring public using the highways of the state.

(3) The department may acquire by purchase, agreement or donation real property, or any right or interest therein, deemed necessary for the culture of trees and the preservation of scenic or historic places and other objects of attraction or scenic value. The department may

in like manner acquire land and ground necessary for the development and maintenance of parks, campsites, recreational grounds or resorts, forest or timbered areas or other places of attraction and scenic or historic value which in the judgment of the department will contribute to the general welfare and pleasure of the public.

(4) The department may develop, construct, improve, operate and maintain the places named in subsection (3) of this section to such an extent and in such manner as will best afford to the public necessary conveniences and accommodations, and as will contribute to the general welfare of the public. [Formerly 366.345]

390.120 Administrator of Parks and Recreation Division. The chief administrative officer appointed to supervise the Parks and Recreation Division by the Director of the Department of Transportation under ORS 184.615 shall be called the Administrator of the Parks and Recreation Division. [Formerly 366.175; 1979 c.186 §17]

390.130 State Recreation Director and assistants. (1) The Department of Transportation shall appoint upon the recommendation of the Administrator of the Parks and Recreation Division, a director of recreation, who shall be called State Recreation Director, and who shall hold office at the pleasure of the department.

(2) The State Recreation Director shall receive an annual salary to be fixed by the department, payable in monthly instalments, together with such actual traveling and other necessary expenses as may be incurred in the discharge of his official duties.

(3) The department may employ such engineers, landscape architects, technical assistants and such other help as, in its judgment, may be necessary for the proper and efficient administration of the parks and recreation division. The compensation, travel allowance and other expenses for such staff and other help shall be fixed by the department.

(4) This section is subject to any applicable provision of the State Personnel Relations Law. [Formerly 366.180; 1979 c.186 §18]

390.140 Powers and duties of State Recreation Director. (1) Under the direction of the Administrator of the Parks and Recreation Division, the State Recreation Director shall:

(a) Study and appraise the recreation needs of this state and assemble and disseminate infor-

390.605**HIGHWAYS, ROADS, BRIDGES AND FERRIES**

corner, section 11; thence west to the center of section 9; thence north to the north quarter corner, section 9; thence west to the northwest corner, section 8; thence south to the west quarter corner, section 8; thence west to the center of section 11, township 1 north, range 6 east; thence south to the center of section 14; thence west to the center of section 15; thence south to the north quarter corner, section 22; thence east to the northeast corner, section 22; thence south to the east quarter corner, section 22; thence west to the center of section 22; thence south to the south quarter corner, section 22; thence west to the southwest corner of section 22; thence north to the west quarter corner, section 22; thence west to the center of section 21; thence north to the center of section 16; thence west to the west quarter corner, section 16; thence north to the northwest corner, section 16; thence west to the north quarter corner, section 17; thence south to the center of section 17; thence east to the east quarter corner, section 17; thence south to the southeast corner, section 17; thence west to the north quarter corner, section 24, township 1 north, range 5 east; thence south to the center of section 24; thence west to the center of section 23; thence south to the south quarter corner, section 23; thence east to the northeast corner of section 26; thence south to the east quarter corner, section 26; thence east to the center of section 25; thence south to the center of section 36; thence west to the west quarter corner, section 32; thence south to the southeast corner, section 31; thence west to the south quarter corner, section 31; thence north to the center of section 31; thence west to the west quarter corner, section 33, township 1 north, range 4 east; thence north to the northeast corner, section 32; thence west to the south quarter corner, section 30; thence north to the center of section 30; thence west to the center line of the Sandy River; thence northward up the center line of the Sandy River to the point of beginning. [1977 c.482 §3]

OCEAN SHORES; STATE RECREATION AREAS

(General Provisions)

390.605 "Improvement," "ocean shore," and "state recreation area" defined.

As used in ORS 390.610, 390.620 to 390.660, 390.690, and 390.705 to 390.770, unless the context requires otherwise:

(1) An "improvement" includes a structure, appurtenance or other addition, modification or alteration constructed, placed or made on or to the land.

(2) "Ocean shore" means the land lying between extreme low tide of the Pacific Ocean and the line of vegetation as established and described by ORS 390.770.

(3) "State recreation area" means a land or water area, or combination thereof, under the jurisdiction of the Department of Transportation, pursuant to ORS 366.205 (3), used by the public for recreational purposes. [Formerly 274.065 and then 390.710]

390.610 Policy. (1) The Legislative Assembly hereby declares it is the public policy of the State of Oregon to forever preserve and maintain the sovereignty of the state heretofore legally existing over the ocean shore of the state from the Columbia River on the north to the Oregon-California line on the south so that the public may have the free and uninterrupted use thereof.

(2) The Legislative Assembly recognizes that over the years the public has made frequent and uninterrupted use of the ocean shore and recognizes, further, that where such use has been legally sufficient to create rights or easements in the public through dedication, prescription, grant or otherwise, that it is in the public interest to protect and preserve such public rights or easements as a permanent part of Oregon's recreational resources.

(3) Accordingly, the Legislative Assembly hereby declares that all public rights or easements legally acquired in those lands described in subsection (2) of this section are confirmed and declared vested exclusively in the State of Oregon and shall be held and administered as state recreation areas.

(4) The Legislative Assembly further declares that it is in the public interest to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's ocean shore. [1967 c.601 §§1, 2(1), (2), (3); 1969 c.601 §4]

390.615 Ownership of Pacific shore; declaration as state recreation area.

Ownership of the shore of the Pacific Ocean between ordinary high tide and extreme low tide, and from the Oregon and Washington state line on the north to the Oregon and California state line on the south, excepting such portions as may have been disposed of by the state prior to July 5, 1947, is vested in the State of Oregon, and is declared to be a state recreation area. No portion of such ocean shore shall be alienated by any of the agencies of the state except as provided by law. [Formerly 274.070 and then 390.720]

390.620 Pacific shore not to be alienated; judicial confirmation. (1) No portion

PARKS; RECREATION; WATERWAYS; TRAILS**390.650**

of the lands described by ORS 390.610 or any interest either therein now or hereafter acquired by the State of Oregon or any political subdivision thereof shall be alienated except as expressly provided by state law. The Department of Transportation and the State Land Board shall have concurrent jurisdiction to undertake appropriate court proceedings, when necessary, to protect, settle and confirm all such public rights and easements in the State of Oregon.

(2) No portion of the ocean shore declared a state recreation area by ORS 390.610 shall be alienated by any of the agencies of the state except as provided by law.

(3) In carrying out its duties under subsection (1) of this section with respect to lands and interests in land within the ocean shore, the State Land Board shall act with respect to the portion of the tidal submerged lands, as defined in ORS 274.705 (7), and the submersible lands, as defined in ORS 274.005 (8), that are situated within the ocean shore as it does with respect to other state-owned submerged and submersible lands within navigable waters of this state.

(4) In carrying out its duties under subsection (1) of this section with respect to lands and interests in land within the ocean shore, the Department of Transportation shall act with respect to such lands and interests as it does with respect to other lands and interests within state recreation areas. [1967 c.601 §§2(4), 3; 1969 c.601 §5; 1973 c.364 §1]

390.630 Acquisition along ocean shore for state recreation areas or access. The Department of Transportation, in accordance with ORS 390.110, may acquire ownership of or interests in the ocean shore or lands abutting, adjacent or contiguous to the ocean shore as may be appropriate for state recreation areas or access to such areas where such lands are held in private ownership. However, when acquiring ownership of or interests in lands abutting, adjacent or contiguous to the ocean shore for such recreation areas or access where such lands are held in private ownership, the department shall consider the following:

(1) The availability of other public lands in the vicinity for such recreational use or access.

(2) The land uses, improvements, and density of development in the vicinity.

(3) Existing public recreation areas and accesses in the vicinity.

(4) Any local zoning or use restrictions affecting the area in question. [1967 c.601 §4; 1969 c.601 §6]

(Regulating Use of Ocean Shore)

390.635 Jurisdiction of department over recreation areas. Except as provided by

ORS 273.551, 274.710 and 390.620, the Department of Transportation has jurisdiction over the land and interests in land acquired under ORS 390.610, 390.615, 390.620 or 390.630 in order to carry out the purposes of ORS 390.610, 390.620 to 390.660, 390.690 and 390.705 to 390.770. [1969 c.601 §21; 1973 c.364 §2]

390.640 Permit required for improvements on ocean shore; exceptions. (1) In order to promote the public health, safety and welfare, to protect the state recreation areas recognized and declared by ORS 390.610 and 390.615, to protect the safety of the public using such areas, and to preserve values adjacent to and adjoining such areas, the natural beauty of the ocean shore and the public recreational benefit derived therefrom, it is necessary to control and regulate improvements on the ocean shore. Unless a permit therefor is granted as provided by ORS 390.650, no person shall make an improvement on any property that is within the area described by ORS 390.770.

(2) This section does not apply to permits granted pursuant to ORS 390.715, or to rules promulgated or permits granted under ORS 390.725.

(3) This section does not apply to continuous extensions of densely vegetated land areas which are above the 16 foot contour and lying seaward of the line established by ORS 390.770 as of August 22, 1969. The elevation mentioned in this subsection refers to the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947. [1967 c.601 §5; 1969 c.601 §7; 1973 c.642 §14]

390.650 Improvement permit procedure. (1) Any person who desires a permit to make an improvement on any property subject to ORS 390.640 shall apply in writing to the Parks and Recreation Division on a form and in a manner prescribed by the division, stating the kind of and reason for the improvement.

(2) Upon receipt of a properly completed application, the Parks and Recreation Division shall cause notice of the application to be posted at or near the location of the proposed improvement. The notice shall include the name of the applicant, a description of the proposed improvement and its location and a statement of the time within which interested persons may file a request with the division for a hearing on the application. The division shall give notice of any application, hearing or decision to any person

who files a written request with the division for such notice.

(3) Within 30 days after the date of posting the notice required in subsection (2) of this section, the applicant or 10 or more other interested persons may file a written request with the Parks and Recreation Division for a hearing on the application. If such a request is filed, the division shall set a time for a hearing to be held by the division. The division shall cause notice of the hearing to be posted in the manner provided in subsection (2) of this section. The notice shall include the time and place of the hearing. After the hearing on an application or, if a hearing is not requested, after the time for requesting a hearing has expired, the division shall grant the permit if approval would not be adverse to the public interest. ORS 183.310 to 183.550 does not apply to a hearing or decision under this section.

(4) In acting on an application, the Parks and Recreation Division shall take into consideration the matters described by ORS 390.655. The division shall act on an application within 60 days after the date of receipt or, if a hearing is held, within 45 days after the date of the hearing.

(a) If the permit is denied upon the grounds that the same would be adverse to the public interest the division shall make written findings setting forth the specific reasons for the denial.

(b) A copy of the written findings shall be furnished to the applicant within 30 days following denial of the application as provided in this subsection.

(5) Subsections (2) and (3) of this section do not apply to an application for a permit for the repair, replacement or restoration, in the same location, of an authorized improvement or improvement existing on or before May 1, 1967, if the repair, replacement or restoration is commenced within three years after the damage to or destruction of the improvement being repaired, replaced or restored occurs.

(6) The Parks and Recreation Division may, upon application therefor, either written or oral, grant an emergency permit for a new improvement, dike, revetment, or for the repair, replacement or restoration of an existing, or authorized improvement where property or property boundaries are in imminent peril of being destroyed or damaged by action of the Pacific Ocean or the waters of any bay or river of this state. Said permit may be granted by the division without regard to the provisions of subsections (1), (2), (3), (4) and (5) of this section. Any emergency permit granted hereunder shall be reduced to writing by the division within 10 days after

granting the same with a copy thereof furnished to the applicant. [1967 c.601 §6; 1969 c.601 §10; 1979 c.186 §21]

390.655 Standards for improvement permits. The Parks and Recreation Division shall consider applications and issue permits under ORS 390.650 in accordance with standards designed to promote the public health, safety and welfare and carry out the policy of ORS 390.610, 390.620 to 390.660, 390.690, and 390.705 to 390.770. The standards shall be based on the following considerations, among others:

(1) The public need for healthful, safe, esthetic surroundings and conditions; the natural scenic, recreational and other resources of the area; and the present and prospective need for conservation and development of those resources.

(2) The physical characteristics or the changes in the physical characteristics of the area and suitability of the area for particular uses and improvements.

(3) The land uses, including public recreational use if any, and the improvements in the area, the trends in land uses and improvements, the density of development and the property values in the area.

(4) The need for recreation and other facilities and enterprises in the future development of the area and the need for access to particular sites in the area. [1969 c.601 §11; 1979 c.186 §22]

390.658 Judicial review of division action on improvement permit application.

Any person aggrieved by the decision of the Parks and Recreation Division under ORS 390.650 is entitled to petition the circuit court of the county where the property is located for a judicial review, de novo as in equity, of the action or failure to act by the division. A petition filed under this section shall be filed within 60 days after the entry of the findings provided for in ORS 390.650 (4) or after the expiration of the period prescribed for action, by the division under ORS 390.650. [1969 c.601 §12; 1979 c.186 §23]

390.660 Regulation of use of lands adjoining ocean shores. The Department of Transportation is hereby directed to protect, to maintain and to promulgate rules governing use of the public of property that is subject to ORS 390.640, property subject to public rights or easements declared by ORS 390.610 and property abutting, adjacent or contiguous to those lands described by ORS 390.615 that is available for public use, whether such public right or easement to use is obtained by dedication, prescription, grant, state-ownership, permission of a private owner or otherwise. [1967 c.601 §7; 1969 c.601 §16]

PARKS; RECREATION; WATERWAYS; TRAILS**390.725**

390.665 [Formerly 274.100 and then 390.740; repealed by 1971 c.743 §432]

390.668 Motor vehicles and aircraft use regulated in certain zones; zone markers; proceedings to establish zones. (1) The Department of Transportation may establish zones on the ocean shore where travel by motor vehicles or landing of any aircraft except for an emergency shall be restricted or prohibited. After the establishment of a zone and the erection of signs or markers thereon, no such use shall be made of such areas except in conformity with the rules of the department.

(2) Proceedings to establish a zone:

(a) May be initiated by the department on its own motion; or

(b) Shall be initiated upon the request of 20 or more landowners or residents or upon request of the governing body of a county or city contiguous to the proposed zone.

(3) A zone shall not be established unless the department first holds a public hearing in the vicinity of the proposed zone. The department shall cause notice of the hearing to be given by publication, not less than seven days prior to the hearing, by at least one insertion in a newspaper of general circulation in the vicinity of the zone.

(4) Before establishing a zone, the department shall seek the approval of the local government whose lands are adjacent or contiguous to the proposed zone. [Formerly 274.090 and then 390.730]

390.670 [1967 c.601 §8; 1969 c.601 §13; repealed by 1971 c.780 §7]

390.680 [1967 c.601 §9; 1969 c.601 §17; repealed by 1973 c.732 §5]

390.685 Effect of ORS 390.605, 390.615, 390.668 and 390.685. Nothing in ORS 390.605, 390.615, 390.668 and 390.685 is intended to repeal ORS 492.780 to 492.810. [Formerly 274.110 and then 390.750]

390.690 Title and rights of state unimpaired. Nothing in ORS 390.610, 390.620 to 390.660, 390.690 and 390.705 to 390.770 shall be construed to relinquish, impair or limit the sovereign title or rights of the State of Oregon in the shores of the Pacific Ocean as the same may exist before or after July 6, 1967. [1967 c.601 §10]

(Special Permits)

390.705 Prohibition against placing certain conduits across recreation area and against removal of natural products. No person shall:

(1) Place any pipeline, cable line or other conduit across and under the state recreation areas described by ORS 390.635 or the submerged lands adjacent to the ocean shore, except as provided by ORS 390.715.

(2) Remove any natural product from the ocean shore, other than fish or wildlife, agates or souvenirs, except as provided by ORS 390.725. [1969 c.601 §20]

390.710 [Formerly 274.065; 1969 c.601 §2; renumbered 390.605]

390.715 Permits for pipe, cable or conduit across ocean shore and submerged lands. (1) The Department of Transportation may issue permits under ORS 390.650 to 390.658 for pipelines, cable lines and other conduits across and under the ocean shore and the submerged lands adjacent to the ocean shore, upon payment of just compensation by the permittee. Such permit is not a sale or lease of tide and overflow lands within the scope of ORS 274.040.

(2) Whenever the issuance of a permit under subsection (1) hereof will affect lands owned privately, the Department of Transportation shall withhold the issuance of such permit until such time as the permittee shall have obtained an easement, license or other written authorization from the private owner, which easement, license or other written authority must meet the approval of the Department of Transportation, except as to the compensation to be paid to the private owner.

(3) All permits issued under this section are subject to conditions that will assure safety of the public and the preservation of economic, scenic and recreational values and to rules promulgated by state agencies having jurisdiction over the activities of the grantee or permittee. [1969 c.601 §22]

390.720 [Formerly 274.070; renumbered 390.615]

390.725 Permits for removal of products along ocean shore. (1) No sand, rock, mineral, marine growth or other natural product of the ocean shore, other than fish or wildlife, agates or souvenirs, shall be taken from the state recreation areas described by ORS 390.635, except in compliance with a rule of or permit from the Department of Transportation as provided by this section. Permits shall provide for the payment of just compensation by the permittee as provided in subsection (5) of this section.

(2) Rules or permits shall be made or granted by the Department of Transportation only after consultation with the State Fish and Wildlife Commission, the State Department of Geology

390.755

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and Mineral Industries and the Division of State Lands. Rules and permits shall contain provisions necessary to protect the areas from any use, activity or practice inimicable to the conservation of natural resources or public recreation.

(3) On request of the governing body of any coastal city or county, the Department of Transportation may grant a permit for the removal of sand or rock from the area at designated locations on the ocean shore to supply the reasonable needs for essential construction uses in such localities if it appears sand and rock for such construction are not otherwise obtainable at reasonable cost, and if such removal will not materially alter the physical characteristics of the area or adjacent areas, nor lead to such changes in subsequent seasons. Before issuing a permit the department shall likewise take into consideration the standards described by ORS 390.655. The department may grant a permit to take and remove sand, rock, mineral or marine growth from the area at designated locations. The department shall also issue permits to coastal cities or counties to remove or authorize removal of sand from the ocean shore, under the standards provided by ORS 390.655, if the city or county determines that the sand accumulation on the ocean shore constitutes a hazard or maintenance problem to the city or county.

(4) The terms, royalty and duration of a permit under this section are at the discretion of the department. A permit is revocable at any time in the discretion of the department without liability to the permittee.

(5) Whenever the issuance of a permit under this section will affect lands owned privately, the Department of Transportation shall withhold the issuance of such permit until such time as the permittee shall have obtained an easement, license or other written authorization from the private owner, which easement, license or other written authority must meet the approval of the department, except as to the compensation to be paid to the private owner. [1969 c.601 §23]

390.730 [Formerly 274.090; 1969 c.601 §18; renumbered 390.668]

390.735 [1969 c.601 §25; repealed by 1973 c.642 §13]

390.740 [Formerly 274.100; renumbered 390.665]

390.750 [Formerly 274.110; 1969 c.601 §19; renumbered 390.685]

(Vegetation Line)

390.755 Periodical reexamination of vegetation line; division recommendations for adjustment. (1) The Parks and Recreation

Division is directed to periodically reexamine the line of vegetation as established and described by ORS 390.770 for the purpose of obtaining information and material suitable for a re-evaluation and re-definition, if necessary, of such line so that the private and public rights and interest in the ocean shore shall be preserved.

(2) The Department of Transportation may, from time to time, recommend to the Legislative Assembly adjustment of the line described in ORS 390.770. [1969 c.601 §27; 1979 c.186 §24]

390.760 Exceptions from vegetation line. ORS 390.640 does not apply to any state-owned land or to headlands and other lands located at an elevation of more than 16 feet and seaward of a line running between the following designated and numbered points which are more particularly described by ORS 390.770. The elevation mentioned in this section refers to the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947.

Point Designation and Number		Point Designation and Number	
From	To	From	To
Cl-7-6	Cl-7-7	Cl-7-55	Cl-7-56
Cl-7-10	Cl-7-11	Cl-7-76	Cl-7-77
Cl-7-13	Cl-7-14	Cl-7-115	Cl-7-116
Cl-7-52	Cl-7-53	Cl-7-134	Cl-7-135
Ti-7-3	Ti-7-4	La-7-72	La-7-73
Ti-7-6	Ti-7-7	La-7-87	La-7-88
Ti-7-18	Ti-7-19	Do-8-78	Do-8-79
Ti-7-33	Ti-7-34	Co-7-82	Co-7-83
Ti-7-83	Ti-7-84	Co-7-111	Co-7-112
Ti-7-88	Ti-7-89	Co-7-146	Co-7-147
Ti-7-94	Ti-7-95	Co-7-178	Co-7-179
Ti-7-99	Ti-7-100	Co-7-200	Co-7-201
Ti-7-113	Ti-7-114	Co-7-229	Co-7-230
Ti-7-168	Ti-7-169	Cu-7-25	Cu-7-26
Ti-7-183	Ti-7-184	Cu-7-54	Cu-7-55
Ti-7-249	Ti-7-250	Cu-7-155	Cu-7-156
Li-7-2A	Li-7-3	Cu-7-167	Cu-7-167A
Li-7-10	Li-7-11	Cu-7-167E	Cu-7-168
Li-7-17	Li-7-18	Cu-7-174	Cu-7-175
Li-7-73	Li-7-74	Cu-7-196	Cu-7-197
Li-7-118	Li-7-119	Cu-7-201	Cu-7-202
Li-7-150	Li-7-151	Cu-7-219	Cu-7-220
Li-7-154	Li-7-155	Cu-7-225	Cu-7-226
Li-7-161	Li-7-162	Cu-7-236	Cu-7-237
Li-7-165	Li-7-166	Cu-7-258	Cu-7-259
Li-7-167A	Li-7-168	Cu-7-268	Cu-7-269
Li-7-170	Li-7-171	Cu-7-288	Cu-7-289
Li-7-176	Li-7-177	Cu-7-310	Cu-7-311
Li-7-182	Li-7-183	Cu-7-314	Cu-7-315
Li-7-215	Li-7-216	Cu-7-363	Cu-7-364

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Cu-7-578	156,637	980,008	Cu-7-630	145,288	991,314
Cu-7-579	156,670	979,994	Cu-7-631	145,176	991,095
Cu-7-580	156,647	980,077	Cu-7-632	144,723	991,295
Cu-7-581	155,833	980,413	Cu-7-633	143,886	991,657
Cu-7-582	155,518	980,627	Cu-7-634	143,339	991,832
Cu-7-583	155,145	980,715	Description of Location of Point		
Cu-7-584	155,047	980,689	Number Cu-7-634: A point near the Oregon-		
Cu-7-585	155,067	980,612	California Boundary and near the line located		
Cu-7-586	154,825	980,572	between section 26 of township 41 south, range 13		
Cu-7-587	154,813	980,617	west of the Willamette Meridian in Curry		
Cu-7-588	154,921	980,757	County, Oregon, and section 32 of township 19		
Cu-7-589	154,852	980,881	north, range 1 west of the Humboldt Meridian in		
Cu-7-590	154,945	980,926	Del Norte County, California. [1969 c.601 §8]		
Cu-7-591	154,890	981,077	390.775 [1977 c.263 §1; repealed by 1983 c.338 §978]		
Cu-7-592	154,457	981,657	390.780 [1977 c.263 §2; 1981 c.239 §1; repealed by		
Cu-7-593	154,205	981,833	1983 c.338 §978]		
Cu-7-594	153,898	982,094	390.785 [1977 c.263 §3; 1979 c.819 §1; repealed by		
Cu-7-595	154,197	982,374	1983 c.338 §978]		
Cu-7-596	154,187	982,498	390.790 [1977 c.263 §4; 1979 c.819 §2; repealed by		
Cu-7-597	153,956	982,999	1983 c.338 §978]		
Cu-7-598	153,474	983,252	390.792 [1979 c.819 §4; 1983 c.335 §1; repealed by		
Cu-7-599	153,305	983,531	1983 c.338 §978]		
Cu-7-600	153,286	983,807	390.795 [1977 c.263 §5; 1983 c.335 §2; repealed by		
Cu-7-601	153,013	984,447	1983 c.338 §978]		
Cu-7-602	152,765	984,652			
Cu-7-603	152,662	984,708			
Cu-7-604	152,633	984,751			
Cu-7-605	151,850	985,113			
Cu-7-606	151,497	985,195			
Cu-7-607	151,277	985,196			
Cu-7-608	150,861	985,540			
Cu-7-609	150,632	985,569			
Cu-7-610	150,504	985,688			
Cu-7-611	150,030	986,310			
Cu-7-612	149,534	986,461			
Cu-7-613	149,266	986,445			
Cu-7-614	149,132	986,537			
Cu-7-615	149,047	986,629			
Cu-7-616	149,098	986,767			
Cu-7-617	148,936	986,896			
Cu-7-618	148,797	986,890			
Cu-7-619	149,033	987,119			
Cu-7-620	149,030	987,307			
Cu-7-621	148,949	987,399			
Cu-7-622	147,977	988,656			
Cu-7-623	147,740	989,001			
Cu-7-624	147,212	989,610			
Cu-7-625	146,900	989,883			
Cu-7-626	146,614	990,134			
Cu-7-626A	146,463	990,180			
Cu-7-627	146,242	990,362			
Cu-7-627A	146,106	990,481			
Cu-7-628	146,007	990,676			
Cu-7-628A	146,030	990,783			
Cu-7-629	146,181	990,926			
Cu-7-629A	146,439	991,778			
Cu-7-629B	145,626	992,092			
Cu-7-629C	145,317	991,861			

SCENIC WATERWAYS

390.805 Definitions for ORS 390.805 to 390.925. As used in ORS 390.805 to 390.925, unless the context requires otherwise:

(1) "Department" means the Department of Transportation.

(2) "Scenic waterway" means Waldo Lake, river or segment of river that has been designated as such in accordance with ORS 390.805 to 390.925 or any subsequent Act, and includes related adjacent land.

(3) "Related adjacent land" means all land within one-fourth of one mile of the bank on the side of Waldo Lake, river or segment of river within a scenic waterway, except land that, in the department's judgment, does not affect the view from the waters within a scenic waterway.

(4) "Scenic easement" means the right to control the use of related adjacent land, including air space above such land, for the purpose of protecting the scenic view from waters within a scenic waterway; but such control does not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement, and the landowner retains the right to uses of the land not specifically restricted by the easement. [1971 c.1 §2; 1981 c.787 §55; 1983 c.334 §1; 1983 c.642 §10]

390.815 Policy; establishment of system. The people of Oregon find that many of the

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free-flowing rivers of Oregon and Waldo Lake and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archeologic, and outdoor recreation values of present and future benefit to the public. The people of Oregon also find that the policy of permitting construction of dams and other impoundment facilities at appropriate sections of the rivers of Oregon and Waldo Lake needs to be complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and such rivers and fulfill other conservation purposes. It is therefore the policy of Oregon to preserve for the benefit of the public Waldo Lake and selected parts of the state's free-flowing rivers. For these purposes there is established an Oregon Scenic Waterways System to be composed of areas designated in accordance with ORS 390.805 to 390.925 and any subsequent Acts. [1971 c.1 §1; 1983 c.334 §2]

390.825 Designated scenic waterways.

The following lakes or rivers, or segments of rivers, and related adjacent land, are designated as scenic waterways:

(1) The segment of the Rogue River extending from the confluence with the Applegate River downstream a distance of approximately 88 miles to Lobster Creek Bridge.

(2) The segment of the Illinois River from the confluence with Deer Creek downstream a distance of approximately 46 miles to its confluence with the Rogue River.

(3) The segment of the Deschutes River from immediately below the existing Pelton reregulating dam downstream approximately 100 miles to its confluence with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977.

(4) The entire Minam River from Minam Lake downstream a distance of approximately 45 miles to its confluence with the Wallowa River.

(5) The segment of the South Fork Owyhee River in Malheur County from the Oregon-Idaho border downstream approximately 25 miles to Three Forks where the main stem of the Owyhee River is formed, and the segment of the main stem Owyhee River from Crooked Creek (six miles below Rome) downstream a distance of approximately 45 miles to the mouth of Birch Creek.

(6) The segment of the main stem of the John Day River from Service Creek Bridge (at river mile 157) downstream 147 miles to Tumwater Falls (at river mile 10).

(7) The segment of the Clackamas River from the River Mill Dam below Estacada downstream approximately 12 miles to the bridge at Carver, Oregon.

(8) Waldo Lake in Lane County and the segment of the North Fork of the Middle Fork of the Willamette River from Waldo Lake to a point one mile upstream from the railroad bridge that is near the town of Westfir.

(9) Opal Lake in Marion County and the main stem of Opal Creek from Opal Lake to its confluence with Battle Ax Creek.

(10) The segment of the Little North Fork of the Santiam River from the confluence of Battle Ax Creek and Opal Creek downstream to the point at which the Little North Fork of the Santiam River reaches the boundary of the Willamette National Forest as constituted on September 20, 1985. [1971 c.1 §3; 1975 c.612 §1; 1977 c.671 §1; 1983 c.334 §3; 1985 c.781 §§1, 2]

Note: The amendment to 390.825 by section 2, chapter 781, Oregon Laws 1985, takes effect July 1, 1987. See section 3, chapter 781, Oregon Laws 1985. 390.825 as amended is set forth for the users' convenience.

390.825. The following lakes or rivers, or segments of rivers, and related adjacent land, are designated as scenic waterways:

(1) The segment of the Rogue River extending from the confluence with the Applegate River downstream a distance of approximately 88 miles to Lobster Creek Bridge.

(2) The segment of the Illinois River from the confluence with Deer Creek downstream a distance of approximately 46 miles to its confluence with the Rogue River.

(3) The segment of the Deschutes River from immediately below the existing Pelton reregulating dam downstream approximately 100 miles to its confluence with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977.

(4) The entire Minam River from Minam Lake downstream a distance of approximately 45 miles to its confluence with the Wallowa River.

(5) The segment of the South Fork Owyhee River in Malheur County from the Oregon-Idaho border downstream approximately 25 miles to Three Forks where the main stem of the Owyhee River is formed, and the segment of the main stem Owyhee River from Crooked Creek (six miles below Rome) downstream a distance of approximately 45 miles to the mouth of Birch Creek.

(6) The segment of the main stem of the John Day River from Service Creek Bridge (at river mile 157) downstream 147 miles to Tumwater Falls (at river mile 10).

(7) The segment of the Clackamas River from the River Mill Dam below Estacada downstream approximately 12 miles to the bridge at Carver, Oregon.

(8) Waldo Lake in Lane County and the segment of the North Fork of the Middle Fork of the Willamette River from

Waldo Lake to a point one mile upstream from the railroad bridge that is near the town of Westfir.

(9) The segment of the Little North Fork of the Santiam River from the confluence of Battle Ax Creek and Opal Creek downstream to the point at which the Little North Fork of the Santiam River reaches the boundary of the Willamette National Forest as constituted on the September 20, 1985.

390.835 Highest and best use of waters within scenic waterways; authority of State Fish and Wildlife Commission, Water Resources Commission, Division of State Lands and State Land Board. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water impoundment facility shall be constructed or placer mining permitted on waters within scenic waterways. No water diversion facility shall be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways shall be prohibited, except as permitted by the Director of the Division of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways, and approved by the State Land Board and in a manner consistent with the policies set forth under ORS 541.605 to 541.625 and 541.630 to 541.660 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Division of State Lands shall administer and enforce the provisions of this subsection.

(3) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission's duties in administration of the water laws.

(4) The Water Resources Commission shall carry out its responsibilities under ORS 536.220

to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section. [1971 c.1 §4; 1973 c.756 §1; 1977 c.671 §2; 1985 c.673 §177]

390.845 Functions of the department; use of adjacent lands. (1) Except as provided in ORS 390.835, scenic waterways shall be administered by the department, each in such manner as to protect and enhance the values which caused such scenic waterway to be included in the system. In such administration primary emphasis shall be given to protecting the esthetic, scenic, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

(2) After consultation with the State Board of Forestry, the State Department of Agriculture and the affected counties and with the concurrence of the Water Resources Commission, the department shall adopt rules governing the management of related adjacent land. Such rules shall be adopted in accordance with ORS 183.310 to 183.550. Such rules shall reflect management principles, standards and plans applicable to scenic waterways, their shore lines and related adjacent land and, if necessary, establish varying intensities of protection or development based on special attributes of each area. Such management principles, standards and plans shall protect or enhance the esthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and other land uses. Specifically, and not in limitation of the foregoing, such rules shall provide that:

(a) No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses, as defined in subsection (2) of this section and in the rules of the department, of the related adjacent land or unless department approval of such use is obtained as provided in subsection (4) or (5) of this section. The department wherever practicable shall require the sharing of land and air space by such roads, railroads and utilities. All permissible roads, railroads and utilities shall be located in such a manner as to minimize the disturbance of the natural beauty of a scenic waterway;

(b) Forest crops shall be harvested in such manner as to maintain as nearly as reasonably is practicable the natural beauty of the scenic waterway;

(c) Occupants of related adjacent land shall avoid pollution of waters within a scenic waterway;

(d) The surface of related adjacent land shall not be disturbed for prospecting or mining unless

the department's approval is obtained under subsection (4) or (5) of this section; and

(e) Unless department approval of the proposed use is obtained under subsection (4) or (5) of this section, no commercial, business or industrial structures or buildings other than structures or buildings erected in connection with an existing use shall be erected or placed on related adjacent land. All structures and buildings erected or placed on such land shall be in harmony with the natural beauty of the scenic waterway and shall be placed a sufficient distance from other structures or buildings so as not to impair substantially such natural beauty. No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained.

(3) No person shall put related adjacent land to uses that violate ORS 390.805 to 390.925 or the rules of the department adopted under ORS 390.805 to 390.925 or to uses to which the land was not being put before December 3, 1970, or engage in the cutting of trees, or mining, or prospecting on such lands or construct roads, railroads, utilities, buildings or other structures on such lands, unless the owner of the land has given to the department written notice of such proposed use at least one year prior thereto and has submitted to the department with the notice a specific and detailed description of such proposed use or has entered into agreement for such use with the department under subsection (5) of this section. The owner may, however, act in emergencies without the notice required by ORS 390.805 to 390.925 when necessary in the interests of public safety.

(4) Upon receipt of the written notice provided in subsection (3) of this section, the department shall first determine whether in its judgment the proposed use would impair substantially the natural beauty of a scenic waterway. If the department determines that the proposal, if put into effect, would not impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land that the owner may immediately proceed with the proposed use as described to the department. If the department determines that the proposal, if put into effect, would impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land of such determination and no steps shall be taken to carry out such proposal until at least one year after the original notice to the department. During such period:

(a) The department and the owner of the land involved may agree upon modifications or alterations of the proposal so that implementation thereof would not in the judgment of the department impair substantially the natural beauty of the scenic waterway; or

(b) The department may acquire by purchase, gift or exchange, the land involved or interests therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic waterway.

(5) The department, upon written request from an owner of related adjacent land, shall enter into negotiations and endeavor to reach agreement with such owner establishing for the use of such land a plan that would not impair substantially the natural beauty of the scenic waterway. At the time of such request for negotiations, the owner may submit a plan in writing setting forth in detail proposed uses. Three months after the owner makes such a request for negotiations with respect to use of land, either the department or the owner may give written notice that the negotiations are terminated without agreement. Nine months after the notice of termination of negotiations the owner may use land in conformity with any specific written plan submitted by the owner prior to or during negotiations. In the event the department and the owner reach agreement establishing a plan for land use, such agreement is terminable upon at least one year's written notice by either the department or the owner.

(6) With the concurrence of the Water Resources Commission, the department may institute condemnation proceedings and by condemnation acquire related adjacent land:

(a) At any time subsequent to nine months after the receipt of notice of a proposal for the use of such land that the department determines would, if carried out, impair substantially the natural beauty of a scenic waterway unless the department and the owner of such land have entered into an agreement as contemplated by subsection (4) or (5) of this section or the owner shall have notified the department of the abandonment of such proposal; or

(b) At any time related adjacent land is used in a manner violating ORS 390.805 to 390.925, the rules of the department or any agreement entered into by the department pursuant to subsection (4) or (5) of this section; or

(c) At any time related adjacent land is used in a manner which, in the judgment of the department, impairs substantially the natural beauty of a scenic waterway, if the department has not been

given at least one year's advance written notice of such use and if there is not in effect department approval of such use pursuant to subsection (4) or (5) of this section.

(7) In such condemnation the owner of the land shall not receive any award for the value of any structure, utility, road or other improvement constructed or erected upon the land after December 3, 1970, unless the department has received written notice of such proposed structure, utility, road or other improvement at least one year prior to commencement of construction or erection of such structure, utility, road or other improvement or unless the department has given approval for such improvement under subsection (4) or (5) of this section. If the person owned the land on December 3, 1970, and for a continuous period of not less than two years immediately prior thereto, the person shall receive no less for the land than its value on December 3, 1970. The department shall not acquire by condemnation a scenic easement in land. When the department acquires any related adjacent land that is located between a lake or river and other land that is owned by a person having the right to the beneficial use of waters in the river by virtue of ownership of the other land:

(a) The right to the beneficial use of such waters shall not be affected by such condemnation; and

(b) The owner of the other land shall retain a right of access to the lake or river necessary to use, store or divert such waters as the owner has a right to use, consistent with concurrent use of the land so condemned as a part of the Oregon Scenic Waterways System.

(8) Any owner of related adjacent land, upon written request to the department, shall be provided copies of rules then in effect or thereafter adopted by the department pursuant to ORS 390.805 to 390.925.

(9) The department shall furnish to any member of the public upon written request and at expense of the member a copy of any notice filed pursuant to subsection (3) of this section.

(10) If a scenic waterway contains lands or interests therein owned by or under the jurisdiction of an Indian tribe, the United States, another state agency or local governmental agency, the department may enter into agreement with the tribe or the federal, state or local agency for the administration of such lands or interests therein in furtherance of the purposes of ORS 390.805 to 390.925. [1971 c.1 §5; 1971 c.459 §1; 1973 c.756 §2; 1981 c.236 §3; 1983 c.334 §4]

390.848 Passes for use of parts of Deschutes River; fee; exemption from fee; disposition of moneys. (1) The department shall establish, by rule, a system for issuing passes necessary to comply with the requirements under ORS 390.851. The department shall establish a reasonable fee for issuance of a pass under this section. The department may establish any form of proof of payment of the user fees that it deems appropriate.

(2) The system for issuance of passes established by the department under this section may include issuance of the passes by governmental entities or private persons who have entered into appropriate agreements with the department for issuance of the passes. Agreements under this subsection may include, but are not limited to, terms providing for locations for the collection of fees, methods the department determines appropriate to assure payment of moneys collected and provisions for the distribution of river-user information.

(3) The department shall issue, without charge, annual passes to comply with the requirements under ORS 390.851 to persons who own ranch, farm or residential property immediately abutting those portions of the Deschutes River designated as scenic waterways under ORS 390.825 and to members of the immediate family of such persons. This subsection does not authorize the issuance without charge of passes to persons holding less than a majority interest in a firm, corporation or cooperative organization which owns land immediately abutting the Deschutes River designated as scenic waterways under ORS 390.825.

(4) Moneys collected under this section shall be deposited in the separate account established for the Parks and Recreation Division under ORS 366.512 and, subject to the limitations under subsection (5) of this section, are continually appropriated to that division to be used:

(a) For operation of the pass system established under this section;

(b) For providing river-user oriented law enforcement services;

(c) For providing river recreation information and education;

(d) For developing and maintaining river oriented recreation facilities;

(e) For completion of the study and report required by section 2, chapter 606, Oregon Laws 1985; and

(f) For any other purposes the department considers appropriate for the maintenance,

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enhancement or protection of the natural and scenic beauty of the scenic waterway consistent with ORS 390.805 to 390.925.

(5) The use of moneys for purposes described under subsection (4) of this section is limited to the performance of those purposes for areas of the Deschutes River designated as scenic waterways under ORS 390.825. [1981 c.798 §2; 1985 c.606 §4]

390.851 Activities prohibited on parts of Deschutes River without pass; exceptions. (1) Unless the person has an appropriate pass issued under ORS 390.848, no person shall launch, operate or ride in any boat or engage in any camping, fishing or other activity in connection with being transported by a boat on those portions of the Deschutes River designated as scenic waterways under ORS 390.825.

(2) This section does not apply to:

(a) Peace officers, members or employes of a governmental body or their agents while engaged in the discharge of official duties; or

(b) Any member of the Confederated Tribes of the Warm Springs Indian Reservation.

(3) A person who violates this section commits a Class B parks and recreation infraction. [1981 c.798 §3]

390.855 Designation of additional scenic waterways. The department shall undertake a continuing study and submit periodic reports to the Governor, with the concurrence of the Water Resources Commission, recommending the designation of additional rivers or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the provisions of ORS 390.805 to 390.925. Consistent with such recommendation, the Governor may designate any river or segment of a river and related adjacent land as a scenic waterway subject to the provisions of ORS 390.805 to 390.925. The department shall consult with the State Fish and Wildlife Commission, the State Department of Agriculture, the Environmental Quality Commission, the Division of State Lands, and such other persons or agencies as it considers appropriate. The Department of Transportation shall conduct hearings in the counties in which the proposed additional rivers or segments of rivers are located. The following criteria shall be considered in making such report:

(1) The river or segment of river is relatively free-flowing and the scene as viewed from the river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions are restorable.

(2) The river or segment of river and its setting possess natural and recreation values of outstanding quality.

(3) The river or segment of river and its setting are large enough to sustain substantial recreation use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience. [1971 c.1 §6]

390.865 Authority of legislature over designation of additional scenic waterways. The designation of a river or segment of a river and related adjacent land, pursuant to ORS 390.855, shall not become effective until the day following the adjournment sine die of the regular session of the Legislative Assembly next following the date of the designation or that was in session when the designation was made. The Legislative Assembly by joint resolution may disapprove any such designation or a part thereof, and in that event the designation, or part thereof so disapproved, shall not become effective. [1971 c.1 §7]

390.875 Transfer of public lands in scenic waterways to department; administration of nontransferred lands. Any public land within or adjacent to a scenic waterway, with the consent of the governing body having jurisdiction thereof, may be transferred to the jurisdiction of the department with or without compensation. Any land so transferred shall become state recreational land and shall be administered as a part of the scenic waterway. Any such land within a scenic waterway which is not transferred to the jurisdiction of the department, to the fullest extent consistent with the purposes for which the land is held, shall be administered by the body having jurisdiction thereof in accordance with the provisions of ORS 390.805 to 390.925. [1971 c.1 §8]

390.885 Exchange of property within scenic waterway for property outside waterway. In acquiring related adjacent land by exchange, the department may accept title to any property within a scenic waterway, and in exchange therefor, may convey to the grantor of such property any property under its jurisdiction that the department is not otherwise restricted from exchanging. In so far as practicable, the properties so exchanged shall be of approximately equal fair market value. If they are not of approximately equal fair market value, the department may accept cash or property from, or pay cash or grant property to, the grantor in order to equalize the values of the properties exchanged. [1971 c.1 §9]

390.895 Use of federal funds. In addition to State of Oregon funds available for the

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purposes of ORS 390.805 to 390.925, the department shall use such portion of moneys made available to it by the Bureau of Outdoor Recreation and other federal agencies, including matching funds, as the department determines are necessary and available to carry out the purposes of ORS 390.805 to 390.925. [1971 c.1 §10]

390.905 Effect of ORS 390.805 to 390.925 on other state agencies. Nothing in ORS 390.805 to 390.925 affects the jurisdiction or responsibility of other state agencies with respect to boating, fishing, hunting, water pollution, health or fire control; except that such state agencies shall endeavor to perform their responsibilities in a manner consistent with the purposes of ORS 390.805 to 390.925. [1971 c.1 §11]

390.910 Intergovernmental cooperation; county representative on management advisory committee. In carrying out the provisions of ORS 390.805 to 390.925, the department may enter into intergovernmental agreements to form committees to advise the various governmental agencies involved regarding management of the scenic waterways. Each such agreement must provide for membership on the committee of a representative of one of the governing bodies of the counties through which the scenic waterway flows. The county representative shall be chosen by the Governor from among those individuals recommended to the Governor by the county governing bodies. [1981 c.236 §2]

390.915 Determination of value of scenic easement for tax purposes; easement exempt. For ad valorem tax purposes, real property that is subject to a scenic easement shall be valued at its true cash value, less any reduction in value caused by the scenic easement, and assessed in accordance with ORS 308.232. The easement shall be exempt from assessment and taxation the same as any other property owned by the state. [1971 c.1 §12; 1981 c.804 §99]

390.925 Enforcement. In addition to any other penalties provided by law for violation of ORS 390.805 to 390.925 or rules adopted thereunder, the department is vested with power to obtain injunctions and other appropriate relief against violations of any provisions of ORS 390.805 to 390.925 and any rules adopted under ORS 390.805 to 390.925 and agreements made under ORS 390.805 to 390.925. [1971 c.1 §13; 1981 c.798 §6]

RECREATION TRAILS

390.950 Short title. ORS 390.950 to 390.989 and 390.990 (4) may be cited as the

Oregon Recreation Trails System Act. [1971 c.614 §1]

390.953 "Department" defined. As used in ORS 390.950 to 390.989, unless the context requires otherwise, "department" means the Department of Transportation. [1971 c.614 §2]

390.956 Policy. (1) In order to provide for the ever-increasing outdoor recreation needs of an expanding resident and tourist population and in order to promote public access to, travel within and enjoyment and appreciation of, the open-air, outdoor areas of Oregon, trails should be established both near the urban areas of this state and within, adjacent to or connecting highly scenic areas more remotely located.

(2) The purpose of ORS 390.950 to 390.989 and 390.990 (4) is to provide the means for attaining these objectives by instituting a system of recreation trails in this state, by designating certain trails as the initial components of that system, and by prescribing the methods of which, and standards according to which, additional components may be added to the system. [1971 c.614 §3]

390.959 Composition of trails system; establishment of markers. The system of Oregon recreation trails shall be composed of trails established as provided in ORS 390.962 and 390.965. The department, in consultation with appropriate federal, state and local governmental agencies and public and private organizations, shall establish a uniform marker for the system of Oregon recreation trails. [1971 c.614 §4]

390.962 Criteria for establishing trails; location; statutes authorizing trails for motorized vehicles unaffected. (1) Upon finding that such trails will meet the criteria established in ORS 390.950 to 390.989 and 390.990 (4) and such supplementary criteria as the department may prescribe, the department is encouraged and empowered to establish and designate Oregon recreation trails:

(a) Over lands owned by the State of Oregon, by the Federal Government or by any county, municipality or other local governmental body, with the consent of the state agency, federal agency, county, municipality or other local governmental body having jurisdiction over the lands involved; or

(b) Over lands owned by private persons, in the manner and subject to the limitations provided in ORS 390.950 to 390.989 and 390.990 (4).

(2) In establishing such trails, the department shall give special recognition to the need for the establishment of recreation trails in or near,

city, county or municipal corporation of any rights, causes of suit or action or remedies. The issuance of a license under ORS 517.631 shall not relieve any licensee of any obligation imposed upon him by other law [1957 c.580 §9]

517.700 Consulting committee. (1) A consulting committee hereby is established. The committee shall be composed of the State Fish and Wildlife Director, the State Geologist, the Director of Agriculture and the Director of the Division of State Lands who shall serve as the committee chairman. In addition to the foregoing members, when a field examination of the land covered by an application is conducted under ORS 517.621, the members of the county court or board of county commissioners of the county or counties in which such land is located shall also be members of the consulting committee.

(2) The consulting committee shall convene at the call of its chairman for the purpose of performing its duties under ORS 517.611 to 517.700. [1957 c.580 §10]

RECLAMATION OF MINING LANDS (Generally)

517.750 Definitions for ORS 517.750 to 517.955. As used in ORS 517.750 to 517.955, unless the context requires otherwise:

(1) "Abandonment of surface mining" means a cessation of surface mining operation that was not set forth in a permittee's plan of operation or similar written notice extending:

(a) For more than 24 consecutive months; or

(b) For a period of less than 24 consecutive months in length, determined by the department to be sufficient to characterize such cessation of the surface mining operation as an abandonment of surface mining and where the permittee fails to submit sufficient evidence to the department that such operation has not been abandoned within 30 days after receipt of written notification from the department of its intention to declare the operation abandoned.

(2) "Board" means the governing board of the State Department of Geology and Mineral Industries.

(3) "Completion" means termination of surface mining activities including reclamation of the surface-mined land in accordance with the approved reclamation plan and operating permit.

(4) "Department" means the State Department of Geology and Mineral Industries.

(5) "Landowner" means the person possessing fee title to the natural mineral deposit being surface mined.

(6) "Minerals" includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use from natural deposits situated within or upon lands in this state.

(7) "Operator" means any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in surface mining operations.

(8) "Overburden" means the soil, rock and similar materials that lie above natural deposits of minerals.

(9) "Processing" includes, but is not limited to, crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphaltic and portland cement concrete products located within the operating permit area.

(10) "Reclamation" means the employment in a surface mining operation of procedures, reasonably designed to minimize as much as practicable the disruption from the surface mining operation and to provide for the rehabilitation of any such surface resources adversely affected by such surface mining operations through the rehabilitation of plant cover, soil stability, water resources and other measures appropriate to the subsequent beneficial use of such mined and reclaimed lands.

(11) "Reclamation plan" means a written proposal, submitted to the department as required by ORS 517.750 to 517.955 and subsequently approved by the department as provided in ORS 517.750 to 517.955, for the reclamation of the land area adversely affected by a surface mining operation and including, but not limited to the following information:

(a) Proposed measures to be undertaken by the operator in protecting the natural resources of adjacent lands.

(b) Proposed measures for the rehabilitation of the surface-mined lands and the procedures to be applied.

(c) The procedures to be applied in the surface mining operation to control the discharge of contaminants and the disposal of surface mining refuse.

(d) The procedures to be applied in the surface mining operation in the rehabilitation of affected stream channels and stream banks to a condition minimizing erosion, sedimentation and other factors of pollution.

(e) The map required by ORS 517.790 (1)(e) and such other maps and supporting documents as may be requested by the department.

(f) A proposed time schedule for the completion of reclamation operations.

(12) "Spoil bank" means a deposit of excavated overburden or mining refuse.

(13)(a) "Surface mining" includes all or any part of the process of mining minerals by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method by which more than 5,000 cubic yards of minerals are extracted or by which at least one acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse, the construction of adjacent or off-site borrow pits (except those constructed for use as access roads), and prospecting and exploration activities coming within the quantity or area specifications set forth herein or when such activities affect more than one acre of land for each eight acres of land prospected or explored.

(b) "Surface mining" does not include excavations of sand, gravel, clay, rock or other similar materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, onsite road construction or other onsite construction, or nonsurface impacts of underground mines; and also does not include rock, gravel, sand, silt or other similar substances removed from the beds or banks of any waters of this state pursuant to permit issued under ORS 541.605 to 541.625 and 541.627 to 541.660.

(14) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vegetation and other materials resulting from or displaced by surface mining operations within the operating permit area, including all waste materials deposited in or upon lands within such operating permit area.

(15) "Surface impacts of underground mining" means all waste materials produced by underground mining and placed upon the surface including, but not limited to, waste dumps, mill tailings, washing plant fines, and all surface subsidence related to underground mining.

(16) "Underground mining" means all human-made excavations below the surface of the ground through shafts or adits for the purpose of

exploring for, developing or producing valuable minerals. [1971 c.719 §2; 1975 c.724 §1; 1977 c.59 §1; 1981 c.622 §1; 1983 c.46 §1; 1985 c.292 §2]

517.755 Mining operations affecting more than five acres. Notwithstanding the yard and acre limitations of ORS 517.750 (13), as soon as any mining operation begun after July 1, 1975, affects more than five acres of land the provisions of ORS 517.750 to 517.955 apply to the mining operation. [1975 c.724 §1a; 1979 c.435 §3; 1985 c.292 §3; 1985 c.565 §80]

Note: 517.755 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 517 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

517.760 Policy. (1) The Legislative Assembly finds and declares that:

(a) The extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to the economic well-being of the state and nation.

(b) Proper reclamation of surface-mined lands is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety and property rights of the citizens of this state.

(c) Surface mining takes place in diverse areas where the geologic, topographic, climatic, biological and social conditions are significantly different and that reclamation operations and the specifications therefor must vary accordingly.

(d) It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials and that the very character of many types of surface mining operations precludes complete restoration of the affected lands to their original condition.

(e) Reclamation of surface-mined lands as provided by ORS 517.750 to 517.955 will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of the mined and reclaimed lands.

(2) The Legislative Assembly, therefore, declares that the purposes of ORS 517.750 to 517.955 are:

(a) To provide that the usefulness, productivity and scenic values of all lands and water resources affected by surface mining operations within this state shall receive the greatest practical degree of protection and reclamation necessary for their intended subsequent use.

(b) To provide for cooperation between private and governmental entities in carrying out

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the purposes of ORS 517.750 to 517.955. [1971 c.719 §1; 1985 c.292 §4]

517.770 Application of ORS 517.750 to 517.955. (1) Nothing in ORS 517.750 to 517.955 applies to:

(a) The reclamation of lands within the surfaces and contours of surface mines as of July 1, 1972, or to vertical extensions of those surfaces and contours. The surfaces and contours of surface mines shall not include those areas over which the mining operator merely leveled terrain or cleared vegetative cover.

(b) Dredging operations conducted pursuant to ORS 517.611 to 517.700.

(2) Notwithstanding paragraph (a) of subsection (1) of this section, if in the judgment of the department meaningful reclamation cannot be accomplished the department may waive the permit and reclamation requirements of ORS 517.750 to 517.955 even though the mine surfaces and contours as of July 1, 1972, have been extended horizontally. [1971 c.719 §15; 1973 c.709 §1; 1975 c.724 §2; 1985 c.292 §5]

NOTE: Section 16, chapter 292, Oregon Laws 1985, provides:

Sec. 16. The deletion of ORS 517.770 (1)(c) by section 5 of this Act is not intended to affect the reclamation requirements for land that is subject to a contract referred to in ORS 517.770 (1)(c).

517.775 Permit fee for certain landowners and operators. Notwithstanding the provisions of ORS 517.770 (1)(a) and 517.770 (1)(c) (1983 Replacement Part), any landowner or operator conducting surface mining on July 1, 1972, shall pay the permit fee as provided in ORS 517.800. [1971 c.719 §17; 1979 c.435 §4; 1985 c.292 §17]

517.780 Effect on local zoning laws or ordinances; local reclamation permit and fee in lieu of state permit and fee; certain operations exempt. (1) The provisions of ORS 517.750 to 517.955 and the rules and regulations adopted thereunder shall not supersede any zoning laws or ordinances in effect on July 1, 1972; however, if such zoning laws or ordinances are repealed on or after July 1, 1972, the provisions of ORS 517.750 to 517.955 and the rules and regulations adopted thereunder shall be controlling. The department may adopt rules and regulations with respect to matters presently covered by such zoning laws and ordinances.

(2) In lieu of the permit required by ORS 517.790, an operator may conduct surface mining provided such surface mining is done pursuant to a valid permit issued by the appropriate authority of a city or county in which the mining is taking

place, if such authority has adopted an ordinance, approved by the department prior to July 1, 1984, requiring reclamation of land that has been surface mined. If such county ordinance is repealed on or after July 1, 1984, the provisions of ORS 517.750 to 517.955 and the rules and regulations adopted thereunder shall be controlling. The department may adopt rules and regulations with respect to matters presently covered by such zoning laws and ordinances. A county ordinance adopted for the purpose specified in this subsection may apply to surface mining within a city in the county if the city consents thereto. On or after July 1, 1984, surface mining shall be conducted only pursuant to the permit required under ORS 517.790 in all counties which have not received approval of an ordinance prior to that date.

(3) City or county operated surface mining operations which sell less than 5,000 cubic yards of minerals within a period of 12 consecutive calendar months, are exempt from the state mining permit requirements of ORS 517.750 to 517.955 if the city or county adopts an ordinance which shall include a general reclamation scheme establishing the means and methods of achieving reclamation for city or county operated surface mining sites exempted from the state permit requirements by this subsection.

(4) A city or county may determine and collect fees for any function performed pursuant to subsection (2) of this section. However, no such fee shall exceed the amounts prescribed in ORS 517.800. A city or county shall issue a permit for each regulated surface mining activity within its jurisdiction, and all such permittees are subject to the payment of any fee charged by the city or county. However, those activities described in ORS 517.770 are not required to comply with mined land reclamation plans. City or county fees shall be in lieu of any surface mining permit fees assessed by the department. [1971 c.719 §16; 1975 c.724 §3; 1977 c.524 §1; 1979 c.435 §1; 1983 c.20 §1; 1985 c.292 §6]

517.785 Withdrawal of county ordinance approval; effect. (1) The department shall review the implementation of county ordinances adopted pursuant to ORS 517.780 (2) and may withdraw approval of any such ordinance if the department finds that:

(a) Implementation of the ordinance by the county fails to comply with the standards prescribed by ORS 517.750 to 517.955, or any rules promulgated pursuant thereto; and

(b) The county governing body has been notified of such failure to comply and has not

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remedied such failure within a reasonable time specified by the department.

(2) If the department withdraws approval of a county ordinance pursuant to subsection (1) of this section, surface mining in that county thereafter may be conducted only in compliance with ORS 517.750 to 517.955. An order of the department withdrawing approval of a county ordinance is subject to review as provided in ORS 183.310 to 183.550. [1983 c.20 §3; 1985 c.292 §7]

517.790 Operating permit required for surface mining on certain lands; application for permit; proposed reclamation plans. (1) Except as otherwise provided by ORS 517.780 (2), after July 1, 1972, no landowner or operator shall permit or engage in surface mining on land not surface mined on July 1, 1972, without having first applied for and received an operating permit from the department for such surface mining operation. A separate permit shall be required for each separate surface mining operation. Prior to receiving an operating permit from the department the landowner or operator must submit an application on a form provided by the department that contains information considered by the department to be pertinent in its review of the application, including but not limited to:

(a) The name and address of the landowner and the operator and the names and addresses of any persons designated by them as their agents for the service of process.

(b) The materials for which the surface mining operation is to be conducted.

(c) The type of surface mining to be employed in such operation.

(d) The proposed date for the initiation of such operation.

(e) The size and legal description of the lands that will be affected by such operation, and, if more than 10 acres of land will be affected by such operation and if the department considers the conditions to warrant it, a map of the lands to be surface mined that shall include the boundaries of the affected lands, topographic details of such lands, the location and names of all streams, roads, railroads and utility facilities within or adjacent to such lands, the location of all proposed access roads to be constructed in conducting such operation and the names and addresses of the owners of all surface and mineral interests of the lands included within the surface mining area.

(f) If economically practicable, a plan for visual screening by vegetation or otherwise that

will be established and maintained on the lands within such operation for the purpose of screening such operation from the view of persons using adjacent public highways, public parks and residential areas.

(2) The application referred to in subsection (1) of this section must also contain a proposed reclamation plan that is acceptable to and approved by the department. [1971 c.719 §4; 1973 c.709 §2]

517.800 Fees; how determined. (1) Each application for an operating permit under ORS 517.750 to 517.955 shall be accompanied by a fee established by the State Geologist in an amount not to exceed \$415. However, the establishment of any such fee is subject to review by the Executive Department and prior approval by the Joint Committee on Ways and Means, or the Emergency Board if the Legislative Assembly is not then in session.

(2) Annually on the anniversary date of each such operating permit, each holder of an operating permit shall pay to the department a fee established by the State Geologist in an amount not to exceed \$315. However, the establishment of any such fee is subject to review by the Executive Department and prior approval of the Joint Committee on Ways and Means, or the Emergency Board if the Legislative Assembly is not then in session. [1971 c.719 §7; 1973 c.709 §3; 1977 c.524 §2; 1979 c.435 §2; 1981 c.274 §1; 1983 c.88 §1; 1985 c.292 §8]

517.810 Bond or security deposit required of applicant; public and governmental bodies exempt; other security in lieu of bond from landowner.

(1) Before issuing or reissuing an operating permit for any surface mining operation, the department shall require that the applicant for such permit file with it a bond or security deposit in a sum to be determined by the department but not to exceed the total cost for reclamation if the department were to perform the reclamation. The bond or security deposit shall be conditioned upon the faithful performance of the reclamation plan and of the other requirements of ORS 517.750 to 517.955 and the rules adopted thereunder. In lieu of a bond, the applicant may deposit with the department cash or other security in a form satisfactory to the department. In no event shall such bond or deposit of cash or other security exceed the sum of \$2,500 for each site plus \$500 per acre of land to be surface mined under the terms of the operating permit therefor.

(2) Nothing in this section shall apply to any public or governmental agency.

(3) In lieu of the bond or other security required of the applicant in subsection (1) of this

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section, the department may accept a similar security from the landowner, equal to the estimated cost of reclamation as determined by the department, not to exceed \$2,500 for each site plus \$500 per acre.

(4) In lieu of the bond required by subsection (1) of this section, the department may accept a blanket bond covering two or more surface mining sites operated by a single company or owned by a single landowner, in an amount, established by the department, not to exceed the amount of the bonds that would be required for separate sites.

(5) The board shall:

(a) Identify by rule the procedures for the determination of the amount of the bond or other security deposit required of an applicant for an operating permit;

(b) Provide an opportunity for participation by the applicant as part of the procedures; and

(c) Specify by rule the procedures for appeal to the board or department of such determinations. [1971 c.719 §8; 1975 c.724 §4; 1979 c.435 §5; 1983 c.497 §1; 1985 c.291 §1a; 1985 c.292 §9]

Note: Section 2, chapter 291, Oregon Laws 1985, provides:

Sec. 2. Notwithstanding ORS 517.810 (1) and (3), from July 1, 1985, through June 30, 1987, before issuing or reissuing an operating permit for any site which does not have a valid operating permit on July 1, 1985, the applicant shall file with the department a bond or security deposit in a sum to be determined by the department. The bond or security deposit shall not exceed the total cost for reclamation if the department were to perform the reclamation. The bond or security deposit shall be conditioned upon the faithful performance of the reclamation plan and of the other requirements of ORS 517.750 to 517.955 and 517.990 (3), (4) and (5) and the rules adopted thereunder. In lieu of a bond, the applicant may deposit with the department cash or other security in a form satisfactory to the department.

517.820 Extensions of time for submission of proposed reclamation plans; time limit for reclamation completion; consultation with state agencies. (1) Upon good cause shown, the department may grant reasonable extensions of time for the completion by the landowner or operator and the submission to the department of a proposed reclamation plan required by ORS 517.790 (2). Each reclamation plan submitted to the department must provide that all reclamation activities shall be completed within three years after the termination of mineral extraction from the surface mining operation conducted within each separate area for which an operating permit is requested. Each such reclamation plan shall be approved by the department

if it adequately provides for the reclamation of surface-mined lands.

(2) The department, prior to approving a proposed reclamation plan, shall consult with all other interested state agencies and appropriate local planning authorities. [1971 c.719 §5; 1977 c.59 §2]

517.830 Inspection of operating site; approval of application for operating permit; effect of failure to approve or refusal to approve reclamation plan; appeal from denial of plan; transfer of permittee's interest. (1) Upon receipt of an application for an operating permit, the department shall cause the operating site described therein to be inspected. Within 30 days after the date on which such application is received and upon receipt of the required permit fee, the department shall issue the operating permit applied for or, if it considers such application incomplete, return the application to the applicant for correction of the deficiencies indicated by the department.

(2) Failure by the department to act upon the reclamation plan submitted with an application for an operating permit within the 30-day period referred to in subsection (1) of this section shall not be considered a denial by the department of the operating permit applied for. The department, pending final approval of a reclamation plan, may issue a provisional permit subject to reasonable limitations that may be prescribed by the department and conditioned upon the applicant's compliance with the bond and security requirements established by ORS 517.810. For all operations ongoing as of July 1, 1972, a provisional permit shall be issued except in those instances where there is reason to believe that a reclamation plan will not be approved and the operating permit ultimately denied.

(3) If the department refuses to approve a reclamation plan in the form submitted by the applicant, it shall notify the applicant, in writing, of its reasons for the refusal to approve such reclamation plan, including additional requirements as may be prescribed by the department for inclusion in such reclamation plan. Within 60 days after the receipt of such notice, the applicant shall comply with the additional requirements prescribed by the department for such reclamation plan or file with the department a notice of appeal from the decision of the department with respect to such reclamation plan. If a notice of appeal is filed with the department by the applicant, the department may issue a provisional permit to such applicant.

(4) An operating permit issued by the department under this section shall be granted for the

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period required to mine the land described in such permit and shall be valid, subject to payment of the renewal fee, until the surface mining operation described in the operating permit is completed or abandoned. Each such operating permit shall provide that the reclamation plan described therein may be modified upon agreement between the department and the permittee to change the reclamation plan included within the operating permit.

(5) When a person succeeds to the interest of a permittee in any uncompleted surface mining operation by sale, assignment, lease or other means, the department shall release the permittee from the duties imposed upon the permittee under the operating permit if a successor assumes fully the duties of the former permittee with respect to the reclamation of the surface-mined lands. Upon the assumption by such person of the duties of the permittee as provided in this subsection, the department shall transfer the operating permit to the successor upon the approval of such successor's bond or security deposit as required under ORS 517.750 to 517.955. [1971 c.719 §6; 1975 c.724 §5; 1985 c.292 §10]

517.840 Administration and enforcement of ORS 517.750 to 517.955.

The board shall administer and enforce the provisions of ORS 517.750 to 517.955 and may:

(1) Conduct or cause to be conducted investigations, research, experiments and demonstrations and may collect and disseminate information related to surface mining and the reclamation of surface-mined lands.

(2) Cooperate with other governmental and private agencies of this state or of other states and with agencies of the Federal Government, including the reimbursement for any services provided by such agencies to the department at its request.

(3) Apply for, accept and expend public and private funds made available for the reclamation of lands affected by surface mining in accordance with the purposes of ORS 517.750 to 517.955.

(4) In accordance with the applicable provisions of ORS 183.310 to 183.550, adopt rules and regulations considered by the board to be necessary in carrying out the provisions of ORS 517.750 to 517.955. However, such rules and regulations shall be subject to existing rights under any permit, license, lease or other valid authorization granted or issued by a governmental entity. [1971 c.719 §3; 1985 c.292 §11]

517.850 Inspection of permit area. At such reasonable times as the department may elect, the department, after reasonable advance notice has been given to the permittee, may cause the permit area to be inspected to determine if the permittee has complied with the reclamation plan and the rules and regulations of the department. [1971 c.719 §9]

517.860 Failure to comply with reclamation plan; notice of noncompliance; performance period; department may perform work and assess costs against bond or security deposit. (1) If from inspections conducted pursuant to ORS 517.850, or from any other source the department shall determine that the permittee has not or is not complying with the reclamation plan or the rules of the department, it shall give written notice thereof to the permittee, specifically outlining the deficiencies. Within 30 days thereafter, the permittee shall commence action to rectify those deficiencies and diligently shall proceed until they are all corrected. However, the department may extend performance periods for delays occasioned for causes beyond the permittee's control, but only when the permittee is, in the opinion of the department, making a reasonable effort to comply.

(2)(a) If the permittee has not commenced action to rectify the deficiencies within said period of time, and after notification by the department, or

(b) If the permittee has commenced such action and fails to diligently pursue it, or

(c) If reclamation is not properly completed in conformance with the reclamation plan within three years after surface mining on any segment of the permit area has terminated, or

(d) If reclamation is not properly completed in conformance with the reclamation plan upon determination by the department that abandonment of surface mining has occurred on any segment of the permit area, then the surety on the bond or holder of the other security deposit shall pay the amount of the bond or other security deposit required for such completion to the department upon the department's demand. The department may reclaim the surface-mined land in a manner determined by the department including by public or private contractor. If the amount specified in the demand is not paid within 30 days following such demand the Attorney General, upon request of the department, shall institute proceedings to recover the amount specified in the demand.

(3) If the landowner has given security as provided in ORS 517.810 (3) and the permittee is

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in default as specified in subsection (2) of this section, the landowner shall be held responsible for complying with the reclamation plan of the permittee. The department shall furnish written notice of the default to the landowner and require the landowner to complete the reclamation as specified in the permittee's reclamation plan acceptable to the department. If the landowner has not commenced action to rectify the deficiencies within 30 days after receiving notice, or if the landowner fails to diligently pursue reclamation in conformance with the plan, the department may demand payment of the amount of the bond or other security deposit from the surety or other holder and otherwise proceed as provided in subsection (2) of this section, including requesting the Attorney General to institute proceedings to recover the amount specified in the demand.

(4) The department, in performing reclamation of surface-mined land, shall pursue a goal for reclamation designed to be at the level necessary to:

- (a) Remove hazards;
- (b) Protect from drainage problems and pollution;
- (c) Meet local land use requirements for reclamation; and
- (d) Comply with all federal and state laws. [1971 c.719 §10; 1975 c.724 §6; 1977 c.59 §3; 1983 c.497 §2; 1985 c.291 §3]

517.865 Failure to faithfully perform reclamation; insufficient bond; lien; notice; priority; foreclosure. (1) If a permittee fails to faithfully perform the reclamation required by the reclamation plan and if the bond or security deposit required by ORS 517.810 is not sufficient to compensate the department for all reasonably necessary costs and expenses incurred by it in reclaiming the surface-mined land, the amount due shall be a lien in favor of the department upon all property, whether real or personal, belonging to the permittee. However, for any permittee which has a valid operating permit on June 30, 1985, or is first issued a permit after June 30, 1987, the lien shall not exceed \$2,500 for each site plus \$1,500 per acre.

(2) The lien shall attach upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim shall contain a true statement of the demand, the insufficiency of the bond or security deposit to compensate the department and the failure of the permittee to perform the reclamation required.

(3) The lien created by this section is prior to all other liens and encumbrances, except that the lien shall have equal priority with tax liens.

(4) The lien created by this section may be foreclosed by a suit in the circuit court in the manner provided by law for the foreclosure of other liens on real or personal property. [1975 c.724 §8; 1983 c.497 §3; 1985 c.291 §4]

517.870 Adjustment of bond or security deposit of permittee upon satisfactory completion of reclamation work. Upon request of the permittee, and when in the judgment of the department the reclamation has been completed in accordance with the reclamation plan, the permittee shall be notified that the work has been found to be satisfactorily performed and is acceptable and the bond or security deposit of the permittee shall be adjusted accordingly. [1971 c.719 §11]

517.880 Order for suspension of surface mining operation operating without required permit; enjoining operation upon failure of operator to comply; completion of reclamation by department. When the department finds that an operator is conducting a surface mining operation for which an operating permit is required by ORS 517.750 to 517.955, but has not been issued by the department under the provisions of ORS 517.750 to 517.955 or by the rules and regulations adopted thereunder, it may order such operator to suspend such operation until an operating permit has been issued by the department for such surface mining operation or until such time as the department is assured that such operator will comply therewith. If the operator fails or refuses to comply with such order, the Attorney General at the request of the department shall initiate any necessary legal proceeding to enjoin such surface mining operation and to provide for the completion of the reclamation of the lands affected by such operation. [1971 c.719 §12; 1985 c.292 §12]

517.890 Appeals. Appeals from determinations made by the department in carrying out the provisions of ORS 517.750 to 517.955 and the rules and regulations adopted thereunder shall be conducted in the manner provided by the applicable provisions of ORS 183.310 to 183.550 for appeals from orders in contested cases. [1971 c.719 §13; 1985 c.292 §13]

517.900 Information submitted by operators and landowners is confidential. Operators' reports and other information submitted by operators and landowners as required under ORS 517.750 to 517.955, with the exception of the reclamation plan as approved by the department, shall be confidential. [1971 c.719 §14; 1985 c.292 §14]

517.905**MINERAL RESOURCES****(Nonaggregate Mineral Surface Mines)**

517.905 Applicability of ORS 517.910 to 517.950. (1) ORS 517.910 to 517.950 only apply to surface mines for nonaggregate minerals that do not have a valid operating permit, a certificate of limited exemption or a certificate of total exemption based on the inactivity of a limited exempt site on August 16, 1981.

(2) ORS 517.910 to 517.950 do not apply to placer mining for gold or silver in which less than 5,000 cubic yards of material per year are extracted. [1981 c.622 §15]

517.910 Definitions for ORS 517.910 to 517.950. Notwithstanding ORS 517.750 (9), for the purposes of ORS 517.910 to 517.950:

(1) "Reclamation" means the employment in a surface mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the surface mining operation and to provide for the rehabilitation of any such surface resources through the use of plant cover, soil stability techniques, and through the use of measures to protect the surface and subsurface water resources, including but not limited to domestic water use and agricultural water use, and other measures appropriate to the subsequent beneficial use of such mined and reclaimed lands.

(2) "Nonaggregate minerals" means coal and metal-bearing ores, including but not limited to ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome, copper or mercury. [1981 c.622 §3]

517.915 Additional operating permit requirements for nonaggregate mineral mines; denial of permit if reclamation not possible. (1) In addition to any other provision of law, the department shall not issue an operating permit until:

(a) The department has received a reclamation plan that contains but is not limited to:

(A) A description of the proposed mining operation;

(B) A description of what is to be mined;

(C) The present use of the land, the planned subsequent beneficial use of the land and a list of plant species to be established;

(D) The measures that will adequately conserve the quantity and quality of the affected aquifers;

(E) A description of any toxic or radioactive materials known to be present in the ore, spoil, tailings, overburden or any other material involved in the mining operation and their approximate concentrations;

(F) A description of how the materials described in subparagraph (E) of this paragraph will be handled during mining and reclamation;

(G) Environmental baseline information as may be required by the department; and

(H) The name and address of the landowner, the owner of the surface estate, the operator and any parent corporations of the operator.

(b) The department has received a performance bond as it may require.

(c) The department finds that reclamation is possible and that the reclamation plan as approved will achieve the reclamation of affected lands.

(2) The reclamation plan, minus proprietary information, is a public document.

(3) Notwithstanding ORS 517.770 (2), if the department finds that reclamation cannot be accomplished it shall not issue an operating permit.

(4) The department shall obtain, whenever possible, a list of plant species suitable for reseeding in the area pursuant to a reclamation plan and comments on the feasibility of permanent revegetation from the soil and water conservation district in which the mined land is situated.

(5) The department shall consult with the soil and water conservation district in which the mined land is situated regarding the feasibility of reclamation, with particular attention to possible impacts on ground water aquifers. [1981 c.622 §§4, 5, 9; 1985 c.292 §18]

517.920 Permit application fees under ORS 517.910 to 517.950. Each application for an operating permit under ORS 517.910 to 517.950 shall be accompanied by a fee sufficient to cover the costs of the department in processing the application, as determined by the department. [1981 c.622 §8]

517.925 Time limit for action on permit application. The department shall have 120 days to act upon a completed permit application. [1981 c.622 §6]

517.930 Department inspection of nonaggregate mineral mine. Notwithstanding ORS 517.850, if the department has reason to believe that the provisions of an operating permit are being violated or that a surface mining operation is being conducted without a valid operating permit, it may inspect such surface mining areas without prior notice. [1981 c.622 §7]

517.935 Limit on reclamation lien by department against nonaggregate mineral permittee. Notwithstanding ORS 517.865, for

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the purposes of ORS 517.910 to 517.950 the amount due on the lien under ORS 517.865 (1) shall not exceed \$10,000 per acre. [1981 c.622 §12]

517.940 Reclamation expenditure by department. Notwithstanding ORS 517.860, for the purposes of ORS 517.910 to 517.950 the expenditure by the department for reclamation not completed by the permittee shall not exceed \$10,000 per acre. [1981 c.622 §11; 1985 c.291 §5]

517.945 Reclamation to be done on abandoned mine before subsequent permit granted. An operator who wilfully abandons a surface mining site for nonaggregate minerals shall not be issued another operating permit until the operator has completed reclamation at the abandoned mine site. [1981 c.622 §13]

517.950 Bond or security deposit for nonaggregate mineral operating permit.

Notwithstanding ORS 517.810, for the purposes of ORS 517.910 to 517.950 the bond or security deposit required by ORS 517.750 to 517.955 shall not exceed \$10,000 per acre of land to be surface mined under the terms of the operating permit. [1981 c.622 §10; 1985 c.292 §15]

517.955 Legislative intent not to assume exclusive jurisdiction. The Legislative Assembly declares that ORS 517.910 to 517.950 are not intended to provide the legal basis for assumption by the State of Oregon of exclusive jurisdiction over the environmental regulation of surface coal mining and reclamation operations described in section 503 of the Federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1253). [1981 c.622 §16]

PENALTIES

517.990 Penalties. (1) Violation of any rules, regulations and orders made pursuant to ORS 517.540 (4) is punishable, upon conviction, by a fine of not less than \$25 nor more than \$250, or by imprisonment in the county jail for not more than 60 days, or both.

(2) Any person conducting a dredging operation in violation of the provisions of ORS 517.611 to 517.700 is guilty of a misdemeanor.

(3) Any landowner or operator who shall conduct a surface mining operation, for which a permit is required by ORS 517.750 to 517.900, without a valid operating permit therefor shall be punished, upon conviction, by a fine of not more than \$1,000.

(4) Violation of any provision of ORS 517.750 to 517.900, or any rules promulgated pursuant thereto, or of any conditions of an operating permit is punishable, upon conviction, by a fine of not more than \$1,000.

(5) Violation of ORS 517.910 to 517.955, or any rules promulgated pursuant thereto, or of any conditions of an operating permit for a nonaggregate surface mining operation is punishable, upon conviction, by a fine of not more than \$10,000.

(6) Notwithstanding any other provision of the law, any landowner or operator who conducts a nonaggregate surface mining operation, without a valid operating permit as required by ORS 517.910 to 517.955 shall be punished, upon conviction, by a fine of not more than \$10,000. [Amended by 1953 c.188 §2; subsection (3) enacted as 1957 c.580 §11; 1971 c.743 §398; subsection (4) enacted as 1971 c.719 §18; subsections (5) and (6) enacted as 1981 c.622 §14; 1985 c.292 §1]

CHAPTERS 518 AND 519**[Reserved for expansion]**

CONSERVATION OF GAS AND OIL**520.025****DEFINITIONS**

520.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "And" includes "or" and "or" includes "and."

(2) "Board" means the governing board of the State Department of Geology and Mineral Industries.

(3) "Condensate" means liquid hydrocarbons that were originally in the gaseous phase in the reservoir.

(4) "Field" means the general area underlaid by one or more pools.

(5) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subsection (6) of this section, including condensate originally in the gaseous phase in the reservoir.

(6) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, which are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(7) "Person" means any natural person, partnership, corporation, association, receiver, trustee, guardian, fiduciary, executor, administrator, representative of any kind, or the State of Oregon and any of its political subdivisions, boards, agencies or commissions.

(8) "Pool" means an underground reservoir containing a common accumulation of oil and natural gas. A zone of a structure which is completely separated from any other zone in the same structure is a pool.

(9) "Owner" means a person who has the right to drill into and to produce from any pool and to appropriate the oil or gas he produces therefrom either for others, for himself or for himself and others.

(10) "Producer" means the owner of one or more wells capable of producing oil or gas or both.

(11) "Protect correlative rights" means that the action or regulation by the board affords a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in his tract or tracts or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent.

(12) "Unit area" means one or more pools or parts thereof under unit operation pursuant to ORS 520.260 to 520.330 and subsection (2) of 520.230.

(13) "Well" means a well drilled in search of oil or gas, but shall not include core test wells, stratigraphic test wells, seismic test wells or wells drilled for information purposes only as distinguished from wells drilled for the purpose of producing oil or gas if found.

(14) "Underground reservoir" means any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom, but excluding a "pool."

(15) "Underground storage" means the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir. [1953 c.667 §1; 1961 c.671 §15; 1973 c.276 §1; 1977 c.296 §1]

520.010 [Repealed by 1953 c.667 §21]

520.015 "Waste" defined. "Waste" in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the petroleum industry. It includes:

(1) Underground waste and the inefficient, excessive or improper use or dissipation of reservoir energy, including gas energy and water drive, of any pool; and the locating, spacing, drilling, equipping, operating or producing of any oil well or gas well in a manner which results or tends to result in reducing the quantity of oil or gas ultimately recoverable from any pool;

(2) Surface waste and the inefficient storing of oil and the locating, spacing, drilling, equipping, operating or producing of oil wells or gas wells in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas. [1953 c.667 §2]

520.020 [Repealed by 1953 c.667 §21]

GENERALLY

520.025 Permit for drilling oil or gas well or using well for gas storage; application form; grounds for granting or denying permit; disposition of fees. (1) No person proposing to drill any well for oil or gas or proposing to drill or use any well for underground storage of gas in an underground reservoir shall commence the drilling or use until the person has applied to the State Geologist upon a form prescribed by the State Geologist for a permit to operate the well, paid to the board a fee of \$100 for each such well, posted any bond that may be required pursuant to ORS 520.095 (1) and obtained the permit to drill the well pursuant to subsection (3) of this section.

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(2) The State Geologist shall require that the form indicate:

(a) The location of the well.

(b) The name and address of the mineral owner, surface owner, operator and any other person responsible for the conduct of the drilling operations.

(c) The elevation of the well above sea level.

(d) Such information as is necessary to determine whether the method of drilling and equipment to be used in drilling the well comply with applicable laws and rules.

(e) Such other relevant information as the State Geologist deems reasonably necessary to effectuate the purpose of this chapter.

(3)(a) If upon receipt of the application the State Geologist determines that the method and equipment to be used by the applicant in drilling or using the well comply with applicable laws and rules, the State Geologist shall issue the permit.

(b) The State Geologist may refuse to issue a permit or revoke a permit issued pursuant to this subsection if the State Geologist determines that methods or equipment to be used or being used in drilling or using the well do not comply with applicable laws or rules.

(4) All moneys paid to the board under this section shall be deposited by the board with the State Treasurer for credit to and the benefit of the Department of Geology and Mineral Industries. [1953 c.667 §5; 1973 c.276 §2; 1977 c.296 §3; 1981 c.146 §1]

520.030 [Repealed by 1953 c.667 §21]

520.035 Waste of oil and gas prohibited. The waste of oil and gas, as defined in ORS 520.015, hereby is prohibited. [1953 c.667 §3]

520.040 [Repealed by 1953 c.667 §21]

520.045 Determination of waste of oil or gas. The board shall make such inquiries as it may think proper to determine whether or not waste over which it has jurisdiction exists or is imminent. In the exercise of such power the board may:

(1) Collect data.

(2) Make investigations and inspections.

(3) Examine properties, leases, papers, books and records, including drilling records and logs.

(4) Examine, check, test and gauge oil and gas wells and tanks.

(5) Hold hearings.

(6) Provide for the keeping of records and the making of reports.

(7) Take such action as may be reasonably necessary to enforce this chapter. [1953 c.667 §6]

520.050 [Repealed by 1953 c.667 §21]

520.055 General jurisdiction and authority of board; tidal lands. (1) The board has jurisdiction and authority over all persons and property necessary to enforce effectively this chapter and all other laws relating to the conservation of oil and gas.

(2) In addition to and not in lieu of any other powers granted under this chapter, the Department of Geology and Mineral Industries and its governing board may in compliance with ORS 520.105 promulgate reasonable rules, regulations and orders necessary to regulate geological, geophysical and seismic surveys on, and operations to remove oil, gas and sulphur from the tidal submerged and submersible lands of this state under ORS 274.705 to 274.860. [1953 c.667 §4; subsection (2) enacted as 1961 c.619 §40; 1969 c.594 §57]

520.060 [Repealed by 1953 c.667 §21]

520.065 [1953 c.667 §8; renumbered 520.210]

520.070 [Repealed by 1953 c.667 §21]

520.075 [1953 c.667 §9; 1961 c.671 §16; renumbered 520.220]

520.080 [Repealed by 1953 c.667 §21]

520.085 [1953 c.667 §10; 1961 c.671 §17; renumbered 520.230]

520.090 [Repealed by 1953 c.667 §21]

520.095 Rules and orders; confidentiality of logs; notice and hearing. The board may make, in compliance with ORS 183.310 to 183.550, such reasonable rules and orders as may be necessary in the proper administration and enforcement of this chapter, including rules and orders for the following purposes:

(1) To require the drilling, casing and plugging of wells to be done in such a manner as to prevent the escape of oil or gas out of one stratum to another; to prevent the intrusion of water into oil or gas strata; to prevent the pollution of fresh water supplies by oil, gas or salt water; and to require reasonable bond conditioned upon compliance with applicable laws and rules and upon the performance of the duty to plug each dry or abandoned well.

(2) To compel the filing of logs, including electrical logs, if any are taken, drilling records, typical drill cuttings or cores, if cores are taken, in the office of the State Geologist within 20 days from the date of completion or abandonment of any well. For a period of two years from

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the date of abandonment or completion, such logs or other records or drill cuttings or cores shall be kept confidential and shall not be accessible to public inspection. However, the two-year confidentiality period may be extended for such time as the State Geologist determines is necessary for the reasonable protection of the economic interests of the person who has engaged in the drilling activity.

(3) To prevent wells from being drilled, operated and produced in such a manner as to cause injury to neighboring leases or property.

(4) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities, and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.

(5) To require the operation of wells with efficient gas-oil ratios, and to fix ratios.

(6) To prevent blowouts, caving and seepage in the same sense that conditions indicated by such terms are generally understood in the oil and gas business.

(7) To prevent fires.

(8) To identify the ownership of all oil and gas wells, producing leases, tanks, plants, structures and all storage equipment and facilities.

(9) To regulate the "shooting" and chemical treatment of wells.

(10) To regulate secondary recovery methods, including the introduction of gas, air, water or other substance into producing formations.

(11) To regulate the spacing of wells.

(12) To require the filing currently of information as to the volume of oil and gas, or either of them, produced and saved from the respective properties.

(13) To require the filing with the State Geologist of a notice of intention to drill stratigraphic test wells, core test wells, seismic test wells or wells drilled only for information purposes, giving the location thereof, and to require the filing with the State Geologist of a plugging report within 60 days after completion of such well. No fee shall be required in connection with the filing of such notices and reports.

(14) To require the disposal of salt water and oil field waste so as not to damage land or property unnecessarily.

(15) To require that wells drilled for oil or gas be logged adequately enough to identify the geologic formations penetrated by the wells.

(16) To regulate the underground storage of natural gas and the drilling and operation of any wells required therefor.

(17) To require the reclamation of drill sites and the filling of sumps for beneficial subsequent use. [1953 c.667 §7; 1961 c.671 §18; 1973 c.276 §3; 1977 c.296 §2; 1981 c.146 §2]

520.100 [Repealed by 1953 c.667 §21]

520.105 Administrative procedure. (1) The board shall, in accordance with ORS 183.310 to 183.550, from time to time prescribe reasonable rules governing practice and procedure before it.

(2) No rule, regulation or order, except in emergency, shall be made by the board without a prior public hearing upon at least 10 days' notice. Such public hearings shall be held at such times and places as may be designated by the board. However, in respect to matters of local interest such hearings shall be held at the county seat of the county wherein the greater part of real or personal property affected is situated. Any interested person shall be entitled to be heard at such hearings.

(3) When an emergency requiring immediate action is found to exist, the board may in compliance with ORS 183.310 to 183.550 issue an emergency order without notice or hearing, effective upon promulgation. However, no emergency order shall remain effective for more than 15 days.

(4) Notice as required by this chapter shall be given in compliance with ORS 183.310 to 183.550, except as follows:

(a) In respect to matters of statewide interest, by publication in a newspaper of general circulation in Multnomah, Harney, Jackson and Marion Counties.

(b) In respect to matters of local interest, by publication in a newspaper of general circulation in the county or counties wherein the affected lands are located.

(c) In respect to proceedings before the board where persons are named therein, by personal service upon such persons thereto. Personal service may be made by any agent of the board or by any officer authorized by law to serve process and shall be made in the manner provided by law for the service of summons in civil actions in the courts of this state. Proof of service by an agent of the board shall be made by such person's affidavit and by an officer authorized by law to serve process by his lawful certificate.

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from damages in any aerial spraying contracts entered into by it.

527.520 [Repealed by 1975 c.771 §33]

527.530 [Repealed by 1975 c.302 §15]

527.540 Operation of aircraft in violation of ORS 527.510 prohibited. No person shall operate an aircraft in violation of ORS 527.510.

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ACT**

527.610 Short title. ORS 527.610 to 527.730 and 527.990 (1) are known as the Oregon Forest Practices Act. [Formerly 527.010]

527.620 Definitions for ORS 527.610 to 527.730. As used in ORS 527.610 to 527.730 and 527.990 (1):

(1) "State Forester" means the State Forester or his duly authorized representative.

(2) "Operator" means any person who conducts an operation.

(3) "Board" means the State Board of Forestry.

(4) "Forest land" means land for which a primary use is the growing and harvesting of forest tree species.

(5) "Operation" means any commercial activity relating to the growing, harvesting or processing of forest tree species.

(6) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forest land, including the state and any political subdivision thereof.

(7) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forest land. [1971 c.316 §3]

527.630 Policy. (1) Recognizing that the forest makes a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life, it is hereby declared to be the public policy of the State of Oregon to encourage forest practices that maintain and enhance such benefits and such resources, and that recognize varying forest conditions.

(2) It is recognized that operations on forest land are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forest lands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.730 and 527.990 and to provide a mechanism for harmonizing, and helping to implement and enforce laws and regulations relating to forest land, it is declared to be in the public interest to vest in the board authority to develop and enforce regional rules:

(a) Designed to assure the continuous growing and harvesting of forest tree species and to protect the soil, air and water resources, including but not limited to streams, lakes and estuaries; and

(b) To achieve coordination among state agencies which are concerned with the forest environment. [1971 c.316 §4]

527.640 Forest regions. The board shall establish a number of forest regions, but not less than three, necessary to achieve the purposes described in ORS 527.630. [1971 c.316 §6]

527.650 Forest practice committees; members; qualifications; appointment; terms. (1) The board shall establish a forest practice committee for each forest region established pursuant to ORS 527.640. Each such committee shall consist of nine members, a majority of whom must reside in the region. Members of each committee shall be qualified by education or experience in natural resource management and not less than two-thirds of the members of each committee shall be private landowners, private timber owners or authorized representatives of such landowners or timber owners who regularly engage in operations.

(2) Members of forest practice committees shall be appointed by the board for three-year terms. Appointments under this subsection shall be made by the board within 60 days after July 1, 1972. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term. Each such committee shall select a chairman from among its members. A staff member of the State Forestry Department shall be designated by the State Forester to serve as the secretary, without voting power, for each such committee.

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(3) Notwithstanding the terms of the committee members specified by subsection (2) of this section, of the members first appointed to each such committee:

(a) Three shall serve for a term of one year.

(b) Three shall serve for a term of two years.

(c) Three shall serve for a term of three years. [1971 c.316 §7]

527.660 Committees to recommend rules. Each forest practice committee shall recommend forest practice rules appropriate to the forest conditions within its region to the board. [1971 c.316 §8]

527.665 Notice of reforestation requirements to be given in forest land transfers; effect of failure to notify; damages. (1) In any transaction for the conveyance of an ownership interest in forest land, the transferor must provide to the transferee, prior to the date of execution of the conveyance, written notice of any reforestation requirements imposed upon the land pursuant to the Oregon Forest Practices Act.

(2) The failure of the transferor to comply with subsection (1) of this section does not invalidate an instrument of conveyance executed in the transaction. However, for any such failure the transferee may bring against the transferor an appropriate action to recover the costs of complying with the reforestation requirements. If the transferee prevails in any such action, the transferee is entitled to costs and disbursements and reasonable attorney fees at trial and on appeal. [1983 c.759 §4]

527.670 Commencement of operations; notification of State Forester required; changes in operations. (1) The board shall designate the types of operations for which notice shall be required under this section.

(2) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester as required by subsection (3) of this section. The notification required by this subsection shall be filed with the State Forester who shall then notify the Department of Revenue and the county assessor.

(3) The notification required by subsection (2) of this section shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt

of such notice, the State Forester shall mail a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall also mail to the operator, the timber owner and the landowner a copy of the rules applicable to the proposed operation.

(4) An operator, timber owner or landowner, whichever filed the original notification, shall notify the State Forester of any subsequent change in the information contained in the notification. [1971 c.316 §9]

527.680 Violation by operator; citation; order to cease violation; order to repair damage; temporary order where violation continuing; service on operator.

(1) Whenever the State Forester determines that an operator has committed a violation under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation issued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as the result of such violation.

(2) Whenever a citation is served pursuant to subsection (1) of this section, the State Forester:

(a) Shall issue and serve upon the landowner or operator or authorized representative an order directing that the landowner or operator cease further violation. If the order is served upon an operator, the State Forester shall cause a copy of such order to be mailed or delivered to the timber owner and landowner; and

(b) May issue and serve an order upon the landowner or operator and shall cause a copy of such order to be mailed or delivered to the timber owner and landowner, directing the landowner or operator, where practical and economically feasible, to make reasonable efforts to repair the damage or correct the unsatisfactory condition specified in the citation within a period specified by the State Forester.

(3) In the event the order issued under paragraph (a) of subsection (2) of this section has not been complied with, and the violation specified in such order is resulting in continuing damage, the State Forester by temporary order, may direct the landowner or operator to cease any

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further activity in that portion of the operation that is resulting in such damage. Such temporary order shall be in effect until the date of the expiration of the period as prescribed in subsection (4) of this section or until the date that the violation ceases, whichever date occurs first.

(4) A temporary order issued under subsection (3) of this section shall be served upon the landowner or operator or authorized representative, and the State Forester shall cause a copy of such temporary order to be mailed or delivered to the operator, timber owner and landowner. If requested by the operator, timber owner or landowner, the board, following the appeal procedures of ORS 527.700, must hold a hearing on the temporary order within five working days after the receipt by the board of the request. A temporary order issued and served pursuant to subsection (3) of this section shall remain in effect not more than five working days after such hearing unless the order is sooner affirmed, modified or revoked by the board. [1971 c.316 §10; 1983 c.759 §1]

527.690 Failure to comply with order to repair damage; estimate of cost of repair; notification; board may order repair completed; cost of repair as lien upon operator, timber owner or landowner. (1) In the event an order issued pursuant to ORS 527.680 (2)(b) directs the repair of damage or correction of an unsatisfactory condition, and if the operator or landowner does not comply with the order within the period specified in such order and the order has not been appealed to the board within 30 days, the State Forester based upon a determination by the forester of what action will best carry out the purposes of ORS 527.630 shall:

(a) Maintain an action in the Circuit Court for Marion County or the circuit court for the county in which the violation occurred for an order requiring the landowner or operator to comply with the terms of the forester's order or to restrain violations thereof; or

(b) Estimate the cost to repair the damage or the unsatisfactory condition as directed by the order and shall notify the operator, timber owner and landowner in writing of the amount of the estimate. Upon agreement of the operator, timber owner or the landowner to pay the cost, the State Forester may proceed to repair the damage or the unsatisfactory condition. In the event approval of the expenditure is not obtained within 30 days after notification to the operator, timber owner and landowner under this section, the State Forester shall present to the board the alleged violation, the estimate of the expenditure

to repair the damage or unsatisfactory condition and the justification for the expenditure.

(2) The board shall review the matter presented to it pursuant to subsection (1) of this section and shall determine whether to authorize the State Forester to proceed to repair the damage or correct the unsatisfactory condition and the amount authorized for expenditure. The board shall afford the operator, timber owner or landowner the opportunity to appear before the board for the purpose of presenting facts pertaining to the alleged violation and the proposed expenditure.

(3) If the board authorizes the State Forester to repair the damage or correct the unsatisfactory condition, the State Forester shall proceed, either with forces of the State Forester or by contract, to repair the damage or correct the unsatisfactory condition. The State Forester shall keep a complete account of direct expenditures incurred, and upon completion of the work, shall prepare an itemized statement thereof and shall deliver a copy to the operator, timber owner and landowner. In no event shall the expenditures exceed the amount authorized by subsection (2) of this section. An itemized statement of the direct expenditures incurred by the State Forester, certified by the State Forester, shall be accepted as prima facie evidence of such expenditures in any proceeding authorized by this section.

(4) The expenditures in cases covered by this section shall constitute a general lien upon the real and personal property of the operator, timber owner and landowner within the county in which the damage occurred. A written notice of the lien, containing a statement of the demand, the description of the property upon which the expenditures were made and the name of the parties against whom the lien attaches, shall be certified under oath by the State Forester and filed in the office of the county clerk of the county or counties in which the expenditures were made within six months after the date of delivery of the itemized statement referred to in subsection (3) of this section, and may be foreclosed in the manner provided in ORS chapter 88.

(5) Liens provided for in this section shall cease to exist unless suit for foreclosure is instituted within six months from the date of filing under subsection (4) of this section. [1971 c.316 §11; 1981 c.757 §10; 1983 c.28 §1]

527.700 Appeals from orders of State Forester; appeals committee; hearings; judicial review. (1) Any operator, timber owner or landowner affected by any finding or

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order of the State Forester issued pursuant to ORS 527.680 or 527.690 may appeal to the State Board of Forestry within 30 days after issuance of the order.

(2) The board may delegate to an appeals committee, comprised of members of the board, the authority to hear and decide appeals taken under this section. The board shall designate the appeals committee in the same manner that other committees of the board are designated. Any other member of the board is authorized to serve as an alternate to the appeals committee in the absence or incapacity of a member of the committee upon appointment by the chairman of the board. The board may establish such rules as it deems appropriate for the hearing of appeals.

(3) A request for a judicial review of any decision of the appeals committee may be taken by any operator, timber owner or landowner affected by such decision. The review shall be taken to the Circuit Court for Marion County or the circuit court of the county in which the land or any part thereof affected by the decision is located and must be taken within 30 days from the date of the decision by the appeals committee of the State Board of Forestry. [Formerly 527.240; 1983 c.28 §2]

527.710 Duties and powers of board. The board, in carrying out the purpose of ORS 527.610 to 527.730 and 527.990 (1):

(1) Where necessary to accomplish the purpose specified in ORS 527.630, shall promulgate, in accordance with applicable provisions of ORS 183.310 to 183.550, rules to be administered by the State Forester establishing minimum standards for forest practices in each region or subregion, relating to the following:

- (a) Reforestation of forest land economically suitable therefor;
- (b) Road construction and maintenance operations on forest land;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals on forest land; and
- (e) Disposal of slashing on forest land.

(2) Before promulgating such rules, shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630; and

(3) May enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630. [1971 c.316 §5]

527.720 Purposes of rules; presumption of compliance with rules of other agencies. (1) Rules promulgated pursuant to ORS 527.710, in order to achieve the purpose of ORS 527.630, shall be designed to meet the objectives of the rules and regulations of other agencies in so far as they pertain to forest land.

(2) An operation performed in compliance with rules of the board designed to meet the rules and regulations of other agencies, and when such rules so designed have been approved by the other agencies pursuant to the review required by ORS 527.710 (2), shall be presumed to have complied with such other rules and regulations. [1971 c.316 §5a]

527.722 Restrictions on local government adoption of rules regulating forest operations; exceptions. (1) Except as provided in subsection (2) of this section, no unit of local government shall adopt any rules, regulations or ordinances regulating the conduct on forest lands of forest operations governed by the Oregon Forest Practices Act or rules promulgated thereunder.

(2) Notwithstanding subsection (1) of this section, a city may adopt rules, regulations or ordinances regulating the conduct on forest lands of forest operations within city boundaries if those rules, regulations or ordinances establish standards equal to or more stringent than those established by the Oregon Forest Practices Act or rules promulgated thereunder. [1979 c.400 §2]

527.724 Forest operations to comply with air and water pollution control rules and standards; effect of violation. Any forest operations on forest lands within this state shall be conducted in full compliance with the rules and standards of the Environmental Quality Commission relating to air and water pollution control. In addition to all other remedies provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available under statute or rule to the Department of Environmental Quality or the Environmental Quality Commission. [1979 c.400 §3]

527.725 [1975 c.185 §5; repealed by 1975 c.185 §6]

527.726 Local government forest operations restrictions not to interfere with county planning duties. (1) Nothing in ORS 527.722 and 527.724 is intended to preclude counties from performing their planning duties pursuant to ORS 197.005 to 197.430 and 197.610 to 197.850 with respect to forested lands by:

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(a) Designating in comprehensive plans forested lands to be conserved in accordance with the state-wide planning goals;

(b) Zoning forested lands for uses other than or complementary to commercial growing and harvesting of forest tree species in implementing a comprehensive plan; or

(c) Adopting rules, regulations or ordinances regulating forest operations on those forested lands zoned for primary uses other than the commercial growing and harvesting of forest tree species in accordance with the use or purpose for which those lands have been zoned.

(2) As used in this section, "forested lands" means those lands upon which forest tree species are growing. [1979 c.400 §4; 1983 c.827 §55]

527.730 Conversion of forest land to other uses. Nothing in ORS 527.610 to 527.730 and 527.990 (1) shall prevent the conversion of forest land to any other use. [1971 c.316 §12]

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527.990 Penalties. (1) Violation of ORS 527.670 or any rule promulgated under ORS 527.710 is punishable, upon conviction, as a misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

(2) Violation of ORS 527.260 (1) is a misdemeanor. Violation of ORS 527.260 (3) is punishable, upon conviction, by a fine of not more than \$250 or by imprisonment in the county jail for not more than 60 days, or both.

(3) Violation of ORS 527.540 is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment in the county jail for not more than 30 days, or both. [Amended by 1953 c.262 §2; 1971 c.316 §14]

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DIVISION 24

Repealed by FB 22,
f. 3-26-70, cf. 4-25-70]

FOREST PRACTICES RULES**Western Oregon Small Tract Optional Tax****Determination of Forest Land**

629-24-005 [FB 14, f. 11-18-65;
Repealed by FB 44, f. & cf. 1-9-76]

Determination of Forest Land

629-24-007 [FB 42(Temp),
f. 9-5-75, cf. 9-13-75;
FB 44, f. & cf. 1-9-76;
Suspended by FB 51(Temp),
f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Suitability of Forest Land for Classification

629-24-010 [FB 14, f. 11-18-65;
Repealed by FB 44, f. & cf. 1-9-76]

Primary Utilization of Forest Land

629-24-015 [FB 14, f. 11-18-65;
Repealed by FB 44, f. & cf. 1-9-76]

Owner

629-24-020 [FB 14, f. 11-18-65;
FB 51(Temp), f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Determination of Market Values for Other Uses

629-24-025 [FB 14, f. 11-18-65;
Repealed by FB 22,
f. 3-26-70, cf. 4-25-70]

Waiver of Relationship Limitation

629-24-030 [FB 14, f. 11-18-65;
FB 51(Temp), f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Ownership Plat Requirement

629-24-032 [FB 42(Temp),
f. 9-5-75, cf. 9-13-75;
FB 44, f. & cf. 1-9-76;
FB 51(Temp), f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Processing of Applications

629-24-035 [FB 14, f. 11-18-65;
FB 51(Temp), f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Certificate of Eligibility

629-24-040 [FB 14, f. 11-18-65;

Change of Ownership

629-24-045 [FB 14, f. 11-18-65;
Repealed by FB 22,
f. 3-26-70, cf. 4-25-70]

Determination of Land Eligibility

629-24-050 [FB 14, f. 11-18-65;
FB 51(Temp), f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Definition of "Cultured Christmas Trees"

629-24-052 [FB 42(Temp),
f. 9-5-75, cf. 9-13-75;
FB 44, f. & cf. 1-9-76;
Suspended by FB 51(Temp),
f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Minimum Area for Site Class Determination

629-24-055 [FB 14, f. 11-18-65;
FB 51(Temp), f. & cf. 10-13-77;
Repealed by FB 3-1978, f. & cf. 1-6-78]

Forest Practice Rules**All Regions****General****Definitions**

629-24-101 As used in these rules, unless otherwise required by context:

(1) "Established seedling" means a seedling of acceptable forest tree species which has survived two years in the site.

(2) "Class I streams" means waters which are valuable for domestic use, are important for angling or other recreation, and/or used by significant numbers of fish for spawning, rearing, or migration routes. Stream flows may be either perennial or intermittent during parts of the year.

(3) "Class II streams" means any headwater streams or minor drainages that generally have limited or no direct value for angling or other recreation. They are used by only a few, if any, fish for spawning or rearing. Their principal value lies in their influence on water quality or quantity downstream in Class I waters. Stream flow may be either perennial or intermittent.

(4) "Sapling" means live trees of commercial species, less than 11" DBH, of good form and vigor.

(5) "Forest land" means land for which a primary use is the growing and harvesting of forest tree species.

(6) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.

(7) "Buffer strip" means a protective area adjacent to an area requiring special attention or protection.

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(8) "Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff in to the vegetation and duff so that it does not gain the volume and velocity which causes soil movement and erosion.

(9) "Chemicals" means and includes herbicides, insecticides, rodenticides, fertilizers, and adjuvants.

(10) "Herbicides" means any substances used to destroy, repel, or mitigate any weed or to prevent or retard any undesirable plant growth.

(11) "Insecticides" means any substances used to destroy, repel, or mitigate any insect.

(12) "Rodenticides" means any substance used to destroy small mammals.

(13) "Fertilizers" means any substance or any combination or mixture of substances designed for use principally as a source of plant food.

(14) "Contaminate" means the presence in the atmosphere, soil, or water of sufficient quantities of chemicals as may be injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, or recreational uses, or to livestock, wildlife, fish, or other aquatic life.

(15) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(16) "Filling" means the deposit by artificial means of any materials, organic or inorganic.

(17) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.

(18) "Active roads" are roads currently being used or maintained for the purpose of removing commercial forest products.

(19) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.

(20) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.

(21) "High risk areas" are lands determined by the State Forester to have a significant potential for destructive mass soil movement or stream damage because of topography, geology, biology, soils, or intensive rainfall periods.

(22) "High risk sites" are specific locations determined by the State Forester within high risk areas. A high risk site may include but is not limited to: slopes greater than 65%, steep headwalls, highly dissected land formations, areas exhibiting frequent high intensity rainfall periods, faulting, slumps, slides, or debris avalanches.

(23) "Prior approval" means written approval of the State Forester given for specific forest practices before the operation begins. Where timing is critical, verbal permission may be granted followed by immediate written confirmation.

(24) "Written Plan" means a plan submitted by the operator and/or the landowner, for written approval by the State Forester, which describes how the operation will be

conducted to comply with the applicable rules and regulations of the Forest Practices Act. A written plan shall contain specific information applicable to the operation regarding location of roads and landings, road and landing design, construction techniques, drainage systems, disposal of waste materials, felling and bucking, buffer strips, yarding systems and layout, stream protection measures, and post-operation site stabilization measures. Modifications to a written plan may be verbally approved followed by immediate written confirmation.

(25) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas.

(26) "Coastal shorelands" means all lands designated in local comprehensive plans as coastal shorelands within the area described as:

(a) All lands west of the Oregon Coast Highway as described in ORS 366.235, except that:

(A) In Tillamook County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Brooten Road (County Road 887) northerly from its junction with the Oregon Coast Highway to Pacific City, McPhillips Drive (County Road 915) northerly from Pacific City to its junction with Sandlake Road (County Road 871), Sandlake-Cape Lookout Road (County Road 871) northerly to its junction with Cape Lookout Park, Netarts Bay Drive (County Road 665) northerly from its junction with the Sandlake-Cape Lookout Road (County Road 871) to its junction at Netarts with State Highway 131 to its junction with the Oregon Coast Highway near Tillamook.

(B) In Coos County, only the lands west of a line formed by connecting the western boundaries of the following described roadways: Oregon State 240, Cape Arago Secondary (FAS 263) southerly from its junction with the Oregon Coast Highway to Charleston; Seven Devils Road (County Road 33) southerly from its junction with Oregon State 240 (FAS 263) to its junction with the Oregon Coast Highway, near Bandon; and

(b) All lands within an area defined by a line measured horizontally:

(A) 1,000 feet from the shoreline of estuaries; and

(B) 500 feet from the shoreline of coastal lakes.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, E 6-14-72, E 7-1-72, FB 39, E 7-3-74, E 7-25-74, FB 1-1978, E & E 1-6-78, FB 5-1978, E & E 6-7-78, FB 3-1983, E & E 9-13-83, FB 1-1985, E & E 3-12-85, FB 2-1985(Temp), E & E 4-24-85

[ED. NOTE: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Compliance

629-24-102 Practices contained within a rule shall be complied with where applicable or necessary to accomplish the purpose to which the rule is related, unless the operator or landowner has secured written approval from the State Forester of a plan for an alternate practice or practices which provides for equivalent or better results.

Stat. Auth.: ORS Ch. 526 & 527

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Hist.: FB 31, E 6-14-72, cf. 7-1-72; FB 5-1978, E & cf. 6-7-78

Conversion to a Non-Forest Use

629-24-103 When a landowner wishes to convert his forest land to another use, he shall accomplish a conversion within the period required to achieve reforestation, as specified in rules 629-24-402, 629-24-502, and 629-24-602. The determination by the State Forester as to whether or not conversion has been accomplished shall be governed by:

- (1) The presence or absence of improvements necessary for use of the land for the intended purpose.
- (2) Evidence of actual use of the land for the intended purpose.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, E 6-14-72, cf. 7-1-72; FB 5-1978, E & cf. 6-7-78

Annual Review

629-24-104 The State Forester shall, at least once each year, meet with the other state agencies concerned with the forest environment to review the Forest Practice Rules relative to sufficiency. He shall then report to the Board of Forestry a summary of such meeting or meetings together with recommendations for amendments to rules, new rules, or repeal of rules.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, E 6-14-72, cf. 7-1-72; FB 5-1978, E & cf. 6-7-78

Consultation

629-24-105 State Forestry personnel shall consult with personnel of other state agencies concerned with the forest environment situations where expertise from such agencies is desirable or necessary.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, E 6-14-72, cf. 7-1-72; FB 5-1978, E & cf. 6-7-78

Compliance With the Rules and Regulations of the Department of Environmental Quality

629-24-106 Each operation as defined by ORS 527.620(5) shall be conducted in full compliance with the rules and regulations of the Department of Environmental Quality relating to solid waste control and air, water, and noise pollution control. In addition to all other remedies, any violation thereof shall be subject to all remedies and sanctions available by law, rule, or regulation to the Department of Environmental Quality.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, E 6-14-72, cf. 7-1-72; FB 5-1978, E & cf. 6-7-78

Types of Operations for Which Notification Shall Be Required

629-24-107 (1) The notice required by ORS 527.670(2) is valid for the calendar year, and shall be required for the following types of operations:

- (a) The harvesting of forest crops including felling, bucking, yarding, decking, and hauling, road construction or improvement within the operation area described, and treatment of slashing.
- (b) Road construction or reconstruction of existing roads not within operation areas.
- (c) Site preparation.

(d) Application of insecticides, herbicides, rodenticides, and fertilizers.

(e) Clearing forest land for change to non-forest uses.

(f) Treatment of slashing after completion of operations.

(g) Precommercial thinning.

(2) Notifications required by ORS 527.670 must be completed in detail as requested on forms supplied by the State Forester. When more than one type of operation or more than one location is submitted on a single notification, each type of operation and location must be identifiable by operating unit, or side by legal subdivision, maps, or other appropriate means. Where notification for multiple operations is being made, attachments may accompany the notification form.

(3) Notifications required by ORS 527.670 must be received by the State Forester at least 15 days prior to commencement of an operation. This requirement may be waived, on an individual notification basis, by written approval of the State Forester.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, E 6-14-72, cf. 7-1-72; FB 33, E 6-15-73, cf. 7-1-73; FB 41(Temp), E 6-5-75, cf. 7-1-75; FB 43, E 9-5-75, cf. 9-25-75; FB 1-1978, E & cf. 1-6-78; FB 5-1978, E & cf. 6-7-78

Types of Operations for Which Notice Will Not Be Required

629-24-108 The notice required by ORS 527.670(2) will not be required for routine road maintenance, recreational uses, grazing by domestic livestock, tree planting and direct seeding, unless the seed is treated with rodenticides, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees or the harvesting of fern, huckleberry, salal, or other minor forest products. However, the waiver of the notification procedure does not relieve the responsibility for complying with applicable Forest Practice Rules.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, E 6-14-72, cf. 7-1-72; FB 33, E 6-15-73, cf. 7-1-73; FB 5-1978, E 6-7-78

Stream Channel Changes

629-24-109 Changes shall not be made in natural fish bearing stream courses by filling, removal, or by relocation of the channel, except by written approval from the State Forester.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 33, E 6-15-73, cf. 7-1-73; FB 1-1978, E & cf. 1-6-78

Leakage or Accidental Spillage of Petroleum Products

629-24-110 Take adequate precautions to prevent leakage or accidental spillage of any petroleum products in such a location that they will enter waters of the state.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 39, E 7-3-74, cf. 7-25-74; FB 5-1978, E & cf. 6-7-78

Surface Mining Standards

629-24-111 (1) The development and use of surface mining operations which are located on forest lands, from which materials are to be utilized for forest access roads or other supporting forest management activities, such as riprapping, bridge wing wall diversions, culvert bedding, and other similar activities located on forest land, shall be done in such a manner, as to protect water quality, retain soil

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stability, and provide for general safety during mining operation and after operations have ceased.

(2) Surface Mining Practices:

(a) Quarry sites shall not be located in streambeds except as authorized by ORS 541.605 to 541.645 or OAR 629-24-109.

(b) When reasonable alternatives exist, quarry sites should be located away from state and federal highway routes.

(c) Prevent overburden, solid wastes, and petroleum products from entering waters of the state.

(d) Stabilize banks, headwalls, and other surfaces of quarry sites in order to prevent surface soil erosion or mass soil movement.

(e) When the site is abandoned as a material source, it will be left in the condition described in subsections (c) and (d) above.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 40, I. 6-5-75, cf. 7-1-75; FB 5-1978, I. & cf. 6-7-78

Forest Practices Regions

629-24-112 For the purposes of the Forest Practices rules, the State is divided into three regions as follows:

(1) **Eastern Oregon Region Boundary:** All land east of the summit of the Oregon Cascade Range as described by the following boundary: Beginning at a point on the Columbia River near the junction of Interstate 84 and State Highway 35, thence southerly along State Highway 35 to the north line of Section 5, T2S-R10E; thence east to the NE corner Section 5; thence southeasterly approximately 1.5 miles to a point of intersection with Forest Road No. 1720 in Section 9, T2S-R10E; thence easterly along said road and along Forest Road No. 44 to the east line of Section 12, T2S-R10E; thence southerly along the western boundaries of Wasco, Jefferson, Deschutes, and Klamath Counties to the southern boundary of Oregon.

(2) **Northwest Oregon Region Boundary:** All land west of the summit of the Oregon Cascade Range as described in the Eastern Oregon Region boundary, north of the south boundary of Lane County.

(3) **Northwest Oregon Coastal Subregion Boundary:** All lands in the Northwest Oregon Region and west of the line beginning at the intersection of the range line between Ranges 6 and 7W, W.M. and the Columbia River, thence south along said range line to the SE corner Section 13, T4S-R7W; thence west to the range line between Ranges 7 and 8W; thence south along said range line, to the SE corner Section 1, T7S-R8W; thence west 1 mile; thence south 1 mile; thence west 1 mile; thence south 4 miles to the SE corner Section 34, T7S-R8W; thence east 1 mile; thence south 2 miles; thence west 2 miles; thence south 2 miles; thence east 3 miles; thence south 1 mile; thence east 1 mile; thence south 4 miles; thence east 1 mile; thence south 9 miles to SE corner Section 32, T10S-R7W; thence west 2 miles; thence south 4 miles; thence east 1 mile; thence south 6 miles; thence east 1 mile; thence south 1 mile; thence east 1 mile; thence south 1 mile; thence east 2 miles; thence south 1 mile; thence east 1 mile; thence south along range line between R6W and R7W 5 miles to SW corner Section 31, T13S-R6W; thence east 1 mile; thence south 3 miles; thence west 1 mile; thence south along range line between Ranges 6W and 7W to SE corner Section 36, T15S-R7W; thence west one mile; thence south 4

miles; thence west 1 mile; thence south 2 miles; thence west 2 miles to NW corner Section 4, T17S-R7W; thence south 5 miles; thence east 2 miles; thence south 1 mile; thence east 2 miles to SE corner Section 36, T17S-R7W; thence south 2 miles; thence east 1 mile; thence south 1 mile; thence east 1 mile; thence south 1 mile; thence east 2 miles; thence south 1 mile; thence east 1 mile; thence south 1 mile; thence east 1 mile to NE corner Section 1, T19S-R6W; thence south along range line between Ranges 5W and 6W to the SE corner Section 36, T20S-R6W.

(4) **Southwest Oregon Region Boundary:** All land west of the summit of the Cascade Range as described in the Eastern Oregon Region Boundary; south of the south boundary of Lane County.

(5) Southwest Oregon Interior Subregion Boundary:

(a) A subregion has been established in recognition of major differences in conditions of growth and composition of major tree species.

(b) The subregion boundary is described as follows: Beginning at the south boundary of Oregon at the range line between Ranges 8W and 9W, north to the south line of T40S, thence east across the south boundary of T40S-R8W; thence north 3 miles; thence east 6 miles; thence north about 8 miles along the range line between Ranges 6W and 7W; thence generally easterly along the boundary of the Siskiyou and Rogue River National Forests to the point of its intersection with the south boundary of Oregon in T41S-R1E; thence east to the east boundary of Jackson County; thence north along said county line to a point paralleling the north boundary of Crater Lake National Park; thence east to the Rogue-Umpqua divide; thence westerly along said Rogue-Umpqua divide to the west boundary of the Umpqua National Forest in T32S-R3W; thence northerly along said west boundary to the south Umpqua divide; thence southwesterly along said divide through the City of Myrtle Creek, thence to Nickle Mountain, and thence to the SW corner of T31S-R9W; thence southerly along the eastern boundary of the Siskiyou National Forest to the south boundary of Oregon; thence east to the point of beginning.

Stat. Auth.: ORS Ch. 527

Hist.: FB 10-1982, I. & cf. 10-21-82

Types of Operations Which May Require Written Plan

629-24-113 The State Forester may require a written plan whenever a rule requires prior approval:

(1) Failure to comply with the provisions of an approved written plan is a violation of this rule.

(2) When the State Forester or Operator determines it is necessary to better meet the intent of the rules, the State Forester may require or approve modification of an approved written plan.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 3-1983, I. & cf. 9-13-83; FB 3-1985, I. & cf. 6-11-85

Primary Use

629-24-114 [FB 2-1985(Temp), f. & cf. 4-24-85]

Operations on Designated Coastal Shorelands

629-24-115 Because of unique and special values of the coastal shorelands, conduct operations so as to protect the

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diverse environmental resources of coastal shorelands and coastal waters:

(1) Obtain prior approval of the State Forester before conducting operations in the designated coastal shorelands.

(2) Written plans, when required on designated coastal shorelands, shall describe the methods that will be used to protect the diverse natural resources including major marshes, natural shorelands, riparian vegetation, significant fish and wildlife habitat, soil integrity, and water quality.

Stat. Auth.: ORS Ch. 183, 526 & 527
Hist.: FB 1-1985, f. & cf. 3-12-85

Application of Chemicals

Purpose

629-24-200 Chemicals perform an important function in the growing and harvesting of forest tree species. The purpose of these rules is to regulate the handling, storage, and application of chemicals in such a way that the public health and aquatic habitat will not be endangered by contamination of waters of the state.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78

Maintenance of Equipment in Leakproof Condition

629-24-201 Equipment used for transportation, storage, or application of chemicals shall be leakproof. If there is evidence of chemical leakage, the State Forester shall have the authority to suspend the further use of such equipment until the deficiency has been satisfactorily corrected.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78

Protection of Water Quality During Mixing of Chemicals

629-24-202 Whenever water is taken from any stream or water impoundment for use in the mixing of chemicals, precautions shall be taken to prevent contamination of the source:

(1) Provide an air gap or reservoir between the water source and the mixing tank; or

(2) Use a portable pump with the necessary suction hose, feed hoses, and check valves to supply tanks with water from streams, such equipment to be used only for water.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78

Protection of Waterways, Areas of Open Water, and Dwellings When Spraying

629-24-203 Protect waterways and areas of open water such as swamps or impoundments from contamination when spraying by aircraft by leaving a buffer strip of at least one swath width untreated on each side of every Class I stream or area of open water. When applying 2,4,5-T or Silvex, maintain a 200 foot buffer strip around Class I streams or areas of open water. Maintain a 500 foot buffer strip around inhabited dwellings unless written permission is received from the resident. When applying spray from the ground, leave unsprayed a buffer strip of at least ten (10) feet on each side of every waterway or area of open water. Spray application immediately adjacent to buffer strips shall be made parallel to waterways, and must be applied prior to

application to the remainder of the area to be treated. No buffer strip is required in the application of fertilizers except that precautions shall be taken to avoid direct application of fertilizers to Class I streams or areas of open water.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78, FB 6-1978, f. 9-28-78, cf. 9-29-78

Selection and Maintenance of Mixing and Landing Areas

629-24-204 Mix chemicals or clean tanks or equipment only where the chemicals will not contaminate waters of the state. Mixing areas and aircraft landing areas shall be located where spillage of chemicals will not contaminate waters of the state. If any chemical is spilled, immediate and appropriate action shall be taken to contain or neutralize it.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78

Application of Chemicals in Accordance With Limitations

629-24-205 Apply chemicals only in accordance with currently recognized limitations of temperature, humidity, wind, and other factors specified by the State Forester.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78

Cleaning Re-Use and Disposal of Chemical Containers

629-24-206 Rinse chemical containers with the carrier used in mixing at least three (3) times. Apply the flushing solution in the form of spray to the area. Do not re-use chemical containers unless properly treated. Disposal of chemical containers shall be in accordance with approved state disposal requirements.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78

Daily Records of Chemical Applications

629-24-207 (1) Whenever insecticide or herbicide sprays are applied on forest land, the operator shall maintain a daily record of spray operations which includes:

(a) Name of monitor or name of applicator (pilot or ground applicator);

(b) Location of project;

(c) Temperature (hourly);

(d) Wind velocity and direction (hourly);

(e) Contractor's name and pilot's name when applied aerially; contractor's name and/or employer's name for ground application;

(f) Insecticides or herbicides used, including name, mixture, application rate, and carrier used;

(g) Disposal method/location of containers.

(2) Whenever rodenticides or fertilizers are applied, the operator shall maintain a daily record of such application which includes subsections (1)(a), (b), and (e) of this rule, the name of the chemical and application rate.

(3) The records required in sections (1) and (2) of this rule shall be kept for three (3) years and be made available at the request of the State Forester.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72, FB 5-1978, f. & cf. 6-7-78

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Landowner's Responsibility to Determine Whether or Not Chemicals Are Contaminating Streams

629-24-208 Whenever chemicals are applied to forest land, it is the responsibility of the landowner to determine whether or not chemicals are contaminating streams or other bodies of water.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, E. 6-14-72, cf. 7-1-72; FB 5-1978, E. & cf. 6-7-78

Reporting of Chemical Accidents

629-24-209 Immediately report all chemical accidents to the State Forester.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, E. 6-14-72, cf. 7-1-72; FB 5-1978, E. & cf. 6-7-78

Notification, Posting of Access Routes and Road Closure When Aerially Applying 2,4,5-T or Silvex

629-24-210 (1) The landowner shall make every reasonable effort to notify contiguous landowners of record and residents, and downstream water users of record within one-half mile of the intended spray area, at least fifteen (15) days prior to the spray application. Notification shall be by registered letter and/or direct personal communication and by advertising in the local newspaper.

(2) Boundaries of an aerial spray area shall be posted by the landowner with a sign provided by the State Forester at all points of regular access at least five (5) days prior to spraying. Posting shall remain at least fifteen (15) days after spraying is completed.

(3) Where road closure is feasible, roads leading into or contiguous to a spray area shall be closed temporarily to public traffic during spraying. Where temporary road closures are not practical, leave a buffer strip at least one swath width on each side of all regularly traveled public roads.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 6-1978, E. 9-28-78, cf. 9-29-78

Disposal of Slashing

Purpose

629-24-300 For the purposes of this rule, treatment of slashing is recognized as a necessary tool for the protection of reproduction and residual stands from the risk of fire, insects, and disease, to prepare the site for future productivity and to minimize the risk of material from entering streams. Such treatment may employ the use of mechanical processes, fire, chemical or other means to minimize competitive vegetation and residue from harvesting operations.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, E. 6-14-72, cf. 7-1-72; FB 5-1978, E. & cf. 6-7-78

Maintenance of Productivity and Related Values

629-24-301 Operations on forest land shall be planned and conducted in a manner which will provide adequate consideration to treatment of slashing to protect residual stands of timber and reproduction to optimize conditions for regeneration of forest tree species, to maintain productivity of forest land, and maintain air and water quality and fish and wildlife habitat.

(1) Reduce the volume of debris as much as practicable by such methods as:

(a) Well planned and supervised felling and bucking practices to minimize breakage.

(b) Increased utilization of wood fibre including, but not limited to, salvaging, pre-logging, and relogging when a market exists.

(c) Stage cutting where applicable, with successive cuts delayed until slashing created by previous operations is reduced.

(2) In those areas where slash treatment is necessary for protection or regeneration, the following methods may be used:

(a) Scattering of slash accumulations;

(b) Piling or windrowing of slash;

(c) Mechanized chopping, compaction, or burying of slashing;

(d) Controlled burning;

(e) Provisions for additional protection from fire during the period of increased hazard. Protect fish habitat when establishing water sources.

(3) Dispose of or disperse unstable slash accumulations around landings to prevent their entry into streams.

(4) When treating competing vegetation, plan harvesting practices to break up or destroy such vegetation. When necessary, follow up with application of chemicals and/or by burning.

(5) If burning is the means of slash or competitive vegetation treatment used, it should be accomplished in such ways and at such times that reproduction and residual timber, humus and soil surface are adequately protected.

(6) Where burning is necessary, protect buffer strips from fire.

(7) Whenever disposal of slashing is to be accomplished by burning, such burning shall be accomplished under such conditions of weather that will assure adequate maintenance of air quality. Burning shall be done in accordance with the rules of Oregon's "Smoke Management Plan".

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, E. 6-14-72, cf. 7-1-72; FB 33, E. 6-15-73, cf. 7-1-73; FB 5-1978, E. & cf. 6-7-78

EASTERN OREGON REGION

Reforestation

Purpose

629-24-400 Prompt reforestation of forest land following harvesting operations is an important factor in assuring continuous growing and harvesting of forest tree species on forest lands economically suitable therefor. The purpose of administrative rules relating to reforestation of such lands is to define economic suitability, as a basis for designating the forest land subject to reforestation requirements; to describe the conditions under which reforestation will be required; to specify the minimum number of trees per acre and the maximum period of time allowed after an operation for establishment of such trees; and to require stabilization of soils which have become exposed as a result of operations.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, E. 6-14-72, cf. 7-1-72; FB 5-1978, E. & cf. 6-7-78

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(6) Leave stabilization strips of undergrowth vegetation along all Class II streams in widths sufficient to prevent washing of sediment into Class I streams below.

(7) Keep machine activity in beds of streams to an absolute minimum. Obtain approval of the State Forester prior to machine activity in Class I streams.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Maintenance of Productivity and Related Values

629-24-448 Harvesting practices should first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect the soil, air, water, and wildlife resources:

(1) Where major scenic attractions, highways, recreation areas or other high use areas are located within or traverse forest land, conduct prompt cleanup and regeneration.

(2) Obtain prior approval from the State Forester before operating near or within:

(a) Critical wildlife or aquatic habitat sites that are listed in a cooperative agreement between the Board of Forestry and the Fish and Wildlife Commission or sites designated by the Forester;

(b) Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered.

(3) When conducting operations in or along wetlands or along lakes, springs, seeps, or wet meadows, protect soil and vegetation from disturbances which would cause adverse effects on water quality, quantity, and wildlife and aquatic habitat.

(4) Wherever practical, plan clearcutting operations so that adequate wildlife escape cover is available within one-quarter mile.

(5) Wherever practical, preserve fruit, nut, and berry producing shrubs and trees.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 39, f. 7-3-74, cf. 7-25-74; FB 5-1978, f. & cf. 6-7-78; FB 11-1985, f. & cf. 3-12-85

NORTHWEST OREGON REGION

Reforestation

Purpose

629-24-500 Prompt reforestation of forest land following harvesting operations is an important factor in assuring continuous growing and harvesting of forest tree species on forest lands economically suitable therefor. The purpose of administrative rules relating to reforestation of such lands is to define economic suitability, as a basis for designating the forest land subject to reforestation requirements; to describe the conditions under which reforestation will be required; to specify the minimum number of trees per acre and the maximum period of time allowed after an operation for establishment of such trees; and to require stabilization of soils which have become exposed as a result of operations.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Lands Affected

629-24-501 Any lands which come within the definition of forest land and which are capable of a mean annual production of at least 50 cubic feet per acre at culmination as determined by Site Index Tables contained in Pacific Northwest Forest and Range Experiment Station "Field Instructions for Integrated Forest Survey and Timber Management Inventories in Oregon, Washington, and California, 1971". Pages VI25-36 are subject to the reforestation requirements.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Stocking Levels, Subregions, Time Limits

629-24-502 (1) Whenever as a result of an operation the stocking is reduced below either 25%, based on estimated crown closure, or 80 square feet of basal area per acre, of trees 11" DBH and larger, the landowner shall establish at least 150 well distributed seedlings or saplings, or any combination thereof per acre on the area.

(2) In computing basal area per acre, trees over 36" DBH will be counted only as 36" DBH trees.

(3) For the purpose of determining length of time allowed for establishment of seedlings or saplings, the Northwest Region shall be divided into two subregions. In the area west of the summit of the Coast Range, compliance with the minimum stocking standards shall be achieved at the end of three (3) growing seasons following operations. In the area east of the summit of the Coast Range, compliance with the minimum stocking standards shall be achieved at the end of five (5) growing seasons following operations.

(4) Determination of time for establishment of seedlings shall be based on completion of the logging operations and removal of equipment. When smoke management restricts the burning of slash, an extension in writing may be granted by the State Forester.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 39, f. 7-3-74, cf. 7-25-74; FB 5-1978, f. & cf. 6-7-78; FB 3-1980, f. & cf. 1-9-80

Acceptable Species and Variances

629-24-503 For those lands subject to the reforestation requirement, the State Forester shall maintain a list of forest tree species acceptable to be counted as stocking. The list shall consist of those species normally marketable within the Northwest Region. Red alder or other hardwood species shall not be counted as acceptable species in stocking surveys of lands which have supported adequately stocked stands of Douglas-fir or other acceptable conifers unless a prior alternate plan is approved by the State Forester.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Lands Not Affected - Action Required

629-24-504 Within one year following harvesting on lands not subject to the reforestation requirement, and on which reforestation is not being planned, adequate vegetation cover shall be established to provide continuing soil productivity and stabilization. Consider the use of wildlife habitat plants.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

CHAPTER 629, DIVISION 24 – BOARD OF FORESTRY**Rehabilitation of Brush Fields**

629-24-505 Rehabilitation of brush fields or other sites containing undesirable species, may be accomplished by controlled burning, chemical application, mechanical clearing, or any combination. Place debris above the high water mark of any waters of the state. On mechanical clearing projects, minimize compaction and movement of top soil.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 5-1978, f. & cf. 6-7-78

Road Construction and Maintenance**Purpose**

629-24-520 A well-located, constructed, and maintained system of forest roads is essential if the forest is to reach its potential of supplying jobs, tax base, and wood products for our society, and to provide a means of proper forest management and protection. The purpose of these rules is to establish minimum standards for forest practices that will provide the maximum practical protection to maintain forest productivity, water quality, and fish and wildlife habitat during road construction and maintenance.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Road Location

629-24-521 Roads should be located to minimize the risk of material entering waters of the state:

- (1) Fit the road to the topography so that a minimum alteration of natural features will be necessary.
- (2) Avoid locating roads in steep, narrow canyons, slide areas, steep headwalls, slumps, marshes, meadows, or existing drainage channels where practical alternatives exist. If there is a risk of material entering waters of the state, obtain prior approval from the State Forester.
- (3) Avoid locating roads on high risk sites if practical alternatives exist. Obtain prior approval from the State Forester before building roads on high risk sites.
- (4) Minimize road density in high risk areas whenever practical alternatives exist.
- (5) Minimize the number of stream crossings.
- (6) When it is practical, cross streams at right angles to the main channel.
- (7) Leave or re-establish areas of vegetation between roads and streams.
- (8) To minimize road construction, make use of existing roads where practical. Where roads traverse land in another ownership but will adequately serve the operation, attempt to negotiate with the owner for use before resorting to location of new roads.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78; FB 3-1983, f. & cf. 9-13-83

Road Design

629-24-522 Consistent with good safety practices, design each road to the minimum use standards adapted to the terrain and soil materials, so as to minimize disturbance to existing drainages and damage to water quality:

- (1) Use a flexible design to minimize damage to soil and water quality. Designate end-hauling where disposal of excess material from high risk sites is indicated.
- (2) Roads should be designed no wider than necessary to accommodate the immediate anticipated use.
- (3) Design cut and fill slopes to minimize the risk of mass soil movement.
- (4) Design culvert installations to prevent erosion of the fill.
- (5) Design water crossing structures to provide for adequate fish passage, minimum impact on water quality, and the 25-year frequency storm.
- (6) Design roads to drain naturally by outsloping and through grade changes wherever possible. Where outsloping is not feasible, use roadside ditches and culverts.
- (7) Provide dips, water bars, and cross drainage on all temporary roads.
- (8) Whenever practical, avoid diverting water from natural drainage ways. Dips, water bars, and cross drainage culverts should be placed above stream crossings so that water may be filtered through vegetative buffers before entering waters of the state.
- (9) Provide drainage where surface and groundwater cause slope instability.
- (10) Select stable areas for disposal of end-haul materials. Avoid overloading areas which may become unstable from additional material loading.
- (11) Design roads so that water is not concentrated into high risk sites.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 33, f. 6-15-73, cf. 7-1-73; FB 5-1978, f. & cf. 6-7-78; FB 3-1983, f. & cf. 9-13-83; FB 3-1985, f. & cf. 6-11-85

Road Construction

629-24-523 Debris, overburden, and other materials associated with road construction shall be placed in such a manner as to prevent entry into the waters of the state:

- (1) Deposit end-haul and other excess material in stable locations above the high water level.
- (2) Clear drainage ways of woody debris generated during road construction or maintenance.
- (3) Where exposed material is potentially unstable or erodible, it shall be stabilized by use of seeding, compacting, riprapping, benching, leaving light slashing, or other suitable means.
- (4) In the construction of road fills, compact the material to reduce the entry of water and to minimize the settling of fill material.
- (5) Stream crossings shall be constructed to result in minimum disturbance to banks and existing channels. Temporary crossing structures shall be removed promptly after use, and where applicable, approaches to the crossings shall be water barred.
- (6) Keep machine activity in beds of streams to an absolute minimum. Restrict such activity to periods of low water levels. Prior approval of the State Forester shall be obtained for machine activity in Class I streams.
- (7) Install drainage structures on live streams as soon as feasible. Uncompleted road grades subject to washing before grading should be adequately cross-drained.
- (8) During construction operations, retain outslope drainage and remove all berms on the outside edge except

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those intentionally constructed for protection of road grade fills.

(9) Keep soil disturbance to a minimum by constructing roads when soil moisture conditions are favorable.

(10) Slash, logs, and other large quantities of organic material shall not be incorporated into road fills where fill failure due to organic material decomposition may impact waters of the state.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-73; FB 39, f. 6-7-78; FB 3-1983, f. & ef. 9-13-83

Road Maintenance

629-24-524 Maintenance of active and inactive roads shall be sufficient to maintain a stable surface, to keep the drainage system operating, and to protect the quality of the waters of the state:

(1) Clean culvert inlets and outlets, drainage structures and ditches before and during the rainy season to diminish danger of clogging and the possibility of washouts. Provide for practical preventative maintenance programs for high risk sites that will address the problems associated with high intensity rainfall events.

(2) Restore road surface crown or outslope all roads prior to the rainy season.

(3) When it is the intention of the landowner to discontinue active use of the road or to control unauthorized use, the road shall be maintained to the degree necessary to provide appropriate drainage and soil stability.

(4) When it is the intention of the landowner to vacate a road or "put-a-road-to-bed", the road shall be posted "closed" and shall be blocked to prevent continued use by vehicular traffic and the road shall be left in such a state as to provide for adequate drainage and soil stability.

(5) Plan applications and apply road oil or other surface stabilizing material in such manner as to prevent their entry into waters of the state.

(6) Maintain and repair active and inactive roads as needed to minimize damage to waters of the state.

(7) Place material, removed from ditches, in a stable location.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-73; FB 39, f. 7-3-74, ef. 7-25-74; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 3-1985, f. & ef. 6-11-85

Harvesting**Purpose**

629-24-540 Harvesting of forest tree species is a key part of forest management by which wood is obtained for human use and forests are established and tended. Harvesting operations are recognized as causing a temporary disturbance to the forest environment. These rules are established as minimum standards for forest practices to maintain the productivity of the forest land, to minimize soil and debris entering waters of the state, and to protect wildlife and fish habitat.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-73; FB 5-1978, f. & ef. 6-7-78; FB 2-1983, f. & ef. 4-21-83

Protection of Residual Trees

629-24-541 On any operation, trees left for future harvest shall be adequately protected from damage resulting from harvest operations to assure their survival and growth. This may be done by locating roads and landings and by conducting felling, bucking, yarding, and decking operations so as to minimize damage to or loss of residual trees.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-73; FB 39, f. 7-3-74, ef. 7-25-74; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 2-1983, f. & ef. 4-21-83

Soil Protection

629-24-542 Select for each harvesting operation the logging method, size of equipment, and type of equipment best adapted to the given slope, landscape, and soil materials to minimize soil deterioration:

(1) Avoid tractor or wheel skidding on unstable, wet, or easily compacted soils, and on slopes which exceed 35 percent, unless operations can be conducted without causing deep soil disturbance or accelerated erosion.

(2) Locate skid trails where sidecasting is kept to a minimum.

(3) Uphill cable yarding is recommended. Use a yarding system that will minimize soil disturbance when downhill yarding or when yarding across high risk sites.

(4) Where skidders are used, consider size of the equipment needed to do the job.

Stat. Auth.: ORS Ch. 527

Hist.: FB 2-1983, f. & ef. 4-21-83; FB 3-1985, f. & ef. 6-11-85

Location of Landings

629-24-543 (1) Landings shall be of minimum size and shall be located on stable areas to minimize risk of material entering waters of the state.

(2) Locate landings on firm ground above the high water level of any stream. Do not place landings on unstable areas, on steep side hill areas or where excessive excavation is needed.

Stat. Auth.: ORS Ch. 527

Hist.: FB 2-1983, f. & ef. 4-21-83

Drainage System

629-24-544 For each landing, skid trail, or fire trail, provide and maintain a drainage system that will control the dispersal of runoff water from such exposed soils, and that will minimize the entry of muddy and turbid water into the waters of the state:

(1) Provide and maintain cross-drains, dips, water bars, and other water diversions to prevent soil from entering waters of the state.

(2) Divert or water bar all tractors or skidder trails before the rainy season.

(3) Leave or place debris and re-establish drainage on landings after use to guard against future soil movement.

Stat. Auth.: ORS Ch. 527

Hist.: FB 2-1983, f. & ef. 4-21-83

Treatment of Waste Materials

629-24-545 Debris, overburden, and other waste material associated with harvesting shall be left or placed in such a

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location to prevent their entry by erosion, high water, or other means into waters of the state:

(1) Fall, buck, and limb trees so that the tree or any part of it will not fall into or across any Class I stream. Remove all material that gets into such a stream as an ongoing process during harvesting operations. Place removed material above high water level.

(2) As a minimum, fell all trees away from Class II streams whenever possible. Remove slash that gets into the stream following forest operations.

(3) Felling shall be done in a manner to minimize breakage.

(4) Stabilize potentially unstable or erodible soils by seeding or other suitable means. Consider game forage plants.

(5) Remove waste from logging operations, such as crankcase oil, filters, grease and oil containers, from the forest. Dispose of other debris, such as machine parts, old wire rope, and used tractor tracks, immediately following termination of harvesting operations. Do not place these materials in waterways.

Stat. Auth.: ORS Ch. 527
Hist.: FB 2-1983, f. & ef. 4-21-83

Stream Protection

629-24-546 During and after harvesting operations, leave streambeds and streamside vegetation in as near a natural state as possible to maintain water quality, wildlife habitat and aquatic habitat:

(1) Obtain prior approval of the State Forester before tractor skidding in or through any Class I stream. When streams must be crossed, provide temporary structures for crossings. Remove all temporary crossings before the rainy season, and immediately after use; where applicable, water bar road ends.

(2) Obtain prior approval of the State Forester before cable yarding through any Class I stream. When yarding across such streams is necessary, leave streamside vegetation in as near a natural state as possible.

(3) Avoid cable yarding through Class II streams. When unavoidable, yard material so as to minimize stream bank and channel disturbances.

(4) Provide shading, soil stabilizing, and water-filtering effects of vegetation along Class I streams. Neither an optimum nor a minimum width can be set arbitrarily for buffer strips for shading streams. Necessary width of these buffer strips will vary with steepness of terrain, other topographic features, soil type, and amount of timber to be removed. Apply one or more of the following practices:

(a) Leave hardwood trees, shrubs, grasses, rocks, and natural "down" timber where they provide shade over a Class I stream or maintain the integrity of the soil near such a stream.

(b) A fringe of undisturbed merchantable trees may be required where insufficient nonmerchantable tree species exist to provide at least 75% of original shade over the stream. This requirement may be waived if the State Forester determines that the removal of such vegetation will not impair the quality of aquatic or wildlife habitat.

(c) With prior approval of the State Forester, carefully log mature timber from the buffer strip, in such a way that shading and filtering effects are not destroyed.

(d) Where it is difficult to leave buffer strips of timber to shade a stream, re-establish cover without delay along the stream after cutting is completed.

(5) Retain or re-establish undergrowth vegetation along Class II streams in widths sufficient to maintain water quality affecting Class I streams.

(6) Keep machine activity in beds of streams to an absolute minimum. Obtain prior approval of the State Forester before machine activity in Class I streams.

Stat. Auth.: ORS Ch. 527
Hist.: FB 2-1983, f. & ef. 4-21-83

Site Utilization

629-24-547 When harvesting plans include leaving a residual stand, reserved growing stock should be of desirable species, form, vigor, and crown position which will assure adequate utilization of the site for efficient production of forest products.

Stat. Auth.: ORS Ch. 527
Hist.: FB 2-1983, f. & ef. 4-21-83

Maintenance of Productivity and Related Values

629-24-548 Design harvesting practices to assure the continuous growing and harvesting of forest tree species by suitable economic means, and also to protect soil, air, water, and wildlife resources.

(1) Where major scenic attractions, highways, recreation areas, or other high use areas are located within or traverse forest land, conduct prompt cleanup and regeneration.

(2) Obtain prior approval from the State Forester before operating near or within:

(a) Critical wildlife or aquatic habitat sites that are listed in a cooperative agreement between the Board of Forestry and the Fish and Wildlife Commission or sites designated by the Forester:

(b) Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered.

(3) When conducting operations in or along wetlands or along lakes, springs, seeps, or wet meadows, protect soil and vegetation from disturbances which would cause adverse effects on water quality, quantity, and wildlife and aquatic habitat.

(4) Wherever practical, plan clearcutting operations so that adequate wildlife escape cover is available within one-quarter mile from any portion of the clearcut unit.

(5) Minimize compaction and movement of topsoil on mechanical clearing projects. Place debris above the high water mark of any stream or body of open water.

(6) Slash, logs, and other large quantities of organic material shall not be incorporated into landing fills where fill failure due to organic material decomposition may impact waters of the state.

Stat. Auth.: ORS Ch. 526 & 527
Hist.: FB 2-1983, f. & ef. 4-21-83; FB 3-1983, f. & ef. 9-13-83; FB 1-1985, f. & ef. 3-12-85

Harvesting on High Risk Sites

629-24-549 (1) Obtain prior approval from the State Forester before conducting harvesting operations on high risk sites.

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(2) Written plans, where required for harvesting in high risk sites, will describe how harvesting operations will be conducted to minimize impact upon soil and water resources. Such written plans will consider all actions necessary to minimize such impacts, including but not limited to the following:

(a) Yarding systems that will minimize soil disturbance.

(b) Establishing or maintaining plant species that will enhance slope stability in harvested areas where needed to minimize the risk of mass soil movement while maintaining forest productivity.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 3-1983, f. & ef. 9-13-83, FB 3-1985, f. & ef. 6-11-85

SOUTHWEST OREGON REGION

Reforestation

Purpose

629-24-600 Prompt reforestation of forest land following harvesting operations is an important factor in assuring continuous growing and harvesting of forest tree species on forest lands economically suitable therefor. The purpose of administrative rules relating to reforestation of such lands is to define economic suitability, as a basis for designating the forest land subject to reforestation requirements; to describe the conditions under which reforestation will be required; to specify the minimum number of trees per acre and the maximum period of time allowed after an operation for establishment of such trees; and to require stabilization of soils which have become exposed as a result of operations.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Lands Affected

629-24-601 Any lands which come within the definition of forest land and which are capable of a mean annual production of at least 50 cubic feet per acre at culmination as determined by Site Index Tables contained in Pacific Northwest Forest and Range Experiment Station "Field Instruction for Integrated Forest Survey and Timber Management Inventories in Oregon, Washington, and California, 1971", Pages VI25-36 are subject to the reforestation requirements.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Stocking Levels, Subregion Variance, Time Limits and Established Seedling Definition

629-24-602 (1) Whenever as a result of an operation, the stocking is reduced below 25%, based on estimated crown closure, or 80 square feet of basal area per acre based on trees 11" DBH and larger, the landowner shall establish at least 100 well distributed seedlings, saplings, or larger trees or any combination thereof per acre on the area within four years after such reduction in stocking.

(2) Within the subregion as represented by zones 4, 6A, and 9 on State of Oregon weather zone map, June 1970, subject to prior approval by the State Forester, if not more than 40% of the basal area per acre is removed during any one period of five successive years, the stocking may be reduced to 15% crown closure or 40 square feet of basal area

per acre of trees 11" DBH and larger before the minimum of 100 well distributed seedlings, saplings or larger trees, or any combination thereof per acre shall be established on the area and a maximum of six years will be allowed for establishment after such reduction of stocking.

(3) In computing basal area per acre, trees over 36 inches DBH will be counted only as 36" DBH trees.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 3-1980, f. & ef. 1-9-80

Acceptable Species

629-24-603 (1) For those lands subject to the reforestation requirement, the State Forester shall maintain a list of forest tree species acceptable to be counted as stocking. The list shall consist of those species normally marketable in the Southwest Region.

(2) Red alder or other hardwood species will not be counted as acceptable species in stocking surveys of lands which have supported adequately stocked stands of Douglas fir or other acceptable conifers unless a prior alternate plan is approved by the State Forester.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Variance Procedure

629-24-604 On any operation examined at the end of the period specified for reforestation, areas which are not adequately stocked shall be subject to additional reforestation requirements to achieve the minimum stocking standard. Exception to this requirement may be made for any areas which come within the definition of "forest land" and on which reforestation is practical if such area is smaller than 5 acres in one contiguous unit, with the limitation that at least 70% of an operation area shall meet the stocking standard.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Lands Not Affected – Action Required

629-24-605 Within one year following harvesting on lands not subject to the reforestation requirement, and on which reforestation is not being planned, some form of vegetative cover shall be required sufficient to provide continuing soil productivity and stabilization. Consider the use of wildlife habitat plants.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Rehabilitation of Brush Fields

629-24-606 Rehabilitation of brush fields or other sites containing undesirable species, may be accomplished by controlled burning, chemical application, mechanical clearing or any combination. Place debris above the high water mark of any waters of the state. On mechanical clearing projects, minimize compaction and movement of top soil.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 5-1978, f. & ef. 6-7-78

CHAPTER 629, DIVISION 24 – BOARD OF FORESTRY**Road Construction and Maintenance****Purpose**

629-24-620 A well-located, constructed, and maintained system of forest roads is essential if the forest is to reach its potential of supplying jobs, tax base, and wood products for our society, and to provide a means of proper forest management and protection. The purpose of these rules is to establish minimum standards for forest practices that will provide the maximum practical protection to maintain forest productivity, water quality, and fish and wildlife habitat during road construction and maintenance.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Road Location

629-24-621 Roads should be located to minimize the risk of material entering waters of the state:

(1) Fit the road to the topography so that a minimum alteration of natural features will be necessary.

(2) Avoid locating roads in steep, narrow canyons, slide areas, steep headwalls, slumps, marshes, meadows, or existing drainage channels, where practical alternatives exist. If there is a risk of material entering the waters of the state, obtain prior approval from the State Forester.

(3) Avoid locating roads on high risk sites if practical alternatives exist. Obtain prior approval from the State Forester before building roads on high risk sites.

(4) Minimize road density in high risk areas whenever practical alternatives exist.

(5) Minimize the number of stream crossings.

(6) When it is practical, cross streams at right angles of the main channel.

(7) Leave or re-establish area of vegetation between roads and waters of the state.

(8) To minimize road construction, make use of existing roads where practical. Where roads traverse land in another ownership but will adequately serve the operation, attempt to negotiate with the owner for use before resorting to location of new roads.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78; FB 3-1983, f. & cf. 9-13-83

Road Design

629-24-622 Consistent with good safety practices, design each road to the minimum use standards adapted to the terrain and soil materials, so as to minimize disturbance to existing drainages and damage to water quality:

(1) Use a flexible design standard to minimize damage to soil and water quality. Designate end-hauling where disposal of excess material from high risk sites is indicated.

(2) Roads should be designed no wider than necessary to accommodate the current anticipated use.

(3) Design cut and fill slopes to minimize the risk of mass soil movement.

(4) Design culvert installations to prevent erosion of the fill.

(5) Design stream crossing structures to provide for adequate fish passage, minimum impact on water quality and the 25-year frequency storm.

(6) Design roads to drain naturally through grades, changes, outsloping, insloping, roadside ditches, dips, or other suitable devices. Provide dips, water bars and/or cross drainage on all temporary roads.

(7) Whenever practical, avoid diverting water from natural drainage ways. Dips, water bars, and cross drainage culverts should be placed above stream crossings so that water may be filtered through vegetative buffers before entering waters of the state.

(8) Select stable areas for disposal of end-haul materials. Avoid overloading areas which may become unstable from additional material loading.

(9) Provide drainage where surface and groundwater cause slope instability.

(10) Design roads so that water is not concentrated into high risk sites.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 33, f. 6-15-73, cf. 7-1-73; FB 5-1978, f. & cf. 6-7-78; FB 3-1983, f. & cf. 9-13-83; FB 3-1985, f. & cf. 6-11-85

Road Construction

629-24-623 Debris, overburden, and other materials associated with road construction shall be placed in such a manner as to minimize entry into the waters of the state:

(1) Deposit end-haul and other excess material in stable locations above the high water level.

(2) Clear major drainage ways of woody debris generated during road construction.

(3) Where exposed material is potentially unstable erodible, it shall be stabilized by use of seeding, compacting, rip-rapping, benching, leaving light slashing, or other suitable means.

(4) Consider using catch or settling basins at the head of culverts.

(5) In the construction of road fills, compact the material to reduce the entry of water and to minimize erosion.

(6) Stream crossing shall be constructed to result in minimum disturbance to banks and existing channels. Remove temporary crossings promptly after use, and where applicable water-bar road ends.

(7) Keep machine activity in beds of streams to an absolute minimum. Prior approval of the State Forester shall be obtained for machine activity in Class I streams.

(8) Install drainage structures on live streams as soon as feasible. Uncompleted roads subject to erosion should be adequately cross-drained.

(9) During and following operations, retain outslope drainage and remove unnecessary berms on the outside edge except those intentionally constructed for protection of road grade fills.

(10) Keep erodible soil disturbance to a minimum by constructing roads when soil moisture conditions are favorable.

(11) Slash, logs, and other large quantities of organic material shall not be incorporated into road fills where fill failure due to organic material decomposition may impact waters of the state.

Stat. Auth.: ORS Ch. 526 & 527

CHAPTER 629, DIVISION 24 – BOARD OF FORESTRY

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83

Road Maintenance

629-24-624 Maintenance on both active and inactive roads shall be sufficient to maintain a stable surface, to keep the drainage system operating, and to protect the quality of the waters of the state:

(1) Clean culvert inlets and outlets, drainage structures and ditches before and during the rainy season to diminish danger of clogging and the possibility of washouts. Provide for practical preventative maintenance programs for high risk sites that will address the problems associated with high intensity rainfall events.

(2) Winterize roads by water barring, surface crowning, or outslipping prior to the rainy season.

(3) When it is the intention of the landowner to discontinue active use of the road or to control unauthorized use, the road shall be maintained to the degree necessary to provide appropriate drainage and soil stability.

(4) Reduce roadside vegetation along main roads to a level which permits safe visibility.

(5) Plan applications and apply road oil or other surface stabilizing material in such manner as to prevent their entry into waters of the state.

(6) When it is the intention of the landowner to vacate a road or put-a-road-to-bed, the road shall be posted "closed" and shall be blocked to prevent continued use by vehicular traffic and the road shall be left in such a state as to provide for adequate drainage and soil stability.

(7) Maintain and repair active and inactive roads as needed to minimize damage to waters of the state.

(8) Place material, removed from ditches, in a stable location.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 3-1985, f. & ef. 6-11-85

Harvesting**Purpose**

629-24-640 Harvesting of forest tree species is an integral part of forest management by which wood for human use is obtained and by which forests are established and tended. It is recognized that during harvesting operations there will be a temporary disturbance to the forest environment. It is the purpose of these rules to establish minimum standards for forest practices that will maintain the productivity of the forest land, and minimize soil and debris entering waters of the state and protect wildlife and fish habitat.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Protection of Residual Trees

629-24-641 On any operation, trees which are left for future harvest shall be adequately protected from damage resulting from harvest operations to assure their survival and growth. This may be accomplished by locating roads and landings and by conducting felling, bucking, yarding, and

decking operations so as to minimize damage to or loss of residual trees.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Soil Protection

629-24-642 Select for each harvesting operation the logging method and size and type of equipment best adapted to the given slope, landscape and soil materials in order to minimize soil deterioration:

(1) Avoid tractor or wheel skidding on unstable, wet, or easily compacted soils and on slopes which exceed 35% unless operations can be conducted without causing deep soil disturbance or accelerated erosion.

(2) Locate skid trails where sidecasting is held to a minimum.

(3) Where tractors are used for skidding, limit the size of the equipment to that necessary to do the job.

(4) Uphill cable yarding is recommended. Use a yarding system that will minimize soil disturbance when downhill yarding or when yarding across high risk sites.

(5) Confine the size of landings to that necessary.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 5-1978, f. & ef. 6-7-78; FB 3-1985, f. & ef. 6-11-85

Location of Landings, Skid Trails, and Fire Trails

629-24-643 Locate landings, skid trails, and fire trails on stable areas so as to minimize the risk of material entering waters of the state:

(1) Locate landings on firm ground above the high water level of any stream. Avoid unstable areas or steep side-hill areas or excessive excavation.

(2) Locate skid trails and fire trails so they do not run parallel to any stream when such trails are within the high water level of that stream.

(3) Avoid tractor skidding across slumps and slides.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Drainage System

629-24-644 For each landing, skid trail, or fire trail a drainage system shall be provided and maintained that will control the dispersal of surface runoff water from such exposed soils and that will minimize the entry of muddy and turbid waters into the waters of the state:

(1) Provide cross-drains, dips, water-bars, or other water diversions to prevent soil from entering waters of the state.

(2) Re-establish drainage on landings after use to insure against future soil movement.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 5-1978, f. & ef. 6-7-78

Treatment of Waste Materials

629-24-645 Debris, overburden, and other waste material associated with harvesting shall be left or placed in such a location as to prevent their entry by erosion, high water, or other means into waters of the State:

(1) Trees should be felled, bucked, and limbed so that the tree or any part thereof will not fall into or across any Class I stream. Remove all material that gets into such a

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stream as an ongoing process during harvesting operations. Place removed material above high water level.

(2) Fell all trees away from any Class II stream whenever possible. Remove slash and other debris that gets into the stream immediately following logging.

(3) Deposit excess material from landing construction in stable locations above the high water level.

(4) Potentially unstable or erodible, exposed soils shall be stabilized by seeding or other suitable means. Considerations shall be given to game forage plants.

(5) Waste resulting from logging operations such as crankcase oil, filters, grease and oil containers shall be removed from the forest. Other debris such as machine parts, old wire rope, and used tractor tracks shall be disposed of immediately following termination of harvesting operations. At no time shall such materials be placed in waterways.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Stream Protection

629-24-646 During and after harvesting operations, stream beds and streamside vegetation shall be left in as near natural state as possible in order to maintain water quality and wildlife habitat:

(1) Obtain prior approval of the State Forester before tractor skidding in or through any Class I stream. When streams must be crossed, provide temporary structures for crossings. Remove all temporary crossings prior to the rainy season and/or immediately after use and where applicable, water bar trail ends.

(2) Obtain prior approval of the State Forester before cable yarding through any Class I stream. When yarding across such streams is necessary, do it by lifting the yarded materials free of the streambank or water at the crossing.

(3) Cable yarding through Class II streams should be avoided. When unavoidable, yarding shall be done in a manner to minimize streambank and channel disturbances.

(4) Provide the shading, soil stabilizing, and water filtering effects of vegetation along Class I streams. Neither an optimum nor a minimum width can be set arbitrarily for buffer strips for shading streams. It must be realized that the necessary width will vary with steepness of terrain, other topographic features, the nature of the under cover, the kind of soil, and the amount of timber that is to be removed. Apply one or more of the following practices:

(a) Leave hardwood trees, shrubs, grasses, rocks, and natural "down" timber wherever they afford shade over a Class I stream or maintain the integrity of the soil near such a stream.

(b) Where insufficient non-merchantable tree species exist to provide up to 75% of original shade over the stream, a fringe of undisturbed merchantable trees may be required. This requirement may be waived if the State Forester determines that the removal of such vegetation will not impair the quality of aquatic or wildlife habitat.

(c) With prior approval of the State Forester, carefully log the mature timber from the buffer strip in such a way that shading and filtering effects are not destroyed.

(d) Where it is difficult to leave buffer strips of timber to shade a stream, re-establish cover without delay, along the stream, after cutting is completed.

(5) Retain or re-establish undergrowth vegetation along Class II streams in widths sufficient to maintain water quality of Class I streams.

(6) Keep machine activity in beds of streams to an absolute minimum. Obtain prior approval of the State Forester prior to machine activity in Class I streams.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78; FB 3-1983, f. & cf. 9-13-83

Site Utilization

629-24-647 When harvesting plans include leaving a residual stand, reserved growing stock should be of desirable species, form, vigor, and crown position which will assure adequate utilization of the site for efficient production of forest products.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 5-1978, f. & cf. 6-7-78

Maintenance of Productivity and Related Values

629-24-648 Design harvesting practices to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect the soil, air, water, and wildlife resources:

(1) Where major scenic attractions, highways, recreation areas, or other high use areas are located within or traverse forest land, conduct prompt cleanup and regeneration.

(2) Obtain prior approval from the State Forester before operating near or within:

(a) Critical wildlife or aquatic habitat sites that are listed in a cooperative agreement between the Board of Forestry and the Fish and Wildlife Commission or sites designated by the Forester;

(b) Habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered.

(3) When conducting operations in or along wetlands or along lakes, springs, seeps, or wet meadows, protect soil and vegetation from disturbances which would cause adverse effects on water quality, quantity, and wildlife and aquatic habitat.

(4) Whenever practical, plan clear-cutting operations so that adequate wildlife escape cover is available within one-quarter mile.

(5) Wherever practical preserve fruit, nut, and berry producing shrubs and trees.

(6) On mechanical clearing projects, minimize compaction and movement of top soil. Place debris above the high water mark of any stream, water course, or body of open water.

(7) Slash, logs, and other large quantities of organic material shall not be incorporated into landing fills where fill failure due to organic material decomposition may impact waters of the state.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 31, f. 6-14-72, cf. 7-1-72; FB 39, f. 7-3-74, cf. 7-25-74; FB 5-1978, f. & cf. 6-7-78; FB 3-1983, f. & cf. 9-13-83; FB 1-1985, f. & cf. 3-12-85

Harvesting on High Risk Sites

629-24-649 (1) Obtain prior approval from the Stat

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Forester before conducting harvesting operations on high risk sites.

(2) Written plans, where required for harvesting in high risk sites, will describe how harvesting operations will be conducted to minimize impact upon soil and water resources. Such written plans will consider all actions necessary to minimize such impacts, including but not limited to the following:

- (a) Yarding systems that will minimize soil disturbance.
- (b) Establishing or maintaining plant species that will enhance slope stability in harvested areas where needed to minimize the risk of mass soil movement while maintaining forest productivity.

Stat. Auth.: ORS Ch. 526 & 527

Hist.: FB 3-1983, f. & cf. 9-13-83, FB 3-1985, f. & cf. 6-11-85

496.012

WILDLIFE

496.010 [Amended by 1953 c.379 §2; 1957 c.250 §1; 1959 c.364 §1; 1963 c.30 §1; repealed by 1973 c.723 §130]

496.012 Wildlife policy. It is the policy of the State of Oregon that wildlife shall be managed to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the goals of wildlife management are:

(1) To maintain all species of wildlife at optimum levels and prevent the serious depletion of any indigenous species.

(2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.

(3) To permit an orderly and equitable utilization of available wildlife.

(4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.

(5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state and provides optimum public recreational benefits. [1973 c.723 §6]

496.015 [Amended by 1959 c.578 §1; repealed by 1973 c.723 §130]

496.016 Applicability of wildlife laws to commercial fishing laws. Nothing in the wildlife laws is intended to affect any of the provisions of the commercial fishing laws. However, nothing in the commercial fishing laws is intended to authorize the taking of game fish in any manner prohibited by the wildlife laws. [1973 c.723 §7]

496.020 [Amended by 1957 c.55 §1; 1957 c.471 §1; 1967 c.431 §1; repealed by 1973 c.723 §130]

496.025 [Amended by 1965 c.149 §1; repealed by 1973 c.723 §130]

496.030 [Repealed by 1973 c.723 §130]

496.032 [1971 c.658 §1; repealed by 1973 c.723 §130]

496.035 [Repealed by 1973 c.723 §130]

496.040 [1953 c.184 §1; repealed by 1973 c.723 §130]

496.045 [1953 c.184 §2; repealed by 1973 c.723 §130]

**STATE DEPARTMENT OF
FISH AND WILDLIFE;
COMMISSION; DIRECTOR;
DUTIES AND POWERS
GENERALLY**

496.080 State Department of Fish and Wildlife. The State Department of Fish and Wildlife is created. The department consists of the State Fish and Wildlife Commission, the State Fish and Wildlife Director, and such other personnel as may be necessary for the efficient performance of the functions of the department. [1975 c.253 §7]

496.090 State Fish and Wildlife Commission; members; terms; qualifications; compensation and expenses. (1) There is established a State Fish and Wildlife Commission consisting of seven members appointed by the Governor.

(2) The term of office of each member is four years. Before the expiration of the term of a member, the Governor shall appoint a successor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) All appointments of members of the commission by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution.

(4) One member of the commission shall be appointed from each of the congressional districts referred to in ORS 188.130 and one member from that portion of the state lying west of the Cascade Mountains, one member from that portion of the state lying east of the Cascade Mountains.

(5) No member of the commission may hold any office in any sports fishing organization or commercial fishing organization or have any ownership or other direct interest in a commercial fish processing business.

(6) Failure of a member to maintain compliance with the eligibility requirements of subsections (4) and (5) of this section shall vacate membership. Members of the commission may otherwise be removed only for cause.

(7) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1975 c.253 §8; 1981 c.545 §11]

496.100 [1973 c.723 §8; 1973 c.792 §20a; repealed by 1975 c.253 §40]

496.105 [Repealed by 1973 c.723 §130]

496.108 Commission officers; quorum; meetings. (1) The commission shall select one of its members as chairman and another as vice chairman, for such terms and with such duties and powers necessary for the performance of the functions of such offices as the commission determines appropriate.

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(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every three months at a time and place determined by the commission. The commission shall also meet at such other times and places as are specified by the call of the chairman or of a majority of the members of the commission.

(4) The commission may also meet jointly with authorities of other states or of the United States to consider problems of mutual interest. [1973 c.723 §9]

496.110 [Repealed by 1973 c.723 §130]

496.112 State Fish and Wildlife Director; term; compensation and expenses; delegation of commission powers to director. (1) The commission shall appoint a State Fish and Wildlife Director to serve for a term of four years unless sooner removed by the commission.

(2) The director shall receive such salary as may be fixed by the commission. In addition to his salary, subject to applicable law regulating travel and other expenses of state officers, the director shall be reimbursed for his actual and necessary travel and other expenses incurred in the performance of his official duties.

(3) The commission may delegate to the director any of the administrative authority, powers and duties granted to or imposed upon it by law. [1975 c.253 §9]

496.115 [Repealed by 1975 c.253 §40]

496.118 Duties and powers of director. (1) The director is the executive head of the State Department of Fish and Wildlife, and shall:

(a) Be responsible to the commission for administration and enforcement of the wildlife laws.

(b) Appoint, supervise and control all commission employes and, under the policy direction of the commission, be responsible for all of the commission's functions and activities.

(c) Establish such sections and divisions as are necessary to properly carry out the work of the commission.

(d) Be responsible for the collection, application and dissemination of information pertinent to the management of the wildlife resources, and to the regulation of the uses of such resources.

(2) In times of emergency, the director may exercise the full powers of the commission until such times as the emergency ends or the com-

mission meets in formal session. [1975 c.253 §10]

496.120 [Amended by 1967 c.290 §3; 1969 c.314 §59; repealed by 1973 c.723 §130]

496.122 [1973 c.723 §10; repealed by 1975 c.253 §40]

496.124 Fish Division; Wildlife Division; authority. In addition to such divisions as may be established by the director pursuant to ORS 496.118, there are established within the State Fish and Wildlife Department a Fish Division and a Wildlife Division. The Wildlife Division shall be responsible for the management of all wildlife, except fish and other marine life, over which the commission has regulatory jurisdiction. [1975 c.253 §11]

496.125 [Repealed by 1973 c.723 §130]

496.128 Reports by commission. (1) The commission shall report biennially to the Governor and to the Legislative Assembly on the activities of the commission during the preceding biennium. The commission shall make such additional reports as the Governor or the Legislative Assembly may direct.

(2) The reports required by subsection (1) of this section shall be in such form and contain such information as the commission considers appropriate, and shall contain such other information as the Governor and the Legislative Assembly may require. [1973 c.723 §11]

496.130 [Amended by 1959 c.371 §1; 1963 c.154 §1; 1965 c.74 §1; repealed by 1973 c.723 §130]

496.135 [Repealed by 1973 c.723 §130]

496.138 General duties and powers; rulemaking authority. (1) The commission has the authority to formulate and implement the policies and programs of this state for the management of wildlife, and may perform all acts necessary to administer and carry out the provisions of the wildlife laws.

(2) In accordance with any applicable provision of ORS 183.310 to 183.550, the commission may promulgate rules to carry out the provisions of the wildlife laws. [1973 c.723 §12]

496.140 [Repealed by 1973 c.723 §130]

496.145 [Repealed by 1973 c.723 §130]

496.146 Discretionary duties and powers. In addition to any other duties or powers provided by law, the commission:

(1) May accept, from whatever source, appropriations, gifts or grants of money or other property for the purposes of wildlife management, and use such money or property for wildlife management purposes.

- (2) May sell or exchange property owned by the state and used for wildlife management purposes when the commission determines that such sale or exchange would be advantageous to the state wildlife policy and management programs.
- (3) May acquire, introduce, propagate and stock wildlife species in such manner as the commission determines will carry out the state wildlife policy and management programs.
- (4) May by rule authorize the issuance of such licenses, tags and permits for angling, hunting and trapping and may prescribe such tagging and sealing procedures as the commission determines necessary to carry out the provisions of the wildlife laws or to obtain information for use in wildlife management. Permits issued pursuant to this subsection may include special hunting permits for a person to hunt on land owned by that person in areas where permits for deer or elk are limited by quota.
- (5) May by rule prescribe procedures requiring the holder of any license, tag or permit issued pursuant to the wildlife laws to keep records and make reports concerning the time, manner and place of taking wildlife, the quantities taken and such other information as the commission determines necessary for proper enforcement of the wildlife laws or to obtain information for use in wildlife management.
- (6) May establish special hunting and angling areas or seasons in which only persons less than 18 years of age or over 65 years of age are permitted to hunt or angle.
- (7) May acquire by purchase, lease, agreement or gift real property and all appropriate interests therein for wildlife management and wildlife-oriented recreation purposes.
- (8) May acquire by purchase, lease, agreement, gift, exercise of eminent domain or otherwise real property and all interests therein and establish, operate and maintain thereon public hunting areas.
- (9) May establish and develop wildlife refuge and management areas and prescribe rules governing the use of such areas and the use of wildlife refuge and management areas established and developed pursuant to any other provision of law.
- (10) May by rule prescribe fees for licenses, tags, permits and applications issued or required pursuant to the wildlife laws, and user charges for angling, hunting or other recreational uses of lands owned or managed by the commission, unless such fees or user charges are otherwise prescribed by law. Except for licenses issued pursuant to subsection (14) of this section, no fee or user charge prescribed by the commission pursuant to this subsection shall exceed \$10.
- (11) May enter into contracts with any person or governmental agency for the development and encouragement of wildlife research and management programs and projects.
- (12) May perform such acts as may be necessary for the establishment and implementation of cooperative wildlife management programs with agencies of the Federal Government.
- (13) May offer and pay rewards for the arrest and conviction of any person who has violated any of the wildlife laws. No such reward shall exceed \$100 for any one arrest and conviction.
- (14) May by rule prescribe fees for falconry licenses issued pursuant to the wildlife laws, unless such fees are otherwise prescribed by law. Fees prescribed by the commission pursuant to this subsection shall be based on actual or projected costs of administering falconry regulations and shall not exceed \$250. [1973 c.723 §13; 1977 c.177 §1; 1977 c.668 §1; 1981 c.445 §9]
- 496.150** [Repealed by 1973 c.723 §130]
- 496.154 Limitation on authority to condemn certain farm use property.** (1) The commission shall not commence any proceeding to exercise the power of eminent domain to acquire any real property, or interest therein, that was devoted to farm use on January 1, 1974, unless the commission first obtains approval therefor from the Joint Committee on Ways and Means, or from the Emergency Board if the Legislative Assembly is not then in session. Upon a change in the use of such land from farm use, the commission may acquire such property, and interests therein, by exercise of the power of eminent domain without first obtaining legislative approval therefor. As used in this section, "farm use" has the meaning for that term provided in ORS 215.203.
- (2) The commission shall not commence any proceeding as provided in subsection (1) of this section unless the commission has obtained approval of its intended use of such property from the local governmental agencies having land use planning authority over such lands. [1973 c.723 §13a; 1975 c.788 §1]
- 496.155** [Amended by 1967 c.454 §86; repealed by 1973 c.723 §130]
- 496.156 Expenditure priority for anadromous fish management.** (1) In carrying out duties, functions and powers regarding the propagation of anadromous fish prescribed

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in the wildlife laws and the commercial fishing laws, the commission shall give high priority to expenditures for propagation assistance by means of transportation of upstream and downstream migrants in those areas where dams and other such obstacles present a passage problem to juvenile or adult salmon.

(2) For the purposes of this section, "transportation" means any method of helping anadromous fish to pass dams and other obstacles so as to reduce the mortality associated with passage.

(3) Nothing in subsection (1) of this section prevents the cooperation of the commission with the Federal Government in programs financed pursuant to ORS 506.405. [1977 c.653 §2]

496.160 [Amended by 1971 c.658 §2; repealed by 1973 c.723 §130]

496.162 Establishing seasons, amounts and manner of taking wildlife.

(1) After investigation of the supply and condition of wildlife, the commission, at appropriate times each year, shall by rule:

(a) Prescribe the times, places and manner in which wildlife may be taken by angling, hunting or trapping and the amounts of each of those wildlife species that may be taken and possessed.

(b) Prescribe such other restrictions or procedures regarding the angling, hunting, trapping or possessing of wildlife as the commission determines will carry out the provisions of wildlife laws.

(2) In carrying out the provisions of subsection (1) of this section, the power of the commission includes, but is not limited to:

(a) Prescribing the amount of each wildlife species that may be taken and possessed in terms of sex, size and other physical characteristics.

(b) Prescribing such regular and special time periods and areas closed to the angling, hunting and trapping of any wildlife species when the commission determines such action is necessary to protect the supply of such wildlife.

(c) Prescribing regular and special time periods and areas open to the angling, hunting and trapping of any wildlife species, and establishing procedures for regulating the number of persons eligible to participate in such angling, hunting or trapping, when the commission determines such action is necessary to maintain properly the supply of wildlife, alleviate damage to other resources, or to provide a safe and orderly recreational opportunity.

(3) Notwithstanding subsections (1) and (2) of this section, except as provided in ORS

498.146 or during those times and at those places prescribed by the commission for the hunting of elk, the commission shall not prescribe limitations on the times, places or amounts for the taking of predatory animals. As used in this subsection, "predatory animal" has the meaning for that term provided in ORS 610.002.

(4) In carrying out the provisions of this section, before prescribing the numbers of deer and elk to be taken, the commission shall consider:

(a) The supply and condition of deer and elk herds;

(b) The availability of forage for deer, elk and domestic livestock on public and private range and forest lands;

(c) The recreational opportunities derived from deer and elk populations; and

(d) The effects of deer and elk herds on public and private range and forest lands. [1973 c.723 §14; 1975 c.791 §1; 1981 c.218 §1]

496.165 [Repealed by 1973 c.723 §130]

496.170 [Amended by 1971 c.658 §3; repealed by 1973 c.723 §130]

496.175 [Amended by 1971 c.658 §4; repealed by 1973 c.723 §130]

496.180 [Amended by 1971 c.658 §5; repealed by 1973 c.723 §130]

496.185 [Repealed by 1973 c.723 §130]

496.190 [Amended by 1963 c.154 §2; 1965 c.74 §2; repealed by 1973 c.723 §130]

496.195 [Amended by 1959 c.371 §2; 1961 c.343 §2; 1965 c.74 §3; 1967 c.594 §3; repealed by 1973 c.723 §130]

496.200 [Repealed by 1973 c.723 §130]

SALMON FOR INDIAN CEREMONIES

496.201 Department to furnish salmon for ceremonies; amount; source. (1) The State of Oregon shall, through the State Department of Fish and Wildlife, be directed to provide surplus salmon to the Coos, Lower Umpqua and Siuslaw Indian tribes for their historical, traditional and cultural salmon ceremony that takes place in August of each year.

(2) The salmon provided by the state shall meet the expressed needs of the Coos, Lower Umpqua and Siuslaw tribes up to 200 pounds total.

(3) The salmon provided by the state may be either surplus whole fish or carcasses.

(4) Salmon may be taken from hatcheries under either the complete or joint control of the

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state. [1981 c.575 §2]

496.205 [Amended by 1961 c.343 §3; repealed by 1973 c.723 §130]

496.206 Written request for salmon; contents; time for providing salmon. (1) The tribes of Coos, Lower Umpqua and Siuslaw Indians are required to set forth, in writing, their request for salmon. This request shall be submitted no later than 40 days prior to the ceremony and shall include:

- (a) The poundage of salmon required;
 - (b) The date of the ceremony; and
 - (c) A contact person that the state may refer questions to.
- (2) Prior to any state action, the written request must be received by:
- (a) The State Department of Fish and Wildlife;
 - (b) The Attorney General; and
 - (c) The United States Department of Interior.
- (3) The salmon shall be provided to the Coos, Lower Umpqua and Siuslaw Indian tribes no later than 30 days after receiving a proper written request therefor. [1981 c.575 §3]

496.210 [Repealed by 1973 c.723 §130]

496.211 Limitation on amount and use. (1) The State of Oregon shall be limited to a once a year provision of salmon for the Coos, Lower Umpqua and Siuslaw Indians' salmon ceremony.

(2) If the Coos, Lower Umpqua and Siuslaw Indian tribes use salmon provided by the state for this purpose in any manner other than the historical, traditional and cultural salmon ceremony, they shall pay to the State Department of Fish and Wildlife the prevailing wholesale rate per pound of the entire amount of salmon supplied to that tribe or tribes for that year. [1981 c.575 §4]

496.215 [Repealed by 1973 c.723 §130]

496.216 Disposition of salmon remaining after ceremony. Any salmon remaining after the ceremony may be distributed to tribal members without charge for their subsistence consumption only and not for sale, barter or gift to others, or may be donated to a nonprofit institution or agency. [1981 c.575 §5]

496.220 [Repealed by 1973 c.723 §130]

496.221 ORS 496.201 to 496.221 not intended to extend Indian legal or political rights. Nothing in ORS 496.201 to 496.221

is intended to extend legal or political recognition to any Coos, Lower Umpqua or Siuslaw Indians for any purpose other than provided in ORS 496.201 to 496.216. [1981 c.575 §6]

496.225 [Repealed by 1973 c.723 §130]

496.230 [1957 c.119 §2; repealed by 1973 c.723 §130]

496.235 [Repealed by 1973 c.723 §130]

496.240 [Amended by 1959 c.371 §3; 1963 c.154 §3; 1965 c.74 §4; repealed by 1973 c.723 §130]

496.245 [Repealed by 1973 c.723 §130]

496.250 [Repealed by 1971 c.418 §23]

FISH HABITAT IMPROVEMENT

496.260 Project applications; contents; notice of reasons for rejection; approval conditions; limitation on tax credit. (1) Any person may apply to the State Department of Fish and Wildlife for preliminary certification of a fish habitat improvement project. The department shall develop rules and procedures for administering its responsibilities under this section and ORS 316.084, 317.087, 318.080 and 496.265. Such rules shall clarify the criteria used to evaluate fish improvement projects. Applications for preliminary certification shall be made in writing on a form provided by the department and shall contain:

- (a) A detailed description of the proposed project including a statement of expected benefits;
- (b) Blueprints or drawings of the proposed project providing such detail as the department may require;
- (c) A detailed estimate of project costs; and
- (d) Such other information as the department may require.

(2) The department shall act on all applications for preliminary certification before the 120th day after the receipt of such application. At any time during that period the department may request clarification, additional detail or modification of the plans.

(3) If the department rejects an application for preliminary certification, the department shall cause written notice of the action, together with a statement of findings and the reasons therefor to the applicant.

(4) Preliminary certification of a fish habitat improvement project by the department shall not:

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(a) Qualify the applicant for the tax credit provided under ORS 316.084, 317.087 and 318.080.

(b) Exempt the project from any state or federal law, or local ordinance.

(5) Upon completion of construction or installation of a fish habitat improvement project preliminarily certified by the department under this section, a person may apply to the department for final certification of the project. The application for final certification shall be made in writing on forms provided by the department and shall include:

(a) A detailed statement of project costs; and

(b) Whatever other information the department may require.

(6) Upon receipt of an application for final project certification, the department shall cause the project to be inspected to determine that the project will result in the improvement of riparian or in-stream habitat. If the department determines that the project conforms to the plans approved during the preliminary certification, the department shall provide the applicant with written notice of final certification of the project. The action of the department shall include certification of the actual cost of the project for purposes of the income tax credit relief allowed under ORS 316.084, 317.087 or 318.080. However, in no event shall the department certify an amount for tax credit purposes that is more than 10 percent in excess of the amount approved in the preliminary certificate issued for the project under subsection (2) of this section. [1981 c.720 §22]

496.265 Limitation on amount eligible for tax credit. Notwithstanding any provisions of ORS 316.084, 317.087, 318.080 and 496.260 to the contrary, the State Department of Fish and Wildlife shall not preliminarily certify under ORS 496.260 (2), in any one calendar year, as eligible for tax credit under ORS 316.084, 317.087 and 318.080, fish habitat improvement project costs in excess of \$100,000. The department shall not grant preliminary certification for a fish habitat improvement project unless application under ORS 496.260 (1) is filed with the department on or before January 1, 1990. [1981 c.720 §23]

**STATE WILDLIFE FUND;
RECEIPTS AND
EXPENDITURES**

496.300 State Wildlife Fund; sources; uses. (1) The State Wildlife Fund is established as an account in the General Fund of the State Treasury. Except as otherwise provided by law, all moneys received by the commission pursuant to the wildlife laws, except such as may be required as a revolving fund for payroll and emergency expenses, shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the commission to carry out the wildlife laws.

(2) All moneys received by the commission from the sale of migratory waterfowl stamps shall be deposited in the State Wildlife Fund.

(3) All moneys received by the commission from the sale of art works and prints related to the migratory waterfowl stamp shall be deposited in a separate subaccount in the State Wildlife Fund. Moneys in the subaccount may be expended only for activities that promote the propagation, conservation and recreational uses of migratory waterfowl and for activities related to the design, production, issuance and arrangements for sale of the migratory waterfowl stamps and related art works and prints. Expenditures of moneys in the subaccount may be made within this state, in other states or in foreign countries, in such amounts as the commission determines appropriate. Expenditures in other states and foreign countries shall be on such terms and conditions as the commission determines will benefit most directly the migratory waterfowl resources of this state.

(4) The commission shall keep a record of all moneys deposited in the State Wildlife Fund. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. [1973 c.723 §15; 1975 c.118 §1; 1975 c.253 §12; 1983 c.8 §1; 1983 c.801 §6]

Note: Section 5, chapter 594, Oregon Laws 1983, provides:

Sec. 5. Notwithstanding any other provision of law, the State Department of Fish and Wildlife may not expend any moneys for acquisition of land along the Lower Deschutes River until:

(1) The department determines that adequate funds are available from other source so that such other funds, together with moneys available for expenditure by the department, will be adequate to complete the entire land acquisition proposed in the project; and

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496.445

taxing districts of the county in accordance with the schedule of percentages computed under ORS 311.390.

(5) Notwithstanding any other provision of the wildlife laws, there is appropriated annually from the moneys in the State Wildlife Fund in the State Treasury such amounts as are necessary for the purpose of making the payments to counties required by this section. [Amended by 1955 c.729 §1; 1971 c.356 §1; 1971 c.474 §1; 1973 c.723 §16]

496.345 [1959 c.692 §5; 1963 c.481 §1; part renumbered 506.345; repealed by 1971 c.446 §11]

NONGAME WILDLIFE

496.375 "Nongame wildlife" defined.

As used in ORS 496.380 to 496.390 "nongame wildlife" means all wildlife species over which the State Fish and Wildlife Commission has jurisdiction, except game mammals, as defined in ORS 496.004, fur-bearing mammals as defined in ORS 496.004, game birds as defined in ORS 496.007 and game fish as defined in ORS 496.009. [1979 c.566 §1]

496.380 Designation of tax refunds to finance program. (1) Resident individual taxpayers who file an Oregon income tax return and who will receive a tax refund from the Department of Revenue may designate that a contribution be made to the Nongame Wildlife Fund by marking the appropriate box printed on the return pursuant to subsection (2) of this section.

(2) The Department of Revenue shall print on the face of the Oregon income tax form for residents a space for taxpayers to designate that a contribution be made to the Nongame Wildlife Fund from their income tax refund. The space for designating the contribution shall provide for checkoff boxes in the amount of \$1, \$5, \$10 or other dollar amount.

(3) This section shall apply to taxable years beginning on or after January 1, 1981. [1979 c.566 §2; 1981 c.411 §5]

496.385 Nongame Wildlife Fund. (1) There is established in the General Fund of the State Treasury a Nongame Wildlife Fund consisting of all moneys transferred to it under this section. The Director of the Department of Revenue shall transfer to the fund an amount equal to the total amount designated by individuals to be paid to the fund under ORS 496.380.

(2) Moneys contained in the Nongame Wildlife Fund are continuously appropriated for the purposes specified in ORS 496.390. [1979 c.566 §3]

496.390 Control over fund by department; use of moneys. The State

Department of Fish and Wildlife shall have access to and control of the moneys held in the Nongame Wildlife Fund, but shall use such moneys only to protect and preserve nongame wildlife and their habitat. [1971 c.566 §4]

496.405 [Amended by 1971 c.658 §7a; repealed by 1973 c.723 §130]

496.410 [Repealed by 1973 c.723 §130]

496.415 [Amended by 1971 c.658 §8; repealed by 1973 c.723 §130]

496.420 [1959 c.146 §1; repealed by 1973 c.723 §130]

SALMON AND TROUT ENHANCEMENT

496.430 "Native stocks" defined. As used in ORS 496.435 to 496.455, "native stocks" means those anadromous fish that naturally propagate in a given watershed. [1981 c.317 §2]

496.435 Policy to restore native stocks. Consistent with other provisions of law, it is declared to be a goal of the people of the State of Oregon to restore native stocks of salmon and trout to their historic levels of abundance. In order to achieve this goal in a cost-effective manner, the State of Oregon shall engage in a program to rehabilitate and improve natural habitat and native stocks and insure that the level of harvest does not exceed the capacity of stocks to reproduce themselves. [1981 c.317 §3]

496.440 Enhancement program to be conducted by commission; objective. A salmon and trout enhancement program shall be conducted by the commission to benefit all users of the salmon and trout resources in this state. The program shall be conducted in such manner as to provide the greatest possible opportunity for citizen volunteer participation to achieve the goals of the program. [1981 c.317 §4]

496.445 Duties of commission. In carrying out the salmon and trout enhancement program, the commission shall:

(1) Provide appropriate department personnel to act as community advisors to cooperatively develop enhancement projects with citizen volunteers and to cooperatively evaluate enhancement projects with the citizens responsible for project implementation.

(2) Provide technical assistance to citizens responsible for implementation of enhancement projects.

(3) Coordinate the implementation of enhancement projects with the activities of department staff and other agencies.

(4) Provide educational and informational materials to promote public awareness and

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involvement in the salmon and trout enhancement program.

(5) Supervise the activities of citizens developing local brood stock for enhancement projects.

(6) Grant funds to citizens for the implementation of approved enhancement projects from such moneys as may be available to the commission therefor. [1981 c.317 §5]

496.450 Application for project; subjects for projects; conditions for approval. (1) Any citizen or group of citizens may submit to the commission a proposal for a project to be implemented under the salmon and trout enhancement program or may submit a request for advice and assistance in developing such a project.

(2) An enhancement project may include, but is not limited to, habitat improvement, installation and operation of streamside incubators, brood stock development, fish stocking and spawning ground surveys and data collection.

(3) The commission shall approve for implementation only those enhancement projects based on sound biological principles and shall use fish stocks most adapted to the project locale. To the greatest extent practicable, a project must be designed to maximize survival, adult returns and genetic diversity while minimizing disease.

(4) Conditions for approval by the commission for implementation of a project include but are not limited to:

(a) Provisions satisfactory to the commission for inspection and evaluation of the implementation of a project; and

(b) Provisions satisfactory to the commission for controlling the expenditure of and accounting for any funds granted by the commission for implementation of the project. [1981 c.317 §6]

496.455 Use of native stocks for projects; conditions. In carrying out any duties, functions or power under the wildlife laws or the commercial fishing laws, the commission may authorize the taking of native stocks and their sexual products, but may not provide any such native stocks or the sexual products therefrom to any person granted a permit by the commission pursuant to ORS 508.700 to 508.745 unless, at a minimum, sufficient fish are returned to the donor stream to compensate fully for eggs removed from the donor stock. When entering into a contract for the taking of native stock with a person granted a permit pursuant to ORS 508.700 to 508.745, the commission shall consider the use of the facilities for the taking of additional

native stock for public management activities, including the salmon and trout enhancement program. [1981 c.317 §7]

496.460 Salmon and Trout Enhancement Program Advisory Committee; members; duties and powers; travel and expenses. (1) The Salmon and Trout Enhancement Program Advisory Committee is established as an advisory committee to the State Fish and Wildlife Commission. The committee shall be of such size and have such geographical representation as the commission determines appropriate. Members of the committee shall be appointed by the Governor.

(2) The committee shall review the policies of the department and make recommendations to the State Fish and Wildlife Commission and to the department concerning the implementation of salmon and trout enhancement projects.

(3) A member of the committee shall receive no compensation for services as a member. However, subject to any applicable law regulating travel and other expenses of state officers and employes, a member shall be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from such moneys as may be available to the department therefor. [1981 c.317 §8]

WILDLIFE COOPERATION; FEDERAL WILDLIFE AID

496.505 [Formerly 497.505] 1961 c.343 §1; repealed by 1973 c.723 §130]

496.510 Assent to federal wildlife-restoration statute; duty of commission with regard thereto. The State of Oregon assents to the Act of Congress entitled, "An Act to provide that the United States shall aid the states in wildlife-restoration projects, and for other purposes," approved September 2, 1937, Public No. 415, 75th Congress (50 Stat. 917, 16 U.S.C.A. s. 669). The State Fish and Wildlife Commission shall perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in said Act of Congress, in compliance with said Act and with rules and regulations promulgated by the Secretary of the Interior thereunder.

496.515 [Amended by 1971 c.658 §9; repealed by 1973 c.723 §130]

496.520 [Repealed by 1973 c.723 §130]

496.525 Federal fish restoration and management aid; powers of commission with regard thereto. (1) The State of Oregon

REFUGES AND CLOSURES

501.405

REFUGES AND CLOSURES,
GENERALLY

501.005 Closure of hunting season for fire danger. (1) The Governor by proclamation may suspend any season established by the commission for hunting when the Governor determines that hunting may result in extreme fire danger in any part of the state.

(2) The suspension referred to in subsection (1) of this section may be applicable in all or any portion of this state, and shall be effective for a specified or indeterminate period until it appears to the Governor that the possible excessive fire danger no longer exists. A suspension for an indeterminate period shall be terminated by proclamation of the Governor.

(3) No person shall hunt during a period when or in an area where the appropriate season has been suspended pursuant to this section. [1973 c.723 §104]

501.010 [Repealed by 1973 c.723 §130]

501.015 Hunting or trapping on refuge prohibited. Except as the commission by rule may provide otherwise, no person shall hunt or trap any wildlife on any wildlife refuge created by any law of this state or any rule promulgated pursuant thereto. [1973 c.723 §105]

501.020 [Amended by 1955 c.63 §1; repealed by 1973 c.723 §130]

501.025 Authority to manage supply or condition of wildlife on refuge. Notwithstanding any restrictions to the contrary regarding the uses of any wildlife refuge created by any law of this state or any rule promulgated pursuant thereto, the commission may authorize the hunting or trapping of wildlife on any such wildlife refuge when the commission determines that such action is necessary to properly manage the supply or condition of the wildlife on such refuge. [1973 c.723 §106]

501.030 [Repealed by 1973 c.723 §130]

501.035 Posting signs around refuge; defacing or alteration of signs prohibited. (1) When any wildlife refuge is created by the laws of this state or any rule promulgated thereto, the commission shall post signs around the boundary of the refuge giving notice of restrictions on hunting or trapping of wildlife on the refuge and on such other uses of the refuge as are specified by law or rule.

(2) No person shall remove, deface, alter or destroy any sign referred to in subsection (1) of this section. [1973 c.723 §107]

501.040 [Repealed by 1973 c.723 §130]

501.045 Contracts to establish refuges on private lands. The commission may enter into contracts with the owners of land for the purpose of establishing a wildlife refuge on the land. The contract shall be for such period and shall contain such terms, conditions and restrictions regarding the hunting and trapping of wildlife and other uses of the land as the commission considers appropriate to properly manage the supply and condition of the wildlife on the land. [1973 c.723 §108]

501.050 [Repealed by 1973 c.723 §130]

501.060 [Repealed by 1973 c.723 §130]

501.070 [Repealed by 1973 c.723 §130]

501.080 [Repealed by 1973 c.723 §130]

501.090 [Repealed by 1973 c.723 §130]

501.100 [Repealed by 1973 c.723 §130]

501.110 [Repealed by 1973 c.723 §130]

501.120 [Repealed by 1973 c.723 §130]

501.130 [Repealed by 1973 c.723 §130]

501.140 [Repealed by 1973 c.723 §130]

501.150 [Repealed by 1973 c.723 §130]

501.210 [Repealed by 1973 c.723 §130]

501.220 [Repealed by 1973 c.723 §130]

501.230 [Repealed by 1973 c.723 §130]

501.240 [Repealed by 1973 c.723 §130]

501.250 [Repealed by 1973 c.723 §130]

501.260 [Repealed by 1973 c.723 §130]

501.270 [Repealed by 1973 c.723 §130]

501.280 [Repealed by 1973 c.723 §130]

501.290 [Repealed by 1973 c.723 §130]

501.300 [Repealed by 1973 c.723 §130]

501.400 Columbia River Wildlife Refuge. There is created a wildlife refuge within the following described area: Beginning at the railroad bridge at Celilo in Wasco County; thence easterly along the railroad right of way to Boardman; thence due north to the center of the Columbia River (Washington State Line); thence westerly down the center of the Columbia River to a point due north of the point of beginning; thence south to the point of beginning. [Formerly 498.205]

501.405 Deschutes River Wildlife Refuge. There is created a wildlife refuge within the area that includes any island or sandbar along or in the Deschutes River from the Columbia River to a point one-half mile south of the Oregon Trail highway bridge where it crosses the Deschutes River. [Formerly 498.210]

506.025

COMMERCIAL FISHING AND FISHERIES

506.020 [Repealed by 1965 c.570 §152]

506.025 "Unlawful to buy" defined.

Whenever the commercial fishing laws state that it is unlawful to buy any food fish, illegally taken, this prohibition means that it is unlawful to buy, knowing or having reasonable cause to believe that the fish have been illegally taken or transported within this state, or unlawfully imported or otherwise unlawfully brought into this state. [Amended by 1965 c.570 §6]

506.028 "Conservation" defined. As used in the commercial fishing laws, unless the context requires otherwise, "conservation" means providing for the utilization and management of the food fish of Oregon to protect the ultimate supply for present and future generations, preventing waste and implementing a sound management program for sustained economic, recreational and esthetic benefits. [1971 c.187 §5; 1973 c.271 §1]

506.030 [Repealed by 1965 c.570 §152]

506.031 Effect of wildlife laws on commercial fishing laws. (1) Nothing in the wildlife laws of this state affects the lawful operation of any fishing gear or the lawful taking of any food fish under the commercial fishing laws.

(2) The commercial fishing laws apply to food fish except as otherwise provided in ORS 506.045 and 506.050, and shall be enforced regardless of any conflicting provisions in the wildlife laws of this state. No act lawfully done under the commercial fishing laws is unlawful in the event that such act conflicts with any provision of the wildlife laws of this state. [1965 c.570 §7; 1975 c.545 §10; 1977 c.242 §2]

506.035 [Repealed by 1965 c.570 §152]

506.036 Jurisdiction of commission; duty to protect and propagate fish. (1) Except as otherwise provided in subsection (4) of this section and in ORS 506.045 and 506.050, the commission has exclusive jurisdiction over all fish, shellfish, and all other animals living intertidally on the bottom, within the waters of this state. The commission has joint or other jurisdiction with any other state or government over all such fishes within the waters of the Columbia River and its tributaries where such waters form the boundaries of this state.

(2) The commission has jurisdiction over those species of fish, shellfish and all other animals living intertidally on the bottom referred to in subsection (1) of this section transported into or landed in this state which have been taken in waters outside this state.

(3) The duty of protection, preservation, propagation, cultivation, development and pro-

motion of all fishes under its jurisdiction is delegated to and imposed upon the commission.

(4) The commission has no regulatory authority or jurisdiction over the commercial cultivation of oysters in the waters of this state. However, nothing in this subsection is intended to affect the authority of the commission under ORS 509.140. [1965 c.570 §8; 1975 c.253 §20; 1981 c.638 §13; 1983 c.364 §3]

506.040 [1965 c.570 §9; 1969 c.411 §2; 1973 c.723 §120; repealed by 1975 c.253 §40]

506.045 Fishing rights of treaty Indians not affected. There are excluded from the operation of ORS 506.129, 506.136, 507.030, 508.025, 508.285, 509.025 (1) and 509.216, any Warm Springs, Umatilla, Yakima, Wasco, Tenino, Wyum and other Columbia River Indians affiliated with these tribes and entitled to enjoy fishing rights, who have not severed their tribal relations, in so far as it would conflict with any rights or privileges granted to such Indians under the terms of the treaties made by the United States with the Warm Springs Indians on June 25, 1855, and with the Umatilla and Yakima Indians on June 9, 1855. [Formerly 506.195; 1975 c.545 §11; 1977 c.242 §3]

506.050 Federal and state fish cultural operations and scientific investigations; commission to propagate fish and to stock waters. (1) The United States Fish and Wildlife Service, the commission and their duly authorized agents may conduct fish cultural operations and scientific investigations in the waters of this state in such manner and at such times as may be considered necessary and proper by the service, the commission or their agents.

(2) The commission shall propagate and stock the waters of this state with such fish as it considers proper. [1965 c.570 §11]

506.105 [Amended by 1973 c.271 §2; repealed by 1975 c.253 §40]

506.109 Food fish management policy.

It is the policy of the State of Oregon that food fish shall be managed to provide the optimum economic, commercial, recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the goals of food fish management are:

(1) To maintain all species of food fish at optimum levels in all suitable waters of the state and prevent the extinction of any indigenous species.

(2) To develop and manage the lands and waters of this state in a manner that will optimize the production, utilization and public enjoyment of food fish.

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(3) To permit an optimum and equitable utilization of available food fish.

(4) To develop and maintain access to the lands and waters of the state and the food fish resources thereon.

(5) To regulate food fish populations and the utilization and public enjoyment of food fish in a manner that is compatible with other uses of the lands and waters of the state and provides optimum commercial and public recreational benefits.

(6) To preserve the economic contribution of the sports and commercial fishing industries in a manner consistent with sound food fish management practices.

(7) To develop and implement a program for optimizing the return of Oregon food fish for Oregon's recreational and commercial fisheries. [1975 c.253 §15; 1985 c.529 §2]

506.110 [Repealed by 1965 c.570 §152]

506.111 [1965 c.570 §12; 1967 c.402 §5; 1969 c.314 §60; repealed by 1975 c.253 §40]

506.115 [Repealed by 1965 c.570 §152]

506.116 [1965 c.570 §13; repealed by 1975 c.253 §40]

506.119 General duties and powers of commission; rulemaking authority. (1) The commission has the authority to formulate and implement the policies and programs of this state for the management of food fish, and may perform all acts necessary to administer and carry out the provisions of the commercial fishing laws.

(2) In accordance with any applicable provision of ORS 183.310 to 183.550, the commission may promulgate rules to carry out the provisions of the commercial fishing laws. [1975 c.253 §17]

506.120 [Repealed by 1965 c.570 §152]

506.121 [1965 c.570 §14; repealed by 1975 c.253 §40]

506.124 Hatchery practice rules, reports. The commission shall adopt rules governing public and private salmon hatchery practices by July 1, 1984. The commission shall also submit quarterly reports to the Emergency Board on matters related to the adoption of rules and the impact of hatchery practices on the salmon resource. [1983 c.797 §8]

506.125 [Repealed by 1965 c.570 §152]

506.126 [1965 c.570 §15; repealed by 1975 c.253 §40]

506.129 Establishing seasons, amounts and manner of taking food fish. (1) After investigation of the supply and condition of food fish, the commission, at appropriate times each year, shall by rule:

(a) Prescribe the times, places and manner in which food fish may be taken or sold, except when canned or otherwise processed, and the amount of those food fish species that may be taken or sold.

(b) Prescribe such other restrictions or procedures regarding the taking, selling or possessing of food fish as the commission determines will carry out the provisions of the commercial fishing laws.

(2) In carrying out the provisions of subsection (1) of this section, the power of the commission includes, but is not limited to:

(a) Prescribing the amount of each food fish species that may be taken and possessed in terms of sex, size and other physical characteristics.

(b) Prescribing such regular and special time periods and areas closed to the taking and selling of any food fish species when the commission determines such action is necessary to protect the supply of such food fish.

(c) Prescribing regular and special time periods and areas open to the taking and selling of any food fish species, and prescribing means by which the taking of food fish is permitted. [1975 c.253 §16]

506.130 [Repealed by 1965 c.570 §152]

506.131 [1965 c.570 §14; repealed by 1975 c.253 §40]

506.135 [Repealed by 1965 c.570 §152]

506.136 Commission to study and classify food fish and fishing gear. The commission shall:

(1) Investigate the habits, supply and economic uses of, and classify all food fish.

(2) Classify all fishing gear and such classification shall be final. [1965 c.570 §21]

506.140 [Repealed by 1965 c.570 §152]

506.141 [1965 c.570 §22; repealed by 1975 c.253 §40]

506.142 Authority of Fish Division. The Fish Division established pursuant to ORS 496.124 shall be responsible for the management of all fish and other marine life over which the commission has regulatory jurisdiction. [1975 c.253 §18]

506.145 [Repealed by 1965 c.570 §152]

506.146 [1965 c.570 §23; repealed by 1975 c.253 §40]

506.150 [Repealed by 1965 c.570 §152]

506.151 [1965 c.570 §24; 1971 c.187 §1; repealed by 1975 c.253 §40]

506.153 [1963 c.259 §1; repealed by 1965 c.570 §152]

506.154 Duties of director. The director shall:

(1) Be responsible to the commission for the administration and enforcement of the commercial fishing laws.

506.154

COMMERCIAL FISHING AND FISHERIES

506.154 Duties of director. The director shall:

(1) Be responsible to the commission for the administration and enforcement of the commercial fishing laws.

(2) Be responsible for the collection, application and dissemination of information pertinent to the management of food fish resources and to the regulation of the use of such resources. [1975 c.253 §19]

506.155 [Amended by 1961 c.275 §1; repealed by 1965 c.570 §152]

506.156 [1965 c.570 §2; repealed by 1971 c.187 §3]

506.160 [Repealed by 1965 c.570 §152]

506.161 [1965 c.570 §2; repealed by 1971 c.187 §3]

506.165 [Repealed by 1965 c.570 §152]

506.170 [Repealed by 1965 c.570 §152]

506.173 [1961 c.463 §1; repealed by 1965 c.570 §152]

506.175 [Repealed by 1965 c.570 §152]

506.180 [Repealed by 1965 c.570 §152]

506.185 [Repealed by 1965 c.570 §152]

506.190 [Repealed by 1965 c.570 §152]

506.192 [1957 c.461 §1; 1959 c.60 §1; repealed by 1965 c.570 §152]

506.195 [Amended by 1965 c.570 §10; renumbered 506.045]

506.200 [Repealed by 1965 c.570 §152]

506.201 Powers of commission in regard to real property. The commission may:

(1) Acquire by purchase, lease, gift, agreement or donation, real property, or any right or interest therein, including any easement or right of access, necessary:

(a) To construct or maintain fish hatcheries, fishways or research facilities;

(b) To remove log jams; or

(c) Otherwise to carry out the duties imposed on the commission by law.

(2) Acquire by exercise of the power of eminent domain any easement or right of access necessary to construct or maintain fishways or remove log jams. Proceedings instituted by the commission under this subsection shall be conducted in accordance with ORS chapter 35.

(3) Lease, dispose of or grant easements upon any property owned by the state and used for the protection, propagation or preservation of food fish, which is found to be of no further use or value to the state. The commission shall turn over the proceeds arising from such disposi-

tion to the State Treasurer to be credited to the General Fund. [1965 c.570 §16; 1971 c.741 §34]

506.205 [Repealed by 1965 c.570 §152]

506.210 [Repealed by 1965 c.570 §152]

506.211 Acquisition of fish, eggs and larvae for certain purposes; returning salmon to Rogue River. (1) Subject to subsection (2) of this section, the commission may acquire by gift or purchase, and may acquire by capture or otherwise in this state, any fish, eggs or larvae thereof for propagation, experimental or scientific purposes.

(2) The commission or any other person authorized by it who takes salmon eggs from the waters of the Rogue River for the purpose of supplying the various hatcheries of this state, shall return at least 40 percent of the fish hatched from the eggs to the Rogue River. [1965 c.570 §28]

506.213 Coho and chinook salmon hatchery on Oregon coast. (1) The commission shall cause to be commenced and shall supervise the construction of a fish hatchery on the Oregon coast for the purpose of rearing coho and chinook salmon. The location for the site of the hatchery shall be at the discretion of the commission. Selection of the site shall be based upon the most recent research data available to the commission.

(2) The hatchery constructed pursuant to subsection (1) of this section shall be maintained and operated by the commission. [1967 c.360 §1.4]

506.215 Maintaining hatcheries in adjoining states. The commission may construct, maintain or operate hatcheries in an adjoining state, but no hatchery shall be constructed or operated on any stream in an adjoining state that is not a tributary of the Columbia River, or whose waters do not flow into the Columbia River.

506.220 Erecting markers of closed waters; interference with markers. Whenever deadlines are established on any of the waters of this state, either by legislative enactment or by order of the commission, the commission shall, within a reasonable time, erect suitable monuments or markers in the water or on the banks of the water designating the closed portion of the water. It is unlawful to remove, destroy, alter or mutilate any of these monuments or markers. [Amended by 1965 c.570 §27]

506.225 [Repealed by 1965 c.570 §152]

506.695**COMMERCIAL FISHING AND FISHERIES**

rules of the commission shall be seized by any member of the commission or any officer described in ORS 506.521.

(2) Any fish seized under the provisions of subsection (1) of this section may be disposed of, sold, preserved or used for food purposes, under the rules of the commission, to prevent loss or spoilage. At the time the court passes sentence or orders bail forfeited in the criminal prosecution for violation of the commercial fishing laws, the court may order that any fish seized under subsection (1) of this section or the proceeds from the sale of such fish shall be forfeited. Any moneys derived from the sale of any forfeited fish shall be deposited with the State Treasurer to be placed in the General Fund in the State Treasury.

(3) If the fish seized under subsection (1) of this section are not subsequently forfeited, the commission shall pay to the person from whom the fish were seized an amount equal to the market value of the fish at the time of seizure.

(4) The commission shall approve the amount to be paid under subsection (3) of this section, and the claim shall be paid from the General Fund in the manner provided by law for the payment of claims against the state. There is appropriated continuously from the General Fund an amount equal to the amounts approved by the commission under this subsection.

[Formerly 506.602; 1975 c.253 §27; 1977 c.652 §4]

506.695 Seizure, forfeiture and disposition of fishing gear and vehicles unlawfully used; removal of unlawful piling. (1) All boats, fishing gear and vehicles used in violation of the commercial fishing laws or the rules of the commission may be seized, and piling driven for the sole or primary purposes of violation of such laws may be removed, by any member of the commission or any officer described in ORS 506.521. Following the seizure the boats, gear and vehicles shall be delivered to the sheriff of the county in which the seizure occurred. The sheriff shall retain custody of the seized property until it is ordered returned to the owner or confiscation is adjudged pursuant to ORS 506.670 (2), or forfeiture is ordered pursuant to this section.

(2) Upon the order of the court at the time of passing sentence or for forfeiture of bail for the violation, the property seized under subsection (1) of this section may be forfeited. If forfeited, such property shall be turned over to the commission.

(3) The commission may dispose of such forfeited property in any manner it deems proper, but any moneys derived from the sale of any

forfeited property shall be deposited with the State Treasury to be placed in the General Fund in the State Treasury. [Formerly 506.603; 1977 c.652 §5]

506.700 Return of seized property; undertaking; effect of judgment ordering forfeiture or confiscation. (1) At any time after the seizure mentioned in ORS 506.695, but before the entry of judgment pursuant to ORS 506.670 or 506.695, the owner of the seized property may require the return thereof upon giving to the sheriff a written undertaking, executed by sufficient surety, to be approved by the court described in ORS 506.695, to the effect that such surety is bound in double the value of the property as determined by the court, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the owner. The owner shall file such written undertaking with the clerk of the court for the county in which the seizure occurred and shall serve a true copy thereof upon the district attorney for the same county.

(2) If confiscation or forfeiture of such property is required by a judgment of the court under ORS 506.670 or 506.695, the owner shall return the property to the plaintiff. If the owner fails to return the property, any officer described under ORS 506.521 may maintain an action upon such undertaking. [1977 c.652 §7]

FISHERIES CONSERVATION ZONE

506.750 Policy for ORS 506.755. The Legislative Assembly finds and declares that:

(1) The preservation of complex interrelationships of marine environment within the continental shelf of the Pacific Ocean off the coast of the State of Oregon is necessary to conserve coastal species of fish and to guarantee the well-being of the economy and welfare of the state and its people.

(2) The uncontrolled use of the marine commercial fisheries to harvest coastal species of fish and other marine fisheries resources by foreign nationals is of public concern and constitutes an immediate threat to the marine environment and its ultimate survival.

(3) The State of Oregon has a special interest in the maintenance of the productivity of the living resources in the area of the high seas adjacent to its territorial sea. [1974 s.s. c.3 §1]

Note: 506.750 and 506.755 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 506 or any series therein by legislative

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action. See Preface to Oregon Revised Statutes for further explanation.

506.755 Fisheries Conservation Zone; jurisdiction over zone; penalty; construction. (1) The State of Oregon adopts a Fisheries Conservation Zone for the maintenance, preservation and protection of all coastal species of fish and other marine fisheries resources between the mean high water mark of the state and a straight line extension of the lateral boundaries of the state drawn seaward to a distance of 50 statute miles.

(2) Activities of marine commercial fishing within the limits and boundaries of the Fisheries Conservation Zone shall be under the jurisdiction and regulation of the commission.

(3) The commission shall study the fishery within the zone and when appropriate adopt, amend or repeal all rules, according to the provisions of ORS 506.119 and 506.129 necessary for the maintenance, preservation and protection of all coastal species of fish and other marine fisheries resources.

(4) The jurisdiction within the Fisheries Conservation Zone shall include, but not be limited to, provisions for inspection of catch, particularly regarding anadromous fish; rules relating to methods of fishing, size and kind of gear and nets; rules designating seasons, closures and restricted areas.

(5) ORS 506.501 to 506.695 shall provide the authority for enforcing rules adopted by the commission as specified in this section.

(6) Any person convicted of violating any rule authorized under the provisions of this section shall be punished by a fine not to exceed \$10,000.

(7) Nothing contained within this section is intended to abrogate a nation's right of free passage or navigation of the high seas.

(8) Nothing contained within this section is intended to abrogate international fish compacts, agreements or treaties providing for the management of anadromous or pelagic fish species. [1974 s.a. c.3 §2; 1983 c.740 §204]

Note: See note under 506.750.

FISH MARKETING

506.800 Names for marketing certain fish and shellfish. In order to obtain uniform names to be used for the marketing of fish:

(1) The common names Pacific red snapper, Pacific snapper, Oregon red snapper, Oregon snapper, red snapper and snapper may be used as

alternate names for the purpose of marketing the following fish:

- (a) Widow rockfish (*Sebastes entomelas*).
- (b) Yellowtail rockfish (*Sebastes flavidus*).
- (c) Chilipepper (*Sebastes goodei*).
- (d) Cowcod (*Sebastes levis*).
- (e) Black rockfish (*Sebastes melanops*).
- (f) Vermillion rockfish (*Sebastes miniatus*).
- (g) Speckled rockfish (*Sebastes ovalis*).
- (h) Bocaccio (*Sebastes paucispinnis*).
- (i) Canary rockfish (*Sebastes pinniger*).
- (j) Yelloweye rockfish (*Sebastes ruberrimus*).
- (k) Bank rockfish (*Sebastes rufus*).
- (L) Olive rockfish (*Sebastes serranoides*).

(2) The common names butterfish and black cod may be used as alternate names for purposes of marketing sablefish (*Anoplopoma fimbria*).

(3) The common names Pacific ocean shrimp, Pacific shrimp, pink shrimp and Oregon shrimp may be used as alternate names for the purpose of marketing *Pandalus jordani* (shrimp). [1979 c.457 §2]

MISCELLANEOUS

506.895 Person aiding in commercial fishing law violation punishable as principal. Any person who counsels, aids or assists in any violation of the commercial fishing laws shall incur the penalties provided for the person guilty of such violation. [1981 c.365 §18]

PENALTIES

506.990 [Repealed by 1965 c.570 §152]

506.991 Penalties. (1) Except as provided in this section, violation of any provision of the commercial fishing laws, or of any rule promulgated by the commission in carrying out the commercial fishing laws, is a Class A misdemeanor.

(2) In lieu of the fine provided in ORS 161.635, and in addition to the imprisonment provided in ORS 161.615, any violation of this section is punishable as follows:

(a) For the first conviction, a fine not to exceed \$2,500.

(b) For the second conviction within a 10-year period, a fine not to exceed \$4,000.

(c) For the third conviction within a 10-year period, a fine not to exceed \$10,000.

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possession, except for the purpose of propagation when authorized by law, any spawning salmon.

(3) Notwithstanding subsections (1) and (2) of this section it is lawful to take precocious salmon commonly called jack salmon less than 15 inches in length from the waters of this state, except the Pacific Ocean and to buy, sell or possess such salmon.

(4) To further protect immature salmon the commission may establish by rule a minimum size for any species of salmon which is greater than 20 inches. [Amended by 1965 c.570 §97]

509.045 [Amended by 1965 c.570 §98; repealed by 1981 c.365 §23]

509.050 [Repealed by 1965 c.570 §152]

509.055 [Repealed by 1965 c.570 §152]

509.060 [Amended by 1965 c.570 §96; renumbered 509.185]

509.065 [Amended by 1959 c.254 §1; 1965 c.570 §101; renumbered 509.112]

509.070 Selling, canning, processing or preserving food fish out of water longer than 60 hours. It is unlawful to sell, can, process or preserve for food any food fish that have been removed from the water for a longer period than 60 hours, unless such fish have been artificially chilled. [Amended by 1965 c.570 §102]

509.075 Packing or selling food fish unfit for human consumption. If the commission or its authorized representatives finds that food fish about to be processed, packed, canned, preserved in ice or sold in the open market are unfit for human consumption, it or they shall notify the packer or possessor of such fish of the fact. If, in spite of any warning given to such packer or possessor, such fish are packed, demand shall be made upon the packer to keep such fish separate and apart from the balance of his output or pack, and a full report shall be made of the matter to both the state and the federal health authorities. [Amended by 1965 c.570 §103]

509.080 [Repealed by 1965 c.570 §152]

509.090 [Repealed by 1965 c.570 §152]

509.095 [Repealed by 1959 c.364 §3]

509.100 [Repealed by 1959 c.364 §3]

509.105 Possession, importation or transportation of food fish unlawfully taken in other state. It is unlawful to possess, import into this state or transport within this state any food fish which have been unlawfully taken or transported under the laws of

another state. [Amended by 1957 c.291 §1; 1965 c.570 §108]

509.110 Fish transporters to require statement from shipper; examination by commission. (1) All transportation companies, common carriers or other persons or agencies transporting food fish, fresh, frozen, salted, smoked, kippered or preserved in ice, shall require of the shipper, before accepting such shipments, a signed statement in writing showing:

(a) The name of the consignor or shipper.

(b) The name of the consignee.

(c) The net weight in pounds of each species of fish in the shipment, in the whole or round, or dressed.

(d) The date of the shipment.

(2) The commission may require such statement to be forwarded to its office.

(3) The director or his authorized representative may at any time examine the records of any such transportation companies, common carriers or other persons or agencies, for the purpose of enforcing this section. [Amended by 1965 c.570 §109]

WASTING, INJURING AND DESTROYING FISH

509.112 Wasting food fish. It is unlawful for any person wantonly to waste or destroy any food fish. [Formerly 509.065]

509.115 Placing in waters fish harmful to food fish. It is unlawful, without written authority from the commission, to place in any of the waters of this state any species or variety of fish whatsoever which are inimical to or destructive of food fish. [Amended by 1965 c.570 §105]

509.120 Using electricity to disturb food fish. It is unlawful to use or permit to be used in any of the waters of this state any electrical device, appliance or current which in any manner has a tendency to retard, scare, frighten or obstruct any food fish in their migrations or movements in such waters without first having obtained the consent of and a permit from the director. [Amended by 1965 c.570 §106]

509.122 Definitions for ORS 509.125 to 509.155. As used in ORS 509.125 to 509.155, unless the context requires otherwise:

(1) "Explosives" means any explosive substances whatever, including but not limited to powder, dynamite and nitroglycerine.

holder as a result of the tax credits provided to the holder under ORS 316.140 or 317.104. The Department of Revenue shall have the benefit of all laws of this state pertaining to the collection of income and excise taxes. No assessment of such taxes shall be necessary and no statute of limitation shall preclude the collection of such taxes.

(4) If the certificate is ordered revoked pursuant to paragraph (b) of subsection (1) of this section, the certificate holder shall be denied any further relief under ORS 316.140 or 317.104 in connection with such facility from and after the date that the order of revocation becomes final.

[1979 c.512 §10]

REGULATION OF ENERGY FACILITIES

(General Provisions)

469.300 Definitions for ORS 469.300 to 469.570 and 469.590 to 469.621. As used in ORS 469.300 to 469.570; 469.590 to 469.621, 469.930 and 469.992, unless the context requires otherwise:

(1) "Applicant" means any person who makes application for a site certificate in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(2) "Application" means a request for approval of a particular site or sites for the construction and operation of an energy facility or the construction and operation of an additional energy facility upon a site for which a certificate has already been issued, filed in accordance with the procedures established pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(3) "Associated transmission lines" means new transmission lines constructed to connect a thermal power plant to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

(4) "Combustion turbine power plant" means a thermal power plant consisting of one or more fuel-fired combustion turbines and any associated waste heat combined cycle generators.

(5) "Construction" means onsite work and construction, the cost of which exceeds \$250,000, excluding exploratory work.

(6) "Council" means the Energy Facility Siting Council established under ORS 469.450.

(7) "Department" means the Department of Energy created under ORS 469.030.

(8) "Director" means the Director of the Department of Energy.

(9) "Electric utility" means individuals, regulated electrical companies, people's utility districts, joint operating agencies, electric cooperatives, municipalities or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy. "Electric utility" includes any person or public agency generating electric energy from an energy facility for its own consumption.

(10) "Energy facility" means any of the following:

(a) An electric power generating plant with a nominal electric generating capacity of more than 25,000 kilowatts, including but not limited to thermal power, hydropower, geothermal power produced from a single geothermal reservoir, or combustion turbine power plant.

(b) A nuclear installation as defined in this section.

(c) A high voltage transmission line of more than 10 miles in length with a capacity in excess of 230,000 volts, to be constructed in more than one political subdivision in this state; but excluding lines proposed for construction entirely within 500 feet of an existing corridor occupied by high voltage transmission lines with a capacity in excess of 230,000 volts.

(d) A solar collecting facility using more than 100 acres of land, or providing more than 25,000 kilowatts of power.

(e) A pipeline that is:

(A) At least six inches in diameter, and five or more miles in length, used for the transportation of crude petroleum or a derivative thereof, liquified natural gas, a geothermal energy form or other fossil energy resource.

(B) At least 16 inches in diameter, and five or more miles in length, used for the transportation of natural or synthetic gas.

(C) At least 16 inches in diameter and five or more miles in length used to carry a geothermal energy form but excluding a pipeline used to distribute heat within a geothermal heating district established under ORS chapter 523.

(f) A synthetic fuel plant which converts a natural resource including, but not limited to, coal, oil or biomass to a gas, liquid or solid product capable of being burned to produce the equivalent of 2×10^9 Btu of heat a day.

(11) "Geothermal reservoir" means an aquifer or aquifers containing a common geothermal fluid.

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(12) "Extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605, from its intended place of confinement offsite, or causing radiation levels offsite, that the United States Nuclear Regulatory Commission or its successor determines to be substantial and to have resulted in or to be likely to result in substantial damages to persons or property offsite.

(13) "Nuclear incident" means any occurrence, including an extraordinary nuclear occurrence, that results in bodily injury, sickness, disease, death, loss of or damage to property or loss of use of property due to the radioactive, toxic, explosive or other hazardous properties of source material, special nuclear material or by-product material as those terms are defined in ORS 453.605.

(14) "Nuclear installation" means any power reactor; nuclear fuel fabrication plant; nuclear fuel reprocessing plant; waste disposal facility for radioactive waste; and any facility handling that quantity of fissionable materials sufficient to form a critical mass. "Nuclear installation" does not include any such facilities which are part of a thermal power plant.

(15) "Nuclear power plant" means an electrical or any other facility using nuclear energy with a nominal electric generating capacity of more than 25,000 kilowatts, for generation and distribution of electricity, and associated transmission lines.

(16) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, people's utility district, or any other entity, public or private, however organized.

(17)(a) "Radioactive waste" means all material which is discarded, unwanted or has no present lawful economic use, and contains mined or refined naturally occurring isotopes, accelerator produced isotopes and by-product material, source material or special nuclear material as those terms are defined in ORS 453.605. The term does not include those radioactive materials identified in OAR 345-50-020, 345-50-025 and 345-50-035, adopted by the council on December 12, 1978, and revised periodically for the purpose of adding additional isotopes which are not referred to in OAR 345-50 as presenting no significant danger to the public health and safety.

(b) Notwithstanding paragraph (a) of this subsection, "radioactive waste" does not include

uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials as those terms are defined in Title 42, United States Code, section 2014, on June 25, 1979.

(18) "Related or supporting facilities" means any structure adjacent to and associated with an energy facility, including associated transmission lines, reservoirs, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures proposed to be built in connection with the energy facility.

(19) "Site" means any proposed location of an energy facility and related or supporting facilities.

(20) "Site certificate" means the binding agreement between the State of Oregon and the applicant, authorizing the applicant to construct and operate an energy facility on an approved site, incorporating all conditions imposed by the state on the applicant and all warranties given by the applicant to the state.

(21) "Thermal power plant" means an electrical or any other facility using any source of thermal energy with a nominal electric generating capacity of more than 25,000 kilowatts, for generation and distribution of electricity, and associated transmission lines, including but not limited to a nuclear-fueled, geothermal-fueled or fossil-fueled power plant, but not including a portable power plant the principal use of which is to supply power in emergencies.

(22) "Transportation" means the transport within the borders of the State of Oregon of radioactive material destined for or derived from any location.

(23) "Utility" includes:

(a) An individual, a regulated electrical company, a people's utility district, a joint operating agency, an electric cooperative, municipality or any combination thereof, engaged in or authorized to engage in the business of generating, transmitting or distributing electric energy;

(b) A person or public agency generating electric energy from an energy facility for its own consumption; and

(c) A person engaged in this state in the transmission or distribution of natural or synthetic gas.

(24) "Waste disposal facility" means a geographical site in or upon which radioactive waste is held or placed but does not include a site at which radioactive waste used or generated pursuant to a license granted under ORS 453.635 is stored temporarily, a site of a thermal power plant used for the temporary storage of radioac-

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tive waste from that plant for which a site certificate has been issued pursuant to this chapter or a site used for temporary storage of radioactive waste from a reactor operated by a college, university or graduate center for research purposes and not connected to the Northwest Power Grid. [Formerly 453.305; 1977 c.796 §1; 1979 c.283 §1; 1981 c.587 §1; 1981 c.629 §2; 1981 c.707 §1; 1981 c.866 §1]

469.310 Policy. In the interests of the public health and the welfare of the people of this state, it is the declared public policy of this state that the siting, construction and operation of energy facilities shall be accomplished in a manner consistent with protection of the public health and safety and in compliance with the energy policy and air, water, solid waste, land use and other environmental protection policies of this state. It is, therefore, the purpose of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 to exercise the jurisdiction of the State of Oregon to the maximum extent permitted by the United States Constitution and to establish in cooperation with the Federal Government a comprehensive system for the siting, monitoring and regulating of the location, construction and operation of all energy facilities in this state. [Formerly 453.315]

(Siting)

469.320 Site certificate required; exceptions. (1) After July 2, 1975, no energy facility shall be constructed or expanded unless a site certificate has been issued for the site thereof in the manner provided in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, but no site certificate shall be required for an existing industrial or energy facility if the facility is merely modified to increase the electric capacity and not expanded. No energy facility shall operate except in conformity with the requirements of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(2) Notwithstanding subsection (1) of this section, no site certificate shall be required for construction or expansion of any interstate natural gas pipeline authorized by and subject to the continuing regulation of the Federal Power Commission or successor agency.

(3) Notwithstanding subsection (1) of this section, no site certificate shall be required for a facility which generates electricity from heat produced as a by-product of the normal industrial processes at an existing industrial facility.

(4)(a) Notwithstanding subsection (1) of this section, no site certificate shall be required for an energy recovery energy facility that has a nominal

electric generating capacity of not more than 50,000 kilowatts.

(b) As used in this subsection, "energy recovery energy facility" means a facility that:

(A) Is designed to produce thermal energy for industrial use and electric energy; and

(B) Is designed to use straw, forest slash, wood waste, other farm or forest waste or solid waste as defined in ORS 459.005 as a fuel. [Formerly 453.325; 1977 c.86 §1; 1979 c.730 §8; 1982 s.a.1 c.6 §1]

469.330 Notice of intent to file application for site certificate; public notice. (1) Each applicant for a site certificate for a nuclear installation, or for a thermal power plant with a nominal electric generating capacity of more than 200,000 kilowatts except combustion turbine power plants and geothermal-fueled power plants, must file with the council a notice of intent to file an application for a site certificate. The notice of intent must describe the proposed site with sufficient detail to enable the council to identify the proposed site.

(2) The council shall cause public notice to be given whenever a notice of intent is filed and provide a description of the proposed site in sufficient detail to inform the public of its location.

(3) A new notice of intent shall not be required as a condition precedent to the filing of an application for a site certificate for a site which was previously recommended against by the council, vetoed by the Governor or withdrawn by the applicant. [Formerly 453.335; 1977 c.794 §9]

469.340 [1975 c.552 §37; 1975 c.606 §26a; repealed by 1981 c.629 §3]

469.350 Application for site certificate; comment and recommendation. (1) Applications for site certificates shall be made to the council on a form prescribed by the council and accompanied by the fee required by ORS 469.420. When a notice of intent is required by ORS 469.330 the application may be filed not sooner than 120 days after filing of the notice of intent.

(2) Proposed use of a site within an area designated by the council pursuant to ORS 469.470 as suitable for location of a particular type of energy facility does not preclude the necessity of the applicant obtaining a site certificate for the specific site.

(3) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission,

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the State Fish and Wildlife Commission, the Health Division, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commissioner of Oregon, the State Department of Agriculture, the Department of Transportation, the Department of Land Conservation and Development, the Economic Development Department and any city or county affected by the application. [Formerly 453.345; 1977 c.794 §10]

469.360 Study of site applications; costs; payment by applicant. The council shall study each site application and may commission an independent study of any aspect of the proposed energy facility. The full cost of the study shall be paid from the applicant's fee paid under ORS 469.420 (2). However, if costs of the study exceed the fee paid under ORS 469.420, the applicant must agree to pay any excess costs before they are incurred and must pay such costs after they are incurred. If the costs are less than the fee paid, the excess shall be refunded to the applicant. Expenses incurred for site studies, other than those incurred for studies authorized by this section, are the sole responsibility of the applicant. [Formerly 453.355]

469.370 Hearings on site application; approval or rejection by council. (1) The council shall hold public hearings in the affected area and elsewhere, as it deems necessary, on the application for a site certificate. At the conclusion of its hearings the council shall either approve or reject the application. The council must make its decision by the affirmative vote of at least four members, approving or rejecting any application for a certificate.

(2) Rejection or approval of an application, together with any conditions that may be attached to the certificate, shall be subject to judicial review as provided in ORS 469.400 (1).

(3) The council shall either approve or reject an application for a site certificate:

(a) Within 24 months after filing an application for a nuclear installation, or for a thermal power plant, other than that described in paragraph (b) of this subsection, with a name plate rating of more than 200,000 kilowatts;

(b) Within nine months after filing of an application for a site certificate for a combustion turbine power plant, a geothermal-fueled power plant or an underground storage facility for natural gas;

(c) Within six months after filing an application for a site certificate for an energy facility, if the application is:

(A) To expand an existing industrial facility to include an energy facility;

(B) To expand an existing energy facility to achieve a nominal electric generating capacity of between 25,000 and 50,000 kilowatts; or

(C) To add generating capacity to an existing dam; or

(d) Within 12 months after filing an application for a site certificate for any other energy facility.

(4) The council shall reject an application for a site certificate for a hydroelectric project if the council finds the project does not comply with the standards set forth in ORS 469.371 or rules adopted by the council under ORS 469.371. [Formerly 453.365; 1977 c.296 §14; 1977 c.794 §11; 1977 c.895 §1; 1985 c.569 §17]

469.371 Hydroelectric power projects; minimum standards; rules. (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Energy Facility Siting Council relating to the development of hydroelectric power projects in excess of 25 megawatts in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The council shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the council may allow mitigation if the council finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation which may result in a wild game fish population or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitiga-

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tion. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities which, in the judgment of the council, are of state-wide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the council shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity including water quality, wildlife, scenic and aesthetic values, historic, cultural and archaeological sites shall be maintained or enhanced. No activity may be approved which, in the judgment of the council, after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the council may consider mitigation if the council determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable the council shall consult with appropriate state, federal and local agencies.

(2) The council shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the council relating to hydroelectric development shall comply with the standards as set forth in this section. In adopting rules under this subsection, the council shall consult with the Water Resources Commission in order to coordinate rules adopted under this section with rules adopted by the Water Resources Commission under ORS 543.017. [1985 c.569 §5]

469.372 Determination of impact of hydroelectric projects required; consolidated review. (1) Whenever the Energy Facility Siting Council receives an application for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council shall determine whether the impacts of the project would be cumulative with:

(a) Impacts of other proposed hydroelectric projects for which an application is pending before the council or before the Water Resources Commission under ORS 537.140 to 537.320 or 543.010 to 543.620; or

(b) Existing hydroelectric projects in the same river basin.

(2) If the council determines that there is no possibility that the hydroelectric projects pro-

posed in pending applications or existing projects may have cumulative effects, the council shall issue an order setting forth the council's determination that there are no cumulative effects and the council's decision that consolidated review is not required.

(3) If the council determines that pending applications or existing projects may have cumulative effects, the council shall conduct a consolidated review before issuing any site certificate for a hydroelectric project in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS 183.310 to 183.550 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the council or the Water Resources Commission and existing hydroelectric projects. In its final order on a site certificate, the council shall include its findings on cumulative impacts. The findings of the council under this section must be sufficient to support the council's decision to issue or deny a site certificate.

(4) The council shall not issue a site certificate for any application for a project in the same river basin filed after the council begins a consolidated review contested case hearing until the council issues final findings on cumulative effects for all projects included in the consolidated review proceeding.

(5) At the request of an applicant for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section.

(6) The time limits for review of the applications provided by ORS 469.370 are not applicable to applications for site certificates subject to this section. [1985 c.569 §14; 1985 c.673 §196]

469.374 Rulemaking for consolidated review process. The Energy Facility Siting Council shall immediately initiate rulemaking proceedings according to the applicable provisions of ORS 183.310 to 183.550 to implement the consolidated review process under ORS 469.372. Before adoption of the rules, the council shall submit the rules to the Joint Legislative Committee on Water Policy for review and recommendation. [1985 c.569 §15]

Note: Section 16, chapter 569, Oregon Laws 1985, provides:

Sec. 16. Any application pending before the Energy Facility Siting Council for which the record for the hearing under ORS 469.370 has not been closed on or before the

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effective date of this Act [October 1, 1985] shall be subject to the consolidated review process set forth in section 14 of this 1985 Act and to rules adopted by the council under section 15 of this 1985 Act.

469.375 Required findings for radioactive waste disposal facility certificate. The council shall not issue a site certificate for a waste disposal facility for uranium mine overburden or uranium mill tailings, mill wastes or mill by-product or for radioactive waste or radioactively contaminated containers or receptacles used in the transportation, storage, use or application of radioactive material, unless, accompanying its decision it finds:

(1) The site is:

(a) Suitable for disposal of such wastes, and the amount of the wastes, intended for disposal at the site;

(b) Not located in or adjacent to:

(A) An area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(B) Within the 500-year flood plain of a river, taking into consideration the area determined to be potentially subject to river or creek erosion within the lifetime of the facility;

(C) An active fault or an active fault zone;

(D) An area of ancient, recent or active mass movement including land sliding, flow or creep;

(E) An area subject to ocean erosion; or

(F) An area having experienced volcanic activity within the last two million years.

(2) There is no available disposal technology and no available alternative site for disposal of such wastes that would better protect the health, safety and welfare of the public and the environment;

(3) The disposal of such wastes and the amount of the wastes, at the site will be compatible with the regulatory programs of Federal Government for disposal of such wastes;

(4) The disposal of such wastes, and the amount of the wastes, at the site will be coordinated with the regulatory programs of adjacent states for disposal of such wastes;

(5) That following closure of the site, there will be no release of radioactive materials or radiation from the waste;

(6) That suitable deed restrictions have been placed on the site recognizing the hazard of the material; and

(7) That, where federal funding for remedial actions is not available, a surety bond in the name

of the state has been provided in an amount determined by the department to be sufficient to cover any costs of closing the site and monitoring it or providing for its security after closure and to secure performance of any site certificate conditions. The bond may be withdrawn when the council finds that:

(a) The radioactive waste has been disposed of at a waste disposal facility for which a site certificate has been issued; and

(b) A fee has been paid to the State of Oregon sufficient for monitoring the site after closure.

(8) If any section, portion, clause or phrase of this section is for any reason held to be invalid or unconstitutional the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force or effect, and to this end the provisions of this section are severable. [Formerly 459.625; 1979 c.283 §3; 1981 c.587 §3; 1985 c.4]

469.380 Conduct of hearings. (1) Any person may appear personally or by counsel to present testimony in any hearing before the council on any application for a site certificate.

(2) The council may, by proper order, permit any person to become a party in support of or in opposition to the application by intervention who appears to have an interest in the results of the hearing or who represents a public interest in such results. However, the request for intervention must be made before the final taking of evidence in the hearing.

(3) Any person authorized to intervene in the hearing on a site certificate may appeal the council's approval or rejection in the manner prescribed in ORS 469.400 (1). Such approval or rejection shall be deemed a final order for purposes of such appeal. [Formerly 453.375; 1977 c.794 §12; 1977 c.895 §2]

469.390 Waiting period for issuance of certificate; waiver. Except as provided in section 4, chapter 609, Oregon Laws 1971, and ORS 469.410, no site certificate shall be issued under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 until the entire review time prescribed by ORS 469.370 has been utilized, except that the council may waive the time requirement if, pursuant to ORS 469.470, area studies of the entire state for that type of energy facility have been completed or have been determined to be unnecessary. [Formerly 453.385]

469.400 Judicial review vested in Supreme Court; appeal; execution of site certificates; contents. (1) Jurisdiction for judicial review of the council's approval or rejection of an application for a site certificate is

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conferred upon the Supreme Court. Proceedings for review shall be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days only following the date the approval or rejection is served. If the council does not otherwise act, a petition for rehearing or reconsideration shall be deemed denied the 60th day following the date the petition was filed, and in such cases, petition for judicial review shall be filed within 60 days only following such date. Date of service shall be the date on which the council delivered or mailed its approval or rejection in accordance with ORS 183.470. Upon approval and after expiration of the appeal period provided in this subsection, the site certificate with any conditions prescribed by the council shall be executed by the chairman of the council and by the applicant, except that the filing of the petition for review stays the construction of the energy facility until final decision by the Supreme Court. No bond or other undertaking shall be required to stay such construction. Except as otherwise provided in this subsection, the review by the Supreme Court shall be as provided in ORS 183.482. The Supreme Court shall give priority on its docket to such a petition for review.

(2) The certificate shall authorize the applicant to construct and operate the proposed energy facility subject to the conditions set forth in such certificate.

(3) The site certificate shall contain conditions for the protection of the public health and safety and shall require both parties to abide by state law and rules of the council in effect on the date the site certificate is executed, except that upon a clear showing that there is danger to the public health and safety that requires stricter laws or rules, the state may, subject to ORS 469.500, require compliance with such stricter laws or rules.

(4) The site certificate shall contain the applicant's warranties as to its abilities required under ORS 469.470 (3), its provisions as to protection of the public health and safety and as to time of completion of construction.

(5) Subject to the conditions set forth therein, any certificate signed by the chairman of the council shall bind the state and all counties and cities and political subdivisions in this state as to the approval of the site and the construction and operation of the proposed energy facility. Affected state agencies, counties, cities and political subdivisions shall issue the appropriate permits, licenses and certificates necessary to construction and operation of the facility, subject

only to condition of the site certificate. Each state or local governmental agency that issues a permit, license or certificate shall continue to exercise enforcement authority over such permit, license or certificate.

(6) Where a site certificate authorizes the construction and operation of an energy facility within the boundaries of an incorporated city, the certificate shall be conditioned upon compliance with lawful ordinances in effect and enacted by the city on the date of filing of the notice of intent or the application, whichever is earlier. If a city subsequently adopts lawful ordinances that are stricter than any ordinance in effect on the date of filing of the notice of intent or the application, upon a clear showing that there is danger to the public health and safety the state may require compliance with such stricter ordinances. [Formerly 453.395; 1977 c.794 §13; 1977 c.895 §3]

469.410 Energy facility site certificate applications filed or under construction prior to July 2, 1975; conditions of site certificate. (1) Any applicant for a site certificate for an energy facility shall be deemed to have met all the requirements of ORS 176.820, 192.500, 192.690, 469.010 to 469.580, 469.990, 757.710 and 757.720 relating to eligibility for a site certificate and a site certificate shall be issued by the Governor for:

(a) Any transmission lines for which application has been filed with the Federal Government and the Public Utility Commissioner of Oregon prior to July 2, 1975; and

(b) Any energy facility under construction on July 2, 1975.

(2) Each applicant for a site certificate under this section shall pay the fees required by ORS 469.420 (3) and (4) and shall execute a site certificate in which the applicant agrees:

(a) To abide by the conditions of all licenses, permits and certificates required by the State of Oregon or any subdivision in the state to operate the energy facility and issued prior to July 2, 1975; and

(b) On and after July 2, 1975, to abide by the rules of the director adopted pursuant to ORS 469.040 (1)(d) and rules of the council adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930.

(3) Site certificates executed by the Governor under ORS 469.400 prior to July 2, 1975, shall bind successor agencies created hereunder in accordance with the terms of such site certificates. [1975 c.606 §24; 1983 c.740 §184]

469.420 [Formerly 453.405; 1977 c.813 §1; 1979 c.234 §1; 1981 c.792 §3; repealed by 1981 c.792 §4 (469.421 enacted in lieu of 469.420)]

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469.421 Fees; exemptions; assessment of certain utilities and suppliers; penalty.

(1) Every person filing notice of intent to file for a site certificate shall submit a fee of \$5,000 for each site so indicated. If the person subsequently becomes an applicant for a site certificate, the amount paid at the time notice of intent is filed shall be credited against the amount otherwise due under subsection (2) of this section.

(2) Every applicant for a site certificate shall submit to the department at the same time as the application for a site certificate is filed with the council, an amount equal to \$0.05 per kilowatt of the maximum planned net electric capacity for a proposed electric generating plant, or addition thereto, or an amount equal to \$200 for each \$1 million of estimated capital investment in any other proposed energy facility or addition thereto. In no case shall the application fee be less than \$5,000.

(3) Each holder of a certificate under ORS 469.300 to 469.570 and 469.992 shall pay a fee, due on the July 1 next following issuance of a site certificate and annually thereafter. For the fiscal year beginning July 1, 1981, and thereafter, upon approval of the department's budget authorization by a regular session of the Legislative Assembly or as revised by the Emergency Board, the director promptly shall enter an order establishing the amount of revenues required to be derived from an annual revenue fee in order to fund the cost of regulating the facility. In no case shall the fee exceed:

(a) For a nuclear-fueled electric power generating plant, \$0.25 per kilowatt of the maximum net electric capacity authorized by the site certificate and for all other electric power generating plants, \$0.025 per kilowatt of the maximum net electric capacity authorized by the site certificate. Once construction on the plant has begun the name plate rating of the plant shall be used in calculating the annual fee.

(b) For any other energy facility, \$300 for each \$1 million (or portion thereof) of estimated capital investment. Once the energy facility is in service, the booked original cost of such energy facility shall be used thereafter in calculating the annual fee.

(4) In addition to any other fees required by law, each energy resource supplier shall pay to the department annually, commencing with the fiscal year beginning July 1, 1981, its share of an assessment to fund the activities of the department, determined by the director in the following manner:

(a) Upon approval of the department's budget authorization by a regular session of the

Legislative Assembly or upon the effective date of this section, the director shall promptly enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the department, including those enumerated in ORS 469.030 and others authorized by law, for the first fiscal year of the forthcoming biennium. On or before June 1 of each even-numbered year, the director shall enter an order establishing the amount of revenues required to be derived from an assessment pursuant to this subsection in order to fund the activities of the department, including those enumerated in ORS 469.030 and others authorized by law, for the second fiscal year of the biennium which order shall take into account any revisions to the department's biennial budget made by the Emergency Board or by a special session of the Legislative Assembly subsequent to the most recently concluded regular session of the Legislative Assembly.

(b) Each order issued by the director pursuant to paragraph (a) of this subsection shall allocate the aggregate assessment set forth therein to energy resource suppliers in accordance with paragraph (c) of this subsection.

(c) The amount assessed to an energy resource supplier shall be based on the ratio which that supplier's annual gross operating revenue derived within this state in the preceding calendar year bears to the total gross operating revenue derived within this state during that year by all energy resource suppliers. The assessment against an energy resource supplier shall not exceed five-tenths of one percent of the supplier's gross operating revenue derived within this state in the preceding calendar year. The director shall exempt from payment of an assessment any individual energy resource supplier whose calculated share of the annual assessment is less than \$250.

(d) The director shall send each energy resource supplier subject to assessment pursuant to this subsection a copy of each order issued, by registered or certified mail. The amount assessed to the energy resource supplier pursuant to the order shall be considered to the extent otherwise permitted by law a government-imposed cost and recoverable by the energy resource supplier as a cost included within the price of the service or product supplied.

(e) The amounts assessed to individual energy resource suppliers pursuant to paragraph (c) of this subsection shall be paid to the department as follows:

(A) Amounts assessed for the first fiscal year of a biennium shall be paid not later than 90 days

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following the close of the regular session of the Legislative Assembly; and

(B) Amounts assessed for the second fiscal year of a biennium shall be paid not later than July 1 of each even-numbered year.

(f) An energy resource supplier shall provide the director, on or before May 1 of each year, a verified statement showing its gross operating revenues derived within the state for the preceding calendar year. The statement shall be in the form prescribed by the director and is subject to audit by the director. The statement shall include an entry showing the total operating revenue derived by petroleum suppliers from fuels sold that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 with reference to aircraft fuel and motor vehicle fuel, and ORS 319.530. The director may grant an extension of not more than 15 days for the requirements of this subsection if:

(A) The energy supplier makes a showing of hardship caused by the deadline;

(B) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and

(C) The extension of time does not prevent the department from fulfilling its statutory responsibilities.

(g) As used in this section:

(A) "Energy resource supplier" means an electric utility, natural gas utility or petroleum supplier supplying electricity, natural gas or petroleum products in Oregon.

(B) "Gross operating revenue" means gross receipts from sales or service made or provided within this state during the regular course of the energy supplier's business, but does not include either revenue derived from interutility sales within the state or revenue received by a petroleum supplier from the sale of fuels that are subject to the requirements of section 3, Article IX of the Oregon Constitution, ORS 319.020 or 319.530.

(C) "Petroleum supplier" has the meaning given that term in ORS 469.020.

(h) In determining the amount of revenues which must be derived from any class of energy resource suppliers by assessment pursuant to this subsection, the director shall take into account all other known or readily ascertainable sources of revenue to the department, including, but not limited to, fees imposed under this section and federal funds, and may take into account any funds previously assessed pursuant to ORS

469.420 (1979 Replacement Part) or section 7, chapter 792, Oregon Laws 1981.

(i) Orders issued by the director pursuant to this section shall be subject to judicial review under ORS 183.484. The taking of judicial review shall not operate to stay the obligation of an energy resource supplier to pay amounts assessed to it on or before the statutory deadline.

(5) Reactors operated by a college, university or graduate center for research purposes and electric utilities not connected to the Northwest Power Grid are exempt from the fee requirements of subsections (3) and (4) of this section.

(6) An energy resource supplier that fails to pay a fee provided under subsection (4) of this section after it is due and payable shall pay, in addition to that fee, a penalty of two percent of the fee a month for the period that the fee is past due. The director may bring an action to collect an unpaid fee or penalty in the name of the State of Oregon in a court of competent jurisdiction. The director shall be entitled to recover all costs and attorney fees connected with the action. [1981 c.792 §5 (enacted in lieu of 469.420); 1983 c.273 §5]

469.430 Site inspections. The council has continuing authority over the site for which the site certificate is issued and may inspect, or direct the department to inspect, the site at any time. [Formerly 453.415]

469.440 Grounds for revocation or suspension of certificates. Pursuant to the procedures for contested cases in ORS 183.310 to 183.550, a certificate may be revoked or suspended:

- (1) For any breach of a warranty; or
- (2) For failure to maintain safety standards or to comply with the terms or conditions of the certificate; or
- (3) For violation of the provisions of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 or rules adopted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. [Formerly 453.425]

(Administration)

469.450 Energy Facility Siting Council; appointment; confirmation; term; restrictions. (1) There is established an Energy Facility Siting Council consisting of seven public members, who shall be appointed by the Governor, subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(2) The term of office of each member is four years, but a member serves at the pleasure of the

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Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment but no member shall serve more than two full terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) No member of the council shall be an employe, director or retired employe or director of or a consultant to or have any pecuniary interest, other than an incidental interest which is disclosed and made a matter of public record at the time of the appointment to the council, in any corporation or utility operating or interested in establishing an energy facility in this state or in any manufacturer of related equipment.

(4) No member shall for two years after the expiration of the term of the member accept employment with any owner or operator of any energy facility that is subject to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(5) Employment of a person in violation of this section shall be grounds for revocation of any license issued by this state or any agency thereof and held by the owner or operator of the energy facility that employs such person. [Formerly 453.435]

469.460 Officers; meetings; compensation and expenses. (1) The council shall annually elect from among its members a chairman and vice chairman with such powers and duties as the council imposes in accordance with ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. The council may meet as often as it requires at a time and place determined by the council. Five members constitute a quorum. The Governor or the chairman of the council may call a special meeting, to be held at any place in this state designated by the person calling the meeting, upon 24 hours' notice to each member and to the public.

(2) Council members shall be entitled to compensation and expenses as provided in ORS 292.495. [Formerly 453.445]

469.470 Powers and duties. The council shall:

(1) Conduct and prepare, independently or in cooperation with others, studies, investigations, research and programs relating to all aspects of site selection.

(2) After public hearings, designate areas within this state that are suitable or unsuitable for use as sites for the following types of energy facilities:

(a) Nuclear-fueled and fossil-fueled thermal power plants with nominal electric generating capacity of more than 200,000 kilowatts.

(b) Geothermal power plants.

(c) Each additional type of energy facility for which the council determines such designations are necessary.

(3) Establish standards and promulgate rules that applicants for site certificates must meet including, but not limited to, standards of financial ability and qualifications as to ability to construct and operate the energy facility to which the site certificate applies and prescribe the form.

(4) Conduct public hearings on the proposed location of any site after application is filed therefor.

(5) Encourage voluntary cooperation by the people, municipalities, counties, industries, agriculture, and other pursuits, in establishing standards for site selection.

(6) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the Federal Government and affected groups, in furtherance of the purposes of ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992.

(7) Perform such other and further acts as may be necessary, proper or desirable to carry out effectively the duties, powers and responsibilities of the council described in ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. [Formerly 453.455]

469.480 County advisory groups; special advisory groups; compensation and expenses. (1) The council shall designate the governing body of the city or county or counties as a special advisory group in any city or county or counties wherein a proposed site is located upon filing of a site application therefor.

(2) In addition to advisory groups required by subsection (1) of this section the council may establish such special advisory groups as are considered necessary. Such advisory groups shall include membership as determined by the council to represent interests and disciplines as needed to carry out the responsibility assigned to such advisory groups, which shall report findings, recommendations and decisions to the council.

(3) Subject to applicable laws regulating travel and other expenses of state officers and employes, members of any advisory committee appointed under subsection (1) of this section shall receive no compensation but may receive their actual and necessary travel and other

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expenses incurred in the performance of their official duties. [Formerly 453.475]

(Rules; Standards)

469.490 Adoption of rules. All rules adopted by the council pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall be adopted in the manner required by ORS 183.310 to 183.550. [Formerly 453.495]

469.500 Adoption of safety standards.

(1) The council shall adopt safety standards promulgated as rules for the operation of all thermal power plants and nuclear installations. Such standards shall include but need not be limited to:

(a) Emission standards at the lowest practicable limits, taking into account the state of technology and the economics of improvements in relation to the benefits to public health and safety;

(b) All necessary safety devices and procedures; and

(c) The accumulation, storage, disposal and transportation of wastes including nuclear wastes.

(2) The council shall establish programs for monitoring the environmental and ecological effects of the construction and operation of thermal power plants and nuclear installations to assure continued compliance with the terms and conditions of the certificate and the safety standards adopted under subsection (1) of this section.

(3) The director shall perform the testing and sampling necessary for the monitoring program or require the operator of the plant to perform the necessary testing or sampling pursuant to standards established by the council. The council and director shall have access to operating logs, records and reprints of the certificate holder, including those required by federal agencies.

(4) The monitoring program may be conducted in cooperation with any federally operated program if the information available therefrom is acceptable to the council, but no federal program shall be substituted totally for monitoring supervised by the director.

(5) The monitoring program shall include monitoring of the transportation process for all radioactive material removed from any nuclear-fueled thermal power plant or nuclear installation. [Formerly 453.505]

469.510 Considerations in adoption of siting, construction and operation rules.

In performing its duties and exercising its powers under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992, the council shall set standards and promulgate rules for the siting, construction and operation of thermal plants and nuclear installations which shall take into account the following:

(1) The health, safety and welfare of the public.

(2) The effects of chemical, waste heat, moisture and radioactive discharge or other impact on the environment and associated natural resources and physical processes, including humans, air, water, fish and wildlife.

(3) Rules and regulations of the federal Nuclear Regulatory Commission, the Environmental Protection Agency, the Federal Department of Transportation and the Federal Energy Administration or their successors.

(4) Land and water use characteristics of any site, including but not limited to the aesthetics of the site and the environment and the impact on present and future use of adjacent areas.

(5) Present and future industrial, commercial and residential power needs by classes and amount for each class.

(6) Beneficial use of waste water developed by a thermal power plant.

(7) The regulations, if any, of cities or counties relating to the installations of thermal power plants or nuclear installations within their respective borders.

(8) Ability of the affected area to absorb the industrial and population growth resulting from operation of the facility. [Formerly 453.515; 1977 c.794 §15]

469.520 Cooperation of state governmental bodies; adoption of rules by state agencies on energy facility development.

(1) Each state agency and political subdivision in this state that is concerned with energy facilities shall inform the department promptly of its activities and programs relating to energy and radiation.

(2) Each state agency proposing to adopt, amend or rescind a rule relating to energy facility development first shall file a copy of its proposal with the council, which may order such changes as it considers necessary to conform to state policy as stated in ORS 469.010 and 469.310.

(3) The effective date of a rule relating to energy facility development, or an amendment or rescission thereof, shall not be sooner than 10 days subsequent to the filing of a copy of such proposal with the council. [Formerly 453.525]

ENERGY CONSERVATION**469.533****(Plant Operations; Radioactive Wastes)**

469.525 Radioactive waste disposal facilities prohibited; exceptions. Notwithstanding any other provision of this chapter, no waste disposal facility for any radioactive waste shall be established, operated or licensed within this state, except as follows:

(1) Wastes generated before June 1, 1981, through industrial or manufacturing processes which contain only naturally occurring radioactive isotopes which are disposed of at sites approved by the council in accordance with ORS 469.375.

(2) Medical, industrial and research laboratory wastes contained in small, sealed, discrete containers in which the radioactive material is dissolved or dispersed in an organic solvent or biological fluid for the purpose of liquid scintillation counting and experimental animal carcasses shall be disposed of or treated at a hazardous waste disposal facility licensed by the Department of Environmental Quality and in a manner consistent with rules adopted by the Department of Environmental Quality after consultation with and approval by the Health Division.

(3) Maintenance of radioactive coal ash at the site of a thermal power plant for which a site certificate has been issued pursuant to this chapter shall not constitute operation of a waste disposal facility so long as such coal ash is maintained in accordance with the terms of the site certificate as amended from time to time as necessary to protect the public health and safety. [Formerly 459.630; 1979 c.283 §2; 1981 c.587 §2]

469.530 Regulation of transport of radioactive material; review and approval of security programs. (1) In cooperation with appropriate federal agencies, the council shall regulate the transportation process for all radioactive material.

(2) No radioactive material, designated by the council by rule as posing a significant hazard to public health or the environment if improperly transported, shall be transported in this state except as in conformance with the provisions of ORS 469.605 to 469.615, 469.619 and 469.621. Such material shall include but is not limited to:

(a) Plutonium isotopes in any quantity and form exceeding two grams or 20 curies, whichever is less;

(b) Uranium enriched in the isotope U-235 exceeding 25 atomic percent of the total uranium content in quantities where the U-235 content exceeds one kilogram;

(c) Any element with atomic number 89 or greater, the activity of which exceeds 20 curies;

(d) Spent nuclear reactor fuel elements or mixed fission products associated with spent nuclear reactor fuel elements the activity of which exceeds 20 curies;

(e) Any large quantity of aggregate radioactivity exceeding that specified in Title 10, Code of Federal Regulations, section 71.4, paragraph (f), (1978), entitled "Packaging of Radioactive Materials for Transport";

(f) Any quantity, arrangement and packaging combination of fissile material specified by the United States Nuclear Regulatory Commission or successor agency as a Fissile Class III shipment in Title 10, Code of Federal Regulations, section 71.4, paragraph (d)(3), (1978), entitled "Packaging of Radioactive Materials for Transport";

(g) Uranium oxide in powdered form in excess of 1,000 pounds per shipment; and

(h) Radioactive waste of any kind originating from any nuclear power plant or nuclear installation or any person licensed by the Health Division pursuant to ORS 453.655, the Nuclear Regulatory Commission or an agreement state established pursuant to 42 U.S.C. 2021.

(3) The council and the director shall review and approve all security programs attendant to a nuclear-fueled thermal power plant, a nuclear installation and the transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation. The council shall provide reasonable public notice of a meeting of the council held for purposes of such review and approval. [Formerly 453.535; 1981 c.707 §3]

469.533 Department of Energy rules for health protection and evacuation procedures in nuclear emergency. Notwithstanding ORS chapter 401, the Department of Energy in cooperation with the Health Division and the Emergency Management Division shall establish rules for the protection of health and procedures for the evacuation of people and communities who would be affected by radiation in the event of an accident or a catastrophe in the operation of a nuclear power plant or nuclear installation. [Formerly 453.765; 1983 c.586 §43]

Note: Section 6, chapter 106, Oregon Laws 1985, provides:

Sec. 6. In addition to any other fees required by law, each operator of a nuclear-fueled thermal power plant within this state shall pay to the department annually, for fiscal years beginning July 1, 1985, and July 1, 1986, an assessment which

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is continuously appropriated to fund the activities of the department and the counties for payment of expenses associated with county emergency planning in compliance with ORS 469.533. The fee assessed under this section shall not exceed \$100,000 per year for any one nuclear-fueled thermal power plant.

469.534 County procedures. Each county in this state that has a nuclear-fueled thermal power plant located within county boundaries and each county within this state that has any portion of its area located within 50 miles of a site within this state of a nuclear-fueled thermal power plant shall develop written procedures that are compatible with the rules adopted by the department under ORS 469.533. The department shall review the county procedures to determine whether they are compatible with the rules of the department. [1983 c.586 §46]

469.535 Governor may assume control of emergency operations during nuclear accident or catastrophe. Notwithstanding ORS chapter 401, when an emergency exists because of an accident or catastrophe in the operation of a nuclear power plant or nuclear installation or in the transportation of radioactive material, the Governor, for the duration of the emergency, may:

(1) Assume complete control of all emergency operations in the area affected by the accident or catastrophe, direct all rescue and salvage work and do all things deemed advisable and necessary to alleviate the immediate conditions.

(2) Assume control of all police and law enforcement activities in such area, including the activities of all local police and peace officers.

(3) Close all roads and highways in such area to traffic or by order of the director limit the travel on such roads to such extent as the director deems necessary and expedient.

(4) Designate persons to coordinate the work of public and private relief agencies operating in such area and exclude from such area any person or agency refusing to cooperate with other agencies engaged in emergency work.

(5) Require the aid and assistance of any state or other public or quasi-public agencies in the performance of duties and work attendant upon the emergency conditions in such area. [1983 c.586 §47]

469.536 Public utility to disseminate information under ORS 469.533. A public utility which operates a nuclear power plant or nuclear installation shall disseminate to the governing bodies of cities and counties that may be affected information approved by the Department of Energy which explains rules or pro-

cedures adopted under ORS 469.533. [Formerly 453.770]

469.540 Reductions or curtailment of operations for violation of safety standards; notice; time period for repairs. (1) In instances where the director determines either from the monitoring or surveillance of the director that there is danger of violation of a safety standard adopted under ORS 469.500 from the continued operation of a plant or installation, the director may order temporary reductions or curtailment of operations until such time as proper safety precautions can be taken.

(2) An order of reduction or curtailment shall be entered only after notice to the thermal power plant or installation and only after a reasonable time, considering the extent of the danger, has been allowed for repairs or other alterations that would bring the plant or installation into conformity with applicable safety standards. [Formerly 453.545]

469.550 Order for halt of plant operations or activities with radioactive material; notice. (1) Whenever in the judgment of the director from the results of monitoring or surveillance of operation of any nuclear-fueled thermal power plant or nuclear installation or based upon information from the council there is cause to believe that there is clear and immediate danger to the public health and safety from continued operation of the plant or installation, the director shall, in cooperation with appropriate state and federal agencies, without hearing or prior notice, order the operation of the plant halted by service of the order on the plant superintendent or other person charged with the operation thereof. Within 24 hours after such order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570 and may commence proceedings for revocation of the site certificate if grounds therefor exist.

(2) Whenever, in the judgment of the director based upon monitoring or surveillance by the director, or based upon information from the council, there is cause to believe that there is clear and immediate danger to the public health and safety from the accumulation, storage, disposal or transportation of radioactive material located at, derived from or destined for a nuclear-fueled thermal power plant or a nuclear installation, the director shall in cooperation with appropriate state and federal agencies, without hearing or prior notice, order such accumulation, storage, disposal or transportation halted or immediately impose safety precautions by service of the order

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on the officer responsible for the accumulation, storage, disposal or transportation. Within 24 hours after such an order, the director must appear in the appropriate circuit court to petition for the relief afforded under ORS 469.570.

(3) The Governor, in the absence of the director, may issue orders and petition for judicial relief as provided in this section. [Formerly 453.555; 1977 c.794 §16]

469.553 Uranium mill or mill tailings disposal facility site certification required; council procedure for application review; fees. (1) Any person desiring to construct or operate a uranium mill or uranium mill tailings disposal facility after June 25, 1979, shall file with the Energy Facility Siting Council a site certificate application.

(2) The Energy Facility Siting Council shall review an application for a site certificate under this section using the procedure prescribed in ORS 469.350, 469.360, 469.370, 469.375, 469.380, 469.390 and 469.400, for energy facilities. The council is authorized to assess fees in accordance with ORS 469.420 in connection with site certificates applied for or issued under this section. [1979 c.283 §7]

469.556 Rules governing uranium-related activities. The Energy Facility Siting Council shall adopt rules governing the location, construction and operation of uranium mills and uranium mill tailings disposal facilities and the treatment, storage and disposal of uranium mine overburden for the protection of the public health and safety and the environment. [1979 c.283 §8]

469.559 Cooperative agreements authorized between council and federal officials and agencies; rules; powers of Governor. (1) Notwithstanding the authority of the Health Division pursuant to ORS 453.605 to 453.745 to regulate radiation sources or the requirements of ORS 469.525, the Energy Facility Siting Council may enter into and carry out cooperative agreements with the Secretary of Energy pursuant to Title I and the Nuclear Regulatory Commission pursuant to Title II of the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95-604 and perform or cause to be performed any and all acts necessary to be performed by the state, including the acquisition by condemnation or otherwise, retention and disposition of land or interests therein, in order to implement that Act and rules, standards and guidelines adopted pursuant thereto. The Energy Facility Siting Council may adopt, amend or repeal rules in accordance with ORS 183.310 to 183.550 and may receive and disburse funds in

connection with the implementation and administration of this section.

(2) The Governor may do any and all things necessary to implement the requirements of the federal Act referred to in subsection (1) of this section. [1979 c.283 §9]

(Records)

469.560 Records; public inspection; confidential information. (1) Except as provided in subsection (2) of this section and ORS 192.500, any information filed or submitted pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall be made available for public inspection and copying during regular office hours of the department at the expense of any person requesting copies.

(2) Any information, other than that relating to the public safety, relating to secret process, device, or method of manufacturing or production obtained in the course of inspection, investigation or activities under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall be kept confidential and shall not be made a part of public record of any hearing. [Formerly 453.565]

(Insurance)

469.565 Property insurance required; exceptions; filing of policy. (1) A person owning and operating a nuclear power plant in this state under a license issued by the United States Nuclear Regulatory Commission or under a site certificate issued under ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 shall obtain and maintain property insurance in the maximum insurable amount available for each nuclear incident occurring within this state, as required by this section. The insurance shall cover property damage occurring within a nuclear plant and its related or supporting facilities as a result of the nuclear incident.

(2) Insurance required under this section does not apply to:

(a) Any claim of an employe of a person obtaining insurance under this section, if the claim is made under a state or federal workers' compensation Act and if the employe is employed at the site of and in connection with the nuclear power plant at which the nuclear incident occurred; or

(b) Any claim arising out of an act of war.

(3) A person obtaining insurance under this section shall maintain insurance for the term of

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the license issued to the nuclear power plant by the United States Nuclear Regulatory Commission and for any extension of the term, and until all radioactive material has been removed from the nuclear power plant and transportation of the radioactive material from the nuclear power plant has ended.

(4) A person obtaining insurance under this section shall file a copy of the insurance policy, any amendment to the policy and any superseding insurance policy with the director.

(5) Property insurance required under this section is in addition to and not in lieu of insurance coverage provided under the Price-Anderson Act (42 U.S.C. 2210).

(6) Property insurance required by subsections (1) to (5) of this section may include private insurance, self-insurance, utility industry association self-assurance pooling programs, or a combination of all three.

(7) A person may fulfill the requirements for an insurance policy under subsections (1) to (5) of this section by obtaining policies of one or more insurance carriers if the policies together meet the requirements of subsections (1) to (5) of this section. [1981 c.866 §§3, 4]

469.567 Eligible insurers. (1) In order to provide the private insurance specified under ORS 469.565, an insurer must be authorized to provide or transact insurance in this state.

(2) An insurer providing property insurance required under ORS 469.565 (1) to (5) may obtain reinsurance as defined in ORS 731.126. [1981 c.866 §5]

(Enforcement)**469.570 Court orders for enforcement.**

Without prior administrative proceedings, a circuit court may issue such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992 or with a site certificate issued pursuant to ORS 469.300 to 469.570, 469.590 to 469.621, 469.930 and 469.992. [Formerly 453.575]

(Natural Gas Storage)**469.580 Use of underground reservoir for natural gas storage requires certificate.**

Any person desiring to condemn or utilize an underground reservoir for the purpose of storage of natural gas pursuant to ORS 520.340, 520.350 and 772.610 to 772.625 shall file with the council a site certificate application. [1977 c.296 §13]

(Siting of Nuclear-fueled Thermal Power Plants)

469.590 Definitions for ORS 469.590 to 469.595. As used in ORS 469.590 to 469.595:

(1) "High-level radioactive waste" means spent nuclear fuel or the radioactive by-products from the reprocessing of spent nuclear fuel.

(2) "Spent nuclear fuel" means nuclear fuel rods or assemblies which have been irradiated in a power reactor and subsequently removed from that reactor. [1981 c.1 §2]

469.593 Findings. The people of this state find that if no permanent repository for high-level radioactive waste is provided by the Federal Government, the residents of the state may face the undue financial burden of paying for construction of a repository for such wastes. Therefore, the people of this state enact ORS 469.590 to 469.601. [1981 c.1 §1]

469.594 No storage of high-level radioactive waste after expiration of license; exception; implementation agreements. (1) Notwithstanding ORS 469.300 (24), no high-level radioactive waste should be stored at the site of a nuclear-fueled thermal power plant after the expiration of the operating license issued to the nuclear power plant by the United States Nuclear Regulatory Commission.

(2) Notwithstanding subsection (1) of this section, a person operating a nuclear power plant under a license issued by the United States Nuclear Regulatory Commission shall remain responsible for proper temporary storage of high-level radioactive materials at the site of the nuclear power plant after termination of a license and until such materials are removed from the site for permanent storage.

(3) The department and the operators of nuclear-fueled thermal plants shall pursue agreements with the United States Department of Energy and the United States Nuclear Regulatory Commission to fulfill the provisions of this section. [1985 c.434 §2]

469.595 Condition to site certificate for nuclear-fueled thermal power plant.

Before issuing a site certificate for a nuclear-fueled thermal power plant, the Energy Facility Siting Council must find that an adequate repository for the disposal of the high-level radioactive waste produced by the plant has been licensed to operate by the appropriate agency of the Federal Government. The repository must provide for the terminal disposition of such

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waste, with or without provision for retrieval for reprocessing. [1981 c.1 §3]

469.597 Election procedure; elector approval required. (1) Notwithstanding the provisions of ORS 469.370, if the council finds that the requirements of ORS 469.595 have been satisfied and proposes to issue a site certificate for a nuclear-fueled thermal power plant, the proposal shall be submitted to the electors of this state for their approval or rejection at the next available state-wide general election. The procedures for submitting a proposal to the electors under this section shall conform, as nearly as possible to those for state measures, including but not limited to procedures for printing related material in the voters' pamphlet.

(2) A site certificate for a nuclear-fueled thermal power plant shall not be issued until the electors of this state have approved the issuance of the certificate at an election held pursuant to subsection (1) of this section. [1981 c.1 §§4, 5]

469.599 Public Utility Commissioner's duty. The Public Utility Commissioner shall not authorize the issuance of stocks, bonds or other evidences of indebtedness to finance any nuclear-fueled thermal power plant pursuant to ORS 757.400 to 757.450 until the Energy Facility Siting Council has made the finding required under ORS 469.595. [1981 c.1 §6]

469.601 Effect of ORS 469.595 on applications and applicants. ORS 469.595 does not prohibit:

(1) The council from receiving and processing applications for site certificates for nuclear-fueled thermal power plants under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930; or

(2) An applicant for a site certificate under ORS 469.300 to 469.570, 469.590 to 469.621 and 469.930 from obtaining any other necessary licenses, permits or approvals for the planning or siting of a nuclear-fueled thermal power plant. [1981 c.1 §8]

(Transportation of Radioactive Material)

469.603 Intent to regulate transportation of radioactive material. It is the intention of the Legislative Assembly that the state shall regulate the transportation of radioactive material to the full extent allowable under and consistent with federal laws and regulations. [1981 c.707 §2]

469.605 Permit to transport required; application. (1) No person shall ship or transport radioactive material identified by the council pursuant to ORS 469.530 (2) into or within the

State of Oregon without first obtaining a permit from the department.

(2) Such permit shall be issued for a period not to exceed one year and shall be valid for all shipments within that period of time unless specifically limited by permit conditions.

(3) Application for a permit under this section shall be made in a form and manner prescribed by the director and may include:

(a) A description of the kind, quantity and radioactivity of the material to be transported;

(b) A description of the route or routes proposed to be taken and the transport schedule;

(c) A description of any mode of transportation; and

(d) Other information required by the director to evaluate the application.

(4) The director shall collect a fee from all applicants for permits under this section in an amount reasonably calculated to provide for the costs to the department of performing the duties of the department under this section and ORS 469.609, and for investigation and prosecution of violations of ORS 469.605 to 469.615 and 469.621. The director may include as part of the fee an amount to provide for training required under ORS 469.611 if federal funds are not sufficient to provide for that training. Fees collected under this subsection shall be deposited in the Energy Department Account established under ORS 469.120.

(5) The director shall issue a permit only if the application demonstrates that the proposed transportation will comply with all applicable rules adopted under ORS 469.300, 469.530, 469.603 to 469.621 and 469.992. [1981 c.707 §5]

Note: Section 8, chapter 106, Oregon Laws 1985, provides:

Sec. 8. Notwithstanding any other law, the Department of Energy is authorized to use permit fees collected pursuant to ORS 469.605 (4) for the transportation of radioactive material associated with the Lakeview uranium mill site and for evaluation and clean up of the site. Such fees may be expended directly for this purpose or be deposited into the General Fund as reimbursement in an amount equal to the amount allocated by the Emergency Board from the appropriation under subsection (1) of section 7 of this Act.

469.607 Authority of council. (1) After consultation with the Public Utility Commissioner of Oregon and other appropriate state, local and federal agencies, the council by rule:

(a) Shall fix requirements for notification, record keeping, reporting, packaging and emergency response;

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(b) Shall designate those routes by highway, railroad, waterway and air where transportation of radioactive material can be accomplished safely;

(c) May specify conditions of transportation for certain classes of radioactive material, including but not limited to, specific routes, permitted hours of movement, requirements for communications capabilities between carriers and emergency response agencies, speed limits, police escorts, checkpoints, operator or crew training or other operational requirements to enhance public health and safety; and

(d) Shall establish requirements for insurance, bonding or other indemnification on the part of any person transporting radioactive material into or within the State of Oregon under ORS 469.300, 469.530, 469.603 to 469.621 and 469.992.

(2) The requirements imposed by subsection (1) of this section must be consistent with federal Department of Transportation and Nuclear Regulatory Commission rules.

(3) Rules adopted under this section shall be adopted in accordance with the provisions of ORS 183.310 to 183.550. [1981 c.707 §6]

469.609 Notice to state agencies and local governments when permit application received. (1) Upon receipt of the application required under ORS 469.605, the director shall notify the Health Division and other interested state agencies and all local government agencies trained and certified under ORS 469.611 in whose jurisdiction the route or routes of the proposed shipments are located. The department shall notify the agencies of:

(a) The type and quantity of material to be transported;

(b) Any mode of transportation to be used;

(c) The route or routes to be taken and the transport schedule; and

(d) Any other information at the discretion of the director.

(2) The director shall place reasonable conditions upon the permit based upon comments received from the agencies notified under subsection (1) of this section. [1981 c.707 §8]

469.611 Emergency response planning; Health Division as coordinator. Notwithstanding ORS chapter 401:

(1) The director shall coordinate emergency response planning with appropriate agencies of government at the local, state and national levels to assure that the response to a radioactive material transportation accident is swift and appropri-

ate to minimize damage to any person, property or wildlife. This planning shall include the preparation of localized plans setting forth agency responsibilities for on-scene response.

(2) The director shall:

(a) Apply for federal funds as available to train, equip and maintain an appropriate response capability at the state and local level; and

(b) Request all available training and planning materials.

(3) The Health Division shall be designated by the director as on-scene coordinator for any radiological accident occurring within the State of Oregon. The Health Division shall contact the governing body of each county in whose jurisdiction the route or routes of the proposed shipments are located to implement emergency response training. The Health Division shall insure that all emergency services personnel that may be designated by a local government unit receive training in the proper procedures for identifying and dealing with a radiological accident pending the arrival of the Health Division staff. The Health Division shall certify to the director when training of local agency personnel has been completed. [1981 c.707 §9; 1983 c.586 §44]

469.613 Records; inspection. (1) Any person obtaining a permit under ORS 469.605 shall establish and maintain any records, make any reports and provide any information as the council may by rule or order require to assure compliance with the conditions of the permit or other rules affecting the transportation of radioactive materials and submit the reports and make the records and information available at the request of the director.

(2) The director may authorize any employee or agent of the director to enter upon, inspect and examine, at reasonable times and in a reasonable manner for the purpose of administration or enforcement of the provisions of ORS 469.300, 469.530, 469.603 to 469.621 and 469.992 or rules adopted thereunder, the records and property of persons within this state who have applied for permits under ORS 469.605.

(3) The director shall provide for:

(a) The inspection of each permitted large quantity radioactive material shipment at the point of entry of the shipment into this state or at the point of origin for the transportation of large quantity radioactive material originating within the state; and

(b) Inspection of a representative sample of shipments containing material required to bear a

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radioactive placarded packing label as specified by federal regulations. [1981 c.707 §10]

469.615 Indemnity for claims against state. (1) A person obtaining a permit under ORS 469.605 shall indemnify the State of Oregon for any claims against the state arising from the release of radioactive material during that transportation for which the permit was issued and for the cost of response to an accident involving the radioactive material for which the permit was issued.

(2) With respect to radioactive materials, the director shall ascertain and certify that insurance coverage required under 42 U.S.C. 2210 is in force and effect at the time the permit is issued under ORS 469.605. [1981 c.707 §11]

469.617 Report to legislature; content.

The director shall prepare and submit to the Governor for transmittal to the Legislative Assembly, on or before the beginning of each regular legislative session, a comprehensive report on the transportation of radioactive material in Oregon and provide an evaluation of the adequacy of the state's emergency response agencies. The report shall include, but need not be limited to:

(1) A brief description and compilation of any accidents and casualties involving the transportation of radioactive material in Oregon;

(2) An evaluation of the effectiveness of enforcement activities and the degree of compliance with applicable rules;

(3) A summary of outstanding problems confronting the department in administering ORS 469.300, 469.530, 469.603 to 469.621 and 469.992; and

(4) Such recommendations for additional legislation as the council considers necessary and appropriate. [1981 c.707 §12]

469.619 Department to make federal regulations available. The department shall maintain and make available copies of all federal regulation and federal code provisions referred to in ORS 469.300, 469.530, 469.603 to 469.621 and 469.992. [1981 c.707 §14]

469.621 Advisory committee. The director may establish a committee of local officials and interested citizens to advise the council on radioactive materials transportation issues from a local perspective. [1981 c.707 §7]

**RESIDENTIAL ENERGY
CONSERVATION ACT
(Investor-owned Utilities)**

469.631 Definitions for ORS 469.631 to 469.645. As used in ORS 469.631 to 469.645:

(1) "Cash payment" means a payment made by the investor-owned utility to the dwelling owner or to the contractor on behalf of the dwelling owner for energy conservation measures.

(2) "Commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association or federal credit union maintaining an office in this state.

(3) "Commissioner" means the Public Utility Commissioner of Oregon.

(4) "Cost-effective" means that an energy conservation measure that provides or saves a specific amount of energy during its life cycle results in the lowest present value of delivered energy costs of any available alternative. However, the present value of the delivered energy costs of an energy conservation measure shall not be treated as greater than that of a nonconservation energy resource or facility unless that cost is greater than 110 percent of the present value of the delivered energy cost of the nonconservation energy resource or facility.

(5) "Director" means the Director of the Oregon Department of Energy.

(6) "Dwelling" means real or personal property within the state inhabited as the principal residence of a dwelling owner or a tenant. "Dwelling" includes a mobile home as defined in ORS 446.003, a floating home as defined in ORS 488.705 and a single unit in multiple-unit residential housing. "Dwelling" does not include a recreational vehicle as defined in ORS 446.003.

(7) "Dwelling owner" means the person:

(a) Who has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trustor under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property; and

(b) Whose dwelling receives space heating from the investor-owned utility.

(8) "Energy audit" means:

(a) The measurement and analysis of the heat loss and energy utilization efficiency of a dwelling;

(b) An analysis of the energy savings and dollar savings potential that would result from providing energy conservation measures for the dwelling;

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DEPARTMENT**

Note: Section 1, chapter 15, Oregon Laws 1982 (first special session), provides:

Sec. 1. Based on study of relevant data, including but not limited to employment, sales of goods and services, financial activity in the private sector and governmental revenues, the Legislative Assembly finds and declares that an economic downturn exists throughout Oregon, that economic recovery is a matter of state-wide concern and that there exists a public need for enhancement of job-producing enterprises in Oregon. All state agencies and local governments are directed to take the existence of this problem into consideration in the exercise of all their duties, functions and powers.

Note: Section 1, chapter 15, Oregon Laws 1982 (first special session), is repealed on July 1, 1989. See section 2, chapter 15, Oregon Laws 1982 (first special session), as amended by section 1, chapter 56, Oregon Laws 1983 and section 1, chapter 535, Oregon Laws 1985.

184.001 Definitions for ORS 184.001 to 184.198. As used in ORS 184.001 to 184.198, unless the context requires otherwise:

(1) "Commission" means the Economic Development Commission.

(2) "Department" means the Economic Development Department.

(3) "Director" means the Director of the Economic Development Department. [Formerly 184.105]

184.003 Policy for economic and community development. (1) The Legislative Assembly recognizes that:

(a) There exists in the state a great and growing need for balanced economic and community development to provide and maintain orderly economic growth and the preservation and enhancement of all facets of Oregon's environment;

(b) Only properly planned and coordinated growth and development can maintain and improve the total environment which strengthens all of our communities in the marketplace, can meet the challenge of creating a positive economic climate and can insure the efficient provision of public and community facilities and services essential to development;

(c) An imbalance presently exists in the degree of economic health among Oregon communities and balanced development opportunities must be made available to bring about the geographical distribution of business and industry necessary to a healthy economy and environment for all Oregonians;

(d) Oregon cannot offer an attractive future to its citizens, unless new jobs are made available; and without new payrolls and the expansion of existing payrolls the state will suffer a loss of its families and young people, a decline of its communities and damage to our quality of life;

(e) Assistance and encouragement of balanced industrial, commercial and community development and of enhanced world trade opportunities are important functions of the state and that the welfare of the state, its people and its institutions depends upon a coordinated program to achieve this development and enhancement on an orderly basis;

(f) The availability of this assistance and encouragement is an important inducement to industrial and commercial enterprises to locate and expand in those portions of the state which will contribute most to the environment and economy of Oregon and that the full cooperation of state, local and federal agencies is necessary to this end; and

(g) Development of new and expanded overseas markets for world trade is an area of great potential for furthering economic growth and can be especially significant in the field of increased processing of Oregon agricultural commodities and manufactured products thereby contributing to economic diversification.

(2) It is the purpose of ORS 184.001 to 184.198 to:

(a) Assist in the maintenance and improvement of the existing economic base of the state;

(b) Diversify the economic base of the state;

(c) Expand international trade;

(d) Assist the economically lagging areas in the state; and

(e) Accomplish the purposes of this subsection in a way that complies with all local, state and federal regulations relating to environmental quality.

(3) In order to accomplish the purposes of ORS 184.001 to 184.198, the department may expend moneys duly budgeted to pay the travel and various other expenses of industrial or commercial site location agents, film or video production location agents, business journal writers, elected state officials or other state personnel whom the director determines may promote the purposes of this subsection. [Formerly 184.120; 1975 c.225 §1; 1979 c.182 §4; 1983 c.217 §1; 1985 c.812 §5]

184.005 [1973 c.691 §§2, 3; 1975 c.225 §2; 1981 c.545 §2; repealed by 1983 c.197 §1 (184.006 enacted in lieu of 184.005)]

184.006 STATE EXECUTIVE DEPARTMENT AND ORGANIZATION

184.006 Economic Development Commission; appointment; terms; compensation and expenses; officers. (1) There is established an Economic Development Commission consisting of nine members appointed by the Governor subject to confirmation by the Senate under ORS 171.562 and 171.565. The members shall be appointed with due consideration given to geographical representation, and to representation of the economic interests of Oregon. In addition, the Governor or the designee of the Governor shall be a nonvoting ex officio member of the commission.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the commission shall be entitled to compensation and expenses as provided in ORS 292.495.

(4) The Governor shall select one of the commission members as chairman and another as vice-chairman, for such terms with duties and powers necessary for the performance of the functions of such offices as the Governor determines.

(5) Five members of the commission constitute a quorum for the transaction of business.

(6) At least once in each calendar quarter, the commission shall meet with the chairman of each committee appointed under ORS 184.030 and with the office of the Governor. [1983 c.197 §2 (enacted in lieu of 184.005); 1985 c.70 §1]

184.008 Duties of commission. The Economic Development Commission shall advise the Governor and the Director of the Economic Development Department on matters pertaining to the economic development of Oregon, including but not limited to:

(1) Identification of opportunities for economic development.

(2) Identification of barriers to economic development.

(3) Appropriate policies for promoting economic development.

(4) Specific proposals and recommendations with respect to action promoting economic development.

(5) Means of improving liaison with economic development efforts of communities within Oregon. [1983 c.197 §4]

184.010 State development policy and program; department duties. (1) The Economic Development Department, considering advice of the Economic Development Commission, shall establish a comprehensive policy for balanced economic and community development, including the enhancement of world trade opportunities, of the State of Oregon and shall:

(a) Identify major constraints upon and opportunities for economic development;

(b) For the major constraints and opportunities identified, create a program proposing the roles for public and private entities throughout this state to best take advantage of those major opportunities and overcome those major constraints and which will give particular recognition to the needs, problems and resources of the rural, economically lagging or underdeveloped areas of the state;

(c) Encourage public and private entities to voluntarily participate in that program; and

(d) Implement the state-level functions required by that program.

(2) In establishing this policy and creating this program and directing its implementation, the department shall:

(a) Consult and advise with, and bring together and review pertinent data, plans and programs and budgetary proposals of, state agencies, municipalities and other public bodies, as pertinent to this comprehensive policy and program and their implementation.

(b) Provide a center of coordination and a clearinghouse for research, planning, programming, basic data, public information, and reports regarding balanced economic and community development, and for stimulation and guidance in pursuit of the planning and programming processes and the implementation.

(c) Conduct conservation and development research, and coordinate research by state agencies, municipalities and other public bodies in the field of balanced economic and community development, using when feasible the resources and potentials of the state institutions of higher learning and other state agencies and encouraging the cooperation of other research and developmental organizations.

(d) Consult and advise with and assist the localities and subdivisions of the state in their developmental planning, using when feasible the resources and potentials of the state institutions of higher learning.

(e) Provide contact and liaison with state agencies, municipalities and other public entities,

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other states and interstate bodies, industrial, commercial, educational, research and civic groups and others.

(f) Consult and advise with and assist each interested party within the state in utilizing existing foreign markets and identifying new avenues of international trade for Oregon products.

(g) Recommend biennially to the Legislative Assembly and annually to the appropriate committees of the Legislative Assembly, corrective legislation needed to overcome the major constraints upon economic development including, but not limited to, conflicting regulatory programs of state agencies. [Formerly 184.150; 1969 c.80 §13; 1973 c.691 §4; 1975 c.225 §3; 1979 c.182 §5; 1983 c.197 §6]

184.015 Directory of Oregon Manufacturers; other publications; Economic Development Publication Account. (1) The Economic Development Department may cause to be published a Directory of Oregon Manufacturers and such other publications relating to the economic development of the state. The cost of such publications shall be fully recovered through the sales thereof.

(2) All revenues derived from the sale of publications of the department shall be deposited in the Economic Development Publication Account, which is hereby established as an account in the General Fund.

(3) The moneys credited to the Economic Development Publication Account under subsection (2) of this section shall be continuously appropriated exclusively to pay for publication costs of the Economic Development Department. [1973 c.691 §22; 1983 c.197 §7]

184.020 [1967 c.397 §14; 1973 c.691 §5; 1975 c.225 §4; repealed by 1975 c.605 §33]

184.025 Prerequisites for certain commission actions. Prior to the approval of bond financing of economic development projects under ORS 280.310 to 280.397, the making of a loan under ORS 777.850 to 777.910 or the making of any loan or the granting of any moneys from any source except for those allocated under chapter 777, Oregon Laws 1985, the Economic Development Commission shall

(1) Determine that the action is cost effective, considering both major public expenses and major public benefits;

(2) Find that the project will produce goods or services which are sold in markets for which national or international competition exists or, if the project is to be constructed and operated by a nonprofit organization, that the project will not compete with local for-profit businesses;

(3) Determine that the action is the best use of the moneys involved, considering other pending applications for those moneys;

(4) Find that the project involved is consistent with the department's comprehensive policy and programs;

(5) Find that the project involved is consistent with all applicable adopted local economic development plans; and

(6) Provide for public notice of, and public comment on, the action. [1979 c.182 §3; 1983 c.197 §8; 1985 c.806 §14]

184.030 Advisory and technical committees. (1) To aid and advise the Economic Development Commission in the performance of its duties, the commission may establish, with the approval of the Governor, such advisory and technical committees as it considers necessary. Such committees may be continuing or temporary. The chairman of the commission shall determine the representation, membership, terms and organization of the committees and, with the approval of the Governor, shall appoint their members. The Director of the Economic Development Department, or designee, shall be an ex officio member of each committee.

(2) Members of the committees appointed pursuant to this section shall receive no compensation, but may receive payment for their actual and necessary travel and other expenses while engaged in the performance of their official duties. [1967 c.397 §15; 1973 c.691 §6; 1983 c.197 §5; 1985 c.70 §2]

Note: Chapter 815, Oregon Laws 1985, provides:

Sec. 1. (1) A task force shall be created for the purpose of studying options for promoting Oregon's wine industry and encouraging reciprocal agreements, allowing the interstate transfer of wine, with other states.

(2) The task force shall be a task force of the Economic Development Department which shall provide staff and expenses.

(3) The task force shall consist of eight persons. One person shall represent the Economic Development Department. Two persons shall represent the Wine Advisory Board, one person shall represent an Oregon based organization engaged in mail order involving interstate shipment of goods and one person shall be a representative of the wholesale wine industry. Two persons shall be legislators and one person shall represent the Oregon Liquor Control Commission.

(4) Members of the task force shall be appointed by the Director of the Economic Development Department not later than 30 days after the effective date of this Act [July 15, 1985]. Vacancies shall be filled by the appointing authority.

Sec. 2. The task force shall study and make recommendations to the Sixty-fourth Legislative Assembly on the following:

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(2) In allocating moneys from the Oregon Promotion and Marketing Fund, the Economic Development Commission shall consider such criteria and facts as are necessary to evaluate the economic benefits of applications, which shall include, but are not limited to, the following criteria:

(a) Support projects that will increase the number of family wage jobs in this state.

(b) Promote economic recovery in small cities heavily dependent on a single industry.

(c) Emphasize development in underdeveloped rural areas of this state.

(d) Utilize the educational resources available at institutions of higher education.

(e) Support the development of the state's small businesses, especially businesses owned by women and members of minority groups.

(f) Encourage the use of Oregon's human and natural resources in endeavors which harness Oregon's economic comparative advantages.

(g) Limit assistance to projects that assist businesses selling goods and services in markets for which national or international competition exists.

Sec. 6. (1) Expenditures from the Oregon Promotion and Marketing Fund may be made to finance any promotion and marketing project described in section 5 of this Act if:

(a) The Economic Development Commission has reviewed and adopted a marketing plan containing all the information listed in subsections (1) to (6) of section 2 of this Act for the product, service or activity for which the project is undertaken;

(b) In making grants under this section, the commission seeks to assure that applicants have attempted to provide the maximum feasible amount of private financial contributions to match expenditures from the Oregon Promotion and Marketing Fund; and

(c) The expenditure of moneys from the Oregon Promotion and Marketing Fund is approved by the Emergency Board.

(2) The commission shall provide that for any project receiving moneys from this fund there shall be prepared:

(a) A full accounting of funds expended for the project; and

(b) An estimate of the economic development and job creation benefits of the project.

Sec. 7. The Economic Development Commission shall achieve the purposes of sections 4 to 8 of this Act by investigating the potential for economic development through marketing Oregon investment opportunities, tourist attractions, products and services, which shall include, at a minimum:

(1) Funding for feasibility studies of projects which would make a significant contribution to the economic development of the state.

(2) Construction of facilities for the exposition of Oregon products, services, resources and investment opportunities, including exhibit, meeting and office space.

(3) Marketing activities to increase foreign consumption of Oregon products including agricultural products and processed forest products.

(4) Support for and promotion of convention, trade, spectator or other special events, fairs, festivals and attractions in Oregon which offer opportunities to diversify the state's attractiveness to tourists.

(5) Cooperative marketing, advertising and retail sales promotions designed to encourage the consumption of Oregon products in domestic markets outside the state.

(6) Attendance by and representation for the state at world's fairs and exhibitions with demonstrated potential to improve the state's image to identified important audiences.

(7) Promotion of Oregon products for sale within the State of Oregon.

Sec. 8. Prior to the approval of any proposed project under this Act, the Economic Development Commission shall determine that the project supports the promotion and marketing of Oregon products and services, making such findings as appropriate to each project, which shall include, but not be limited to the following:

(1) Determine that the project is cost effective and that the project results in significant returns to Oregon;

(2) Find that the project has a state-wide impact or benefits economically distressed areas or industries of the state;

(3) Find that the project will result in on-going, long term benefits to the state;

(4) Find that the project will implement an innovative idea or build on existing and tested programs;

(5) Determine that the project does not duplicate similar efforts underway and available elsewhere or supplant private investment;

(6) Find that the project will not require continuing subsidies; and

(7) Consider the advice of the commission's advisory committees and the Oregon Tourism Council.

Sec. 9. This Act is repealed on July 1, 1987.

184.140 [1957 c.624 §4; 1961 c.80 §19; 1971 c.57 §6; repealed by 1973 c.691 §21]

184.150 [1957 c.624 §5; 1961 c.397 §11; renumbered 184.010]

184.160 Duties of department; field representatives. The Economic Development Department shall:

(1) Implement programs of the department as advised by the commission and as directed by the Governor.

(2) Provide field representatives in the various geographical regions of the state. The field representatives shall be in the unclassified service and shall receive such salary as may be set by the director, unless otherwise provided by law. The field representatives shall:

(a) Work with local units of government and the private sector to encourage and to assist them

CERTAIN EXECUTIVE BRANCH DEPARTMENTS**184.215**

as they establish and carry out economic development plans and programs under ORS 280.500;

(b) Promote local awareness of department policy and department programs and services and of assistance and economic incentives available from government at all levels; and

(c) Deliver to local units of government and the private sector the assistance and services available from the department, including publications, research and technical and financial assistance programs.

(3) Process requests received by state agencies and interested parties for information pertaining to industrial and commercial locations and relocations throughout the state.

(4) Consult and advise with, coordinate activities of, and give technical assistance and encouragement to, state and local organizations, including local development corporations, county, city, and metropolitan-area committees, chambers of commerce, labor organizations and similar agencies interested in obtaining new industrial plants or commercial enterprises.

(5) Act as the state's official liaison agency between persons interested in locating industrial or business firms in the state, and state and local groups seeking new industry or business, maintaining the confidential nature of the negotiations it conducts as requested by persons contemplating location in the state.

(6) Coordinate state and federal economic development programs.

(7) Consult and advise with, coordinate activities of, and give technical assistance and encouragement to all parties including, but not limited to, port districts within the state working in the field of international trade or interested in promoting their own trading activity.

(8) Provide advice and technical assistance to Oregon business and labor.

(9) Collect and disseminate information regarding the advantages of developing new business and expanding existing business in the state.

(10) Aid local communities in planning for and obtaining new business to locate therein and provide assistance in local applications for federal development grants.

(11) Work actively to recruit domestic and international business firms to the state whose location will assist in carrying out the provisions of ORS 184.003. [1957 c.624 §6; 1969 c.80 §20; 1973 c.691 §14; 1979 c.182 §7; 1981 c.316 §1; 1983 c.197 §14; 1985 c.70 §3]

184.165 Designation of department as agency to obtain financial assistance

involving federal port programs. For purposes of the Merchant Marine Act (46 U.S.C. 861 et seq.), the Economic Development Department shall be the state agency to apply to the Secretary of Commerce for financial assistance to assist ports in achieving compliance with federal law or regulations relating to environmental protection, public health and safety, or port or cargo security. [1975 c.288 §2]

184.170 [1957 c.624 §7; 1969 c.80 §21; 1971 c.57 §7; 1973 c.691 §15; repealed by 1979 c.182 §12]

184.180 [1957 c.624 §8; 1969 c.80 §22; 1973 c.691 §16; repealed by 1979 c.182 §12]

184.190 [1957 c.624 §9; 1967 c.397 §5; 1969 c.80 §23; 1971 c.57 §8; 1973 c.691 §17; repealed by 1979 c.182 §12]

184.195 [1961 c.315 §§1, 2, 3; 1967 c.397 §12; renumbered 184.040]

184.196 [1967 c.397 §8; 1969 c.80 §24; repealed by 1973 c.691 §21]

184.198 Federal Economic Development Research Account. (1) There is created in the General Fund of the State Treasury a revolving account known as the Federal Economic Development Research Account. All moneys in such account are appropriated continuously and, pending receipt by the State Treasurer of federal funds for the payment of federally financed economic development research projects administered by the Economic Development Department, shall be used by the department to pay the costs of completing such research projects.

(2) Upon notice that such federal funds have been received by the State Treasurer, the director shall prepare a claim against such funds for the amount advanced from the Federal Economic Development Research Account for the purposes of this section, and the Executive Department shall issue a warrant in payment of such claim, for credit to and reimbursement of such account. [1967 c.397 §9; 1973 c.691 §9; 1975 c.371 §6; 1983 c.197 §15]

184.200 [1957 c.624 §10; 1967 c.397 §6; 1969 c.80 §25; repealed by 1971 c.57 §11]

184.210 [1959 c.660 §17; 1969 c.80 §26; 1973 c.691 §18; repealed 1981 c.68 §1]

184.215 Financial Programs Account. There is created a cash account within the General Fund known as the Financial Programs Account. Revenues shall be derived from fees for service related to administration of the financial programs. Moneys in this account are continuously appropriated to provide for the administrative expenses of the Financial Programs Division of the Economic Development Department. [1981 c.653 §7]

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the export trading corporation has not obliged itself in good faith not to disclose the information and disclosure is in the public interest. [1983 c.200 §9]

777.795 Right to inspect records of export trading corporation; certain records exempt from disclosure. (1) Except as provided in subsection (2) of this section, the written records of an export trading corporation shall be public records available for inspection under ORS 192.410 to 192.500.

(2) In addition to the exemptions set forth in ORS 192.500, the following public records of an export trading corporation are exempt from disclosure:

(a) Information consisting of financial, commercial, sales, production, cost or similar business records of a private concern or enterprise which is not otherwise required to be disclosed by state or federal law.

(b) Trade secrets, as defined in ORS 192.500 (1)(b). [1983 c.200 §14]

777.800 Annual report. An export trading corporation shall report annually to the port on the operations of the export trading corporation. A copy of the report shall be filed by the export trading corporation with the Secretary of State. [1983 c.200 §15]

PORTS DIVISION

777.805 Definitions for ORS 777.805 to 777.845. As used in ORS 777.805 to 777.845, unless the context requires otherwise:

(1) "Commission" means the Economic Development Commission.

(2) "Department" means the Economic Development Department.

(3) "Director" means the Director of the Economic Development Department.

(4) "Port" means the Port of Portland and any municipal corporation established pursuant to ORS 777.005 to 777.725, 777.850 to 777.910 and 777.990.

(5) "Ports Division" or "division" means the Ports Division of the Economic Development Department. [1969 c.599 §39; 1973 c.249 §78; 1975 c.371 §1; 1985 c.565 §120]

777.810 Ports Division continued in Economic Development Department. The Ports Division is continued within the Economic Development Department. [1969 c.599 §40; 1973 c.249 §79; 1975 c.371 §3; 1985 c.565 §121]

777.815 [1969 c.599 §42; 1969 c.599 §42a; repealed by 1973 c.249 §91]

777.820 [1969 c.599 §43; repealed by 1973 c.249 §91]

777.825 [1969 c.599 §44; repealed by 1973 c.249 §91]

777.830 Division employes. Subject to the approval of the director and any applicable provisions of the State Personnel Relations Law, the chief administrative officer of the division may appoint such subordinate officers and employes as are necessary to the accomplishment of the duties and powers assigned to the division and prescribe their duties and fix their compensation. [1969 c.599 §45; 1973 c.249 §80]

777.835 Division function; approval required for creation of new ports; coordinating, planning and research on international trade. (1) The commission, through the division, shall be the state-wide coordinating, planning and research agency for all ports and port authorities in this state to insure the most orderly, efficient and economical development of the state port system.

(2) Notwithstanding any other provision of law, after July 1, 1969, no port or port authority may be formed without the prior approval of the commission.

(3) The commission, through the division, shall be the state-wide coordinating, planning and research agency for port activities involving international trade and international trade development and industrial, commercial and recreational development. Such coordinating, planning and research shall be coordinated with the activities of the Legislative Committee on Trade and Economic Development for its information. [1969 c.599 §46; 1973 c.249 §81; 1975 c.371 §4]

777.840 Port regions. The following port regions are established:

(1) Coastal Region. Tillamook, Lincoln, Lane, Douglas, Coos and Curry Counties.

(2) Lower Columbia Region. Clatsop, Columbia, Clackamas, Washington and Multnomah Counties.

(3) Mid-Columbia Region. Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

(4) Interior Region. Those counties not included within the Coastal Region, the Lower Columbia Region or the Mid-Columbia Region. [1969 c.599 §47]

777.845 Regional meetings required; report to commission. (1) At least four times each year, and at such other times and places as the commission may direct, representatives of each port and port authority within a region established by ORS 777.840 shall meet to discuss

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and solve problems of common interest within the region. Except for meetings directed by the commission, regional meetings shall be held at such times and places as are designated by a majority of the representatives. The representatives shall choose from among their number a chairman and other officers for such terms and with such duties and powers as the representatives determine necessary for the performance of their duties.

(2) The chairman of each regional meeting shall cause a summary of the proceedings to be delivered to the department. [1969 c.599 §48; 1973 c.249 §82]

OREGON PORT REVOLVING FUND

777.850 Definitions for ORS 777.850 to 777.910. As used in ORS 777.850 to 777.910, unless the context requires otherwise:

(1) "Business development project" means the engineering, improvement, rehabilitation, construction, operation or maintenance, in whole or in part, including the preproject planning costs of any business development project authorized by ORS 777.250 (1).

(2) "Port development project" means the engineering, improvement, rehabilitation, construction, operation or maintenance, in whole or in part, including the preproject planning costs of any project authorized by ORS 777.105 to 777.258, except projects authorized primarily by ORS 777.250 (1).

(3) "Commission" means the Economic Development Commission appointed pursuant to ORS 184.006.

(4) "Director" means the Director of the Economic Development Department appointed pursuant to ORS 184.135.

(5) "Fund" means the Oregon Port Revolving Fund.

(6) "Port district" means any municipal corporation incorporated, or proposed to be incorporated, pursuant to ORS chapter 778 or ORS 777.005 to 777.725, 777.850 to 777.910 and 777.990. [1977 c.838 §3; 1985 c.565 §122; 1985 c.773 §3]

777.852 Application for port development money. Any Oregon port district may file with the commission an application to borrow money from the Oregon Port Revolving Fund for a port development project as provided in ORS 777.850 to 777.910. The application shall be filed in such a manner and contain or be accompanied by such information as the commission may prescribe. [1977 c.838 §4]

777.854 Commission review of application; fee. (1) Upon receipt of an application filed, as provided in ORS 777.852, the commission shall determine whether the plans and specifications for the proposed port development project set forth in or accompanying the application are satisfactory. If the commission determines that the plans and specifications are not satisfactory, they may within 60 days:

(a) Reject the application.

(b) Require the applicant to submit additional information of the plans and specifications as may be necessary.

(2) The commission shall charge and collect from the applicant, at the time the application is filed, a fee of not to exceed \$100. Moneys referred to in this subsection shall be paid into the Oregon Port Revolving Fund. [1977 c.838 §5]

777.856 Private development contracts not prohibited. Nothing in ORS 777.850 to 777.910 is intended to prevent an applicant from employing a private engineering firm and construction firm to perform the engineering and construction work on a proposed port development project. [1977 c.838 §6]

777.858 Qualifications for approval of port development funding. The commission may approve a port development project proposed in an application filed, as provided in ORS 777.852, if, after investigation, they find that:

(1) The proposed port development project is feasible and a reasonable risk from practical and economic standpoints, and the loan has reasonable prospect of repayment.

(2) Moneys in the Oregon Port Revolving Fund are or will be available for the proposed port development project.

(3) There is a need for the proposed port development project, and the applicant's financial resources are adequate to provide the working capital needed to assure success of the project.

(4) The applicant has received all necessary permits required by federal, state or local agencies.

(5) The applicant has not received or entered into a contract or contracts exceeding \$500,000 with the commission, under authority of ORS 777.850 to 777.910, for the previous 365 days, and provided that no applicant may have more than \$750,000 in outstanding loans at any one time.

(6) The standards under ORS 184.025, have been met. [1977 c.838 §7; 1979 c.182 §11; 1979 c.800 §1]

777.860 Loan from fund; repayment plan; project inspection; enforcement of

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(c) Shall not exceed, for all bonds issued, a total value of \$3 million.

(2) Each bond issued under ORS 777.892 to 777.904 shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof. No such bond shall constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation. However, nothing in ORS 777.892 to 777.904 is intended to impair the rights of holders of bonds to enforce covenants made for the security thereof as provided under ORS 777.902.

[1981 c.532 §8]

777.910 Short title. This Act shall be known as the Oregon Port Revolving Fund Act. [Formerly 777.890]

PENALTIES

777.990 Penalties. (1) Failure by a port treasurer, or county treasurer charged with the duties provided by ORS 777.515, to comply with the requirements of that section for a period of 10 days is punishable, upon conviction, by a fine of not less than \$500 nor more than \$1,000.

(2) Any person violating a regulation adopted by a port board under ORS 777.120 or 777.190 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$250. [Amended by 1971 c.728 §102]

SHELLFISH**622.090****GENERALLY**

622.010 Definitions. As used in this chapter:

(1) "Division" means the Health Division of the Department of Human Resources.

(2) "Assistant Director" means the Assistant Director for Health.

(3) "Dealer" means every person or peddler engaged in the business of growing, harvesting, processing or distributing shellfish for human consumption.

(4) "Peddler" means every person who for himself or as the agent of another goes from place to place, or house to house, carrying or offering shellfish for sale.

(5) "Person" includes city, county and state as well as those included within the definition of person in ORS 174.100.

(6) "Shellfish" means all fresh and frozen oysters, clams or mussels, either shucked or in the shell, and all fresh edible products thereof intended for human consumption. [1955 c.331 §1; 1969 c.283 §1; 1973 c.508 §1]

622.020 Certificate of shellfish sanitation required to be dealer. No person shall act as a dealer without the certificate or certificates of shellfish sanitation issued by the division. [1955 c.331 §3; 1973 c.508 §2]

622.030 Exemptions. This chapter shall not affect the following:

(1) Retail stores selling to the ultimate consumer.

(2) Operations subject to ORS chapters 616, 619, 620, 621, 625, ORS 624.010 to 624.120, 632.275 to 632.290, 632.450 to 632.490 and 632.900 to 632.985 and to the rules pursuant thereto.

(3) Out-of-state dealers operating under a state shellfish program indorsed by the United States Public Health Service. [1955 c.331 §6; 1957 c.66 §1; 1969 c.283 §2; 1973 c.508 §1a; 1983 c.160 §5]

622.040 Certificate required for each area of operation. A certificate of shellfish sanitation shall specify the area of operation to which it applies. A separate certificate validated for each area of operation as defined by ORS 622.080 and the division rules made under this chapter is required. [1955 c.331 §7 (3); 1973 c.508 §3]

622.050 Application for certificate; inspections; expiration and renewal. (1) A dealer shall make application to the division for a certificate or certificates of shellfish sanitation.

The application shall be accompanied by the required fee or fees.

(2) The division shall issue the initial certificate or certificates of shellfish sanitation, if on inspection the assistant director finds that the dealer has complied with all the provisions of this chapter and the rules of the division under this chapter.

(3) Every certificate of shellfish sanitation shall expire on December 31, following the date of issue. Any certificate of shellfish sanitation may be renewed on payment of the required fee. Inspection is not a condition precedent for renewal, but an inspection shall be made at some time within the renewal year. [1955 c.331 §7(1), (2), (4); 1973 c.508 §4]

622.060 [1955 c.331 §9; repealed by 1973 c.508 §5; (622.065 enacted in lieu of 622.060)]

622.065 Denial, suspension and revocation of license; procedure. (1) The assistant director may suspend, deny or revoke any certificate of shellfish sanitation issued under this section for violation of any applicable provisions of ORS 622.010 to 622.180 or any rule promulgated under ORS 622.180.

(2) Procedures for denial, revocation or suspension of a certificate shall be as provided in ORS 183.310 to 183.550. [1973 c.508 §6 (enacted in lieu of 622.060 and 622.070)]

622.070 [1955 c.331 §10; repealed by 1973 c.508 §5 (622.065 enacted in lieu of 622.070)]

622.080 Fees; areas of operation. The following is the schedule of annual fees to be paid to the division:

(1) Fifty-five dollars for a certificate of shellfish sanitation as a shucker-packer, for a person operating a shellfish shucking, packing or re-packing plant for the distribution of shellfish.

(2) Forty dollars for a certificate of shellfish sanitation as a grower, for a person engaged in the business of growing shellfish.

(3) Fifteen dollars for a certificate of shellfish sanitation as a distributor, for any jobber or wholesaler who furnishes or sells shellfish to retail outlets. [1955 c.331 §8; 1969 c.283 §3; 1973 c.508 §7; 1979 c.696 §10]

622.090 Disposition of fees. The moneys received under ORS 622.050 shall be paid into the State Treasury and placed to the credit of the General Fund in the Health Division Account. Such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of this chapter. ORS 291.238 does not apply to the expenditure of such moneys. [1955 c.331 §7(1); 1973 c.427 §12]

622.100**FOOD AND OTHER COMMODITIES****622.100 Certificate not transferable.**

A certificate of shellfish sanitation issued under this chapter is not transferable from one dealer to another or from one area of operation to another. [1955 c.331 §7(6)]

622.110 Display of certificates. Every dealer shall display his certificate or certificates of shellfish sanitation in accordance with the rules made under this chapter. [1955 c.331 §7(5); 1973 c.508 §8]

622.160 Signed statement to be attached to shellfish consignment. No dealer shall send or accept any shellfish without a signed statement attached showing:

- (1) The name of the consignor.
- (2) The name of the consignee.
- (3) The number of the consignor's certificate of shellfish sanitation issued at the point of origin and the date of harvesting or packing, if the consignor is required by law to have a certificate of shellfish sanitation.

(4) The source of the shellfish and the fact of certification of the source by the division or certification by a state whose shellfish program is indorsed by the United States Public Health Service, if such certification is required by law. [1955 c.331 §4; 1973 c.508 §9]

622.170 Records of amount and source of shellfish. Any dealer who gathers or receives shellfish from any source other than that designated in his certificate or certificates of shellfish sanitation shall keep accurate records of the amount and source of such shellfish, which records shall be retained for at least 90 days. The assistant director shall have access to these records for inspection. [1955 c.331 §5; 1973 c.508 §10]

622.180 Powers of division; rules; inspections; samples; condemnation. For the protection of the public health, the division shall have the following powers and all powers necessary and proper to insure sanitary conditions in the production and distribution of shellfish:

(1) The division shall have power to make rules necessary to enforce the provisions of this chapter. These rules shall at least include the water quality of growing areas, quality of market shellfish, water supply, sewage and waste disposal, drainage, plumbing, building construction, boat and barge sanitation, the handling, storage, construction and maintenance of equipment, lighting and ventilation, insect and rodent control, garbage and refuse disposal, shell disposal, cleanliness of premises, handling, storage and

refrigeration of shellfish and the marking of certificate numbers and dating codes on all containers.

(2) The assistant director shall have power:

(a) To inspect any dealer in every phase and locale of operation.

(b) To take samples of any shellfish for bacteriological and toxicity study.

(c) To condemn or remove from sale and destroy any shellfish which are unfit for human consumption, or are from an uncertified source, or are improperly certified.

(d) To issue certificates of shellfish sanitation in accordance with the provisions of this chapter. [1955 c.331 §2; 1973 c.508 §11]

OYSTERS

622.210 Department defined. As used in ORS 622.210 to 622.300 and 622.320 to 622.350, "department" means the State Department of Agriculture. [1981 c.638 §2]

622.220 Jurisdiction over oysters. (1) The commercial cultivation of oysters is declared to be an agricultural activity which should be subject to the regulatory authority of the State Department of Agriculture. However, the State Fish and Wildlife Commission has jurisdiction over all native oysters in the waters of this state, and shall prescribe such rules for the protection of oysters therein and for the taking of oysters and oyster spat shells therefrom as in the judgment of the commission is for the best interests of the resource.

(2) It is unlawful for any person to take native oysters unless the person complies strictly with all of the rules made by the commission covering such taking. [Formerly 509.425]

622.230 Conversion of plantations to plats. (1) All plats, rights, claims and plantations, and leases lawfully held for such plats, rights, claims and plantations which exist upon the passage of this 1969 Act shall be converted to plats, shall be filed with the department by July 1, 1970, and shall:

(a) Include a legal description of the area applied for, specifying its acreage.

(b) Be accompanied by a map sufficient to permit the area applied for to be readily identified.

(c) Be accompanied by an application fee of \$25 per plat.

(2) All lands held at the time of the passage of this 1969 Act for artificial oyster production

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under any of the laws of this state shall be given first consideration by the commission in order to allow uninterrupted usage during the transition to the provisions of chapter 675, Oregon Laws 1969. [Formerly 509.427]

Note: Legislative Counsel made no substitution in 622.230 for "the passage of this 1969 Act" or "the time of the passage of this 1969 Act."

622.240 Classifying oyster lands. The department shall investigate and classify those state lands that are suitable for oyster cultivation. [Formerly 509.429]

622.250 Application for new plats; notice. Applicants for new oyster plats, in addition to submitting an application in compliance with ORS 622.230 (1), shall:

(1) Cause notice of the application to be published once a week for two consecutive weeks in a newspaper of general circulation in each county where any area applied for, or any part thereof, is located. The notice must state the name of the applicant, the type of operation the applicant proposes to conduct, and must describe the area to be planted with oysters.

(2) Not later than the 30th day after publication of the notice referred to in subsection (1) of this section, and upon finding that the notice complied with the requirements of that subsection, the department may grant to the applicant the area applied for if the area is known to be available and if the department has classified the area as suitable for oyster cultivation.

(3) If the application referred to in this section is denied, the department shall provide the applicant with a written statement explaining the reason for the denial. [Formerly 509.431]

622.260 Copies of laws to be available. The department shall cause copies of the provisions of ORS 622.230 and 622.250 to be made available at the courthouse of each county in which an applicant's approved plat, or part thereof, is located. [Formerly 509.433]

622.270 Reports of cultivators. Any person cultivating oysters shall file an annual report with the department before March 1 of each year showing the number of gallons of each species of oysters harvested by the person during the preceding calendar year. The report shall be made on forms provided by the department. [Formerly 509.436]

622.280 Withdrawal of unproductive lands. (1) If, for a period of three years after the filing of a plat under chapter 675, Oregon Laws 1969, more than one-half the lands claimed

are unproductive, the department may withdraw from a claimant and consider abandoned that portion of the unproductive lands that are in excess of one-half the lands claimed by such claimant. However, the reason for such unproductiveness shall not include restrictions by governmental health authorities, the unavailability of seed or infestation by pest or disease.

(2) The department may withdraw from a claimant and consider abandoned those lands:

(a) On which the claimant fails to pay the fees or use taxes referred to in ORS 622.290, unless the department is satisfied that there was reasonable cause for such failure.

(b) Which are not marked in the manner provided by ORS 622.320.

(c) Which are used or held for purposes other than oyster cultivation. [Formerly 509.439]

622.290 Annual fees and taxes. (1) Persons using state lands for cultivating oysters shall pay annual cultivation fees and use taxes quarterly to the department. Fees and taxes become delinquent 30 days after the end of the quarter.

(a) Use taxes shall be in the amount of five cents per gallon of oysters if sold by the gallon, or five cents per bushel of oysters if sold in the shell by the bushel.

(b) The annual cultivation fee shall be in the amount of \$2 for each acre claimed pursuant to chapter 675, Oregon Laws 1969.

(2) Annual cultivation fees and use taxes shall be assessed in lieu of property taxes, lease fees or rental charges for the use of lands upon which oysters are grown and harvested. [Formerly 509.441]

622.300 Use of fees and taxes. All moneys received by the department under ORS 622.290 shall be paid over to the State Treasurer and deposited in the Department of Agriculture Service Fund and be subject to ORS 561.144. All such moneys are appropriated continuously to the department to carry out the provisions of ORS 622.220 and 622.320. [Formerly 509.451]

622.310 Effect on prior-acquired rights. Nothing in ORS 506.036 and 622.210 to 622.310 affects any oyster cultivation right acquired prior to January 1, 1982, pursuant to chapter 675, Oregon Laws 1969. [1981 c.638 §12]

622.320 Oyster plats as private property; restriction of public use of waters prohibited. Any plats of oyster lands held by citizens of this state, if distinctly marked out by

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means which do not obstruct navigation, and not exceeding the extent allowed by regulations, shall be deemed and protected as private property. Such plats, however, shall not restrict the rights of the public to the use of the waters of this state in a normal and customary manner. [Formerly 509.455]

622.330 Private oyster beds acquired under prior law not affected. Nothing in ORS 509.505, 511.625, 622.210 to 622.300 and 622.320 interferes with any rights in, or ownership of, any private plantations of oysters or oyster beds acquired or held under law existing on February 17, 1921. [Formerly 509.470]

622.340 Transfer by reference to filed oyster plat. Sales, leases, assignments, conveyances, relinquishments and other transfers of oyster plantations and claims, or parts thereof, may be made by reference to the plat filed as provided in ORS 622.210 to 622.300 and 622.320. The heirs, successors, assignees and lessees of oyster plats are entitled to continued possession of such plats by compliance with ORS 622.210 to 622.300 and 622.320. [Formerly 509.495]

622.350 Prior claims, plats, transfers or debts unaffected. Nothing in ORS 622.340 invalidates any claim or plat filed prior to June 14, 1939, or invalidates in any manner any transfers, debts or conveyances made prior to June 14, 1939, of oyster claims or lands made by reference to any filed claims or plats. [Formerly 509.500]

PENALTIES

622.990 [1955 c.331 §11; repealed by 1973 c.508 §12 (622.992 enacted in lieu of 622.990)]

622.992 Penalties. Violation of any provision of ORS 622.010 to 622.180 or the rules of the division promulgated under ORS 622.180 is a Class C misdemeanor. [1973 c.508 §13 (enacted in lieu of 622.990)]

CHAPTER 623
[Reserved for expansion]

ADMINISTRATION OF HEALTH LAWS**431.705**

(2) The State Trauma Advisory Board shall consist of 17 members with at least four members representing each of the health systems agency districts of the state, and shall include at least:

(a) Four surgeons selected from a list recommended by the Oregon Chapter of the American College of Surgeons, through the Oregon Medical Association, all of whom have knowledge of and experience in trauma care and systems, of whom two shall be general or thoracic surgeons, one shall be a neurosurgeon and one shall be an orthopedic surgeon;

(b) Two emergency physicians selected from a list recommended by the Oregon Chapter of the American College of Emergency Physicians, through the Oregon Medical Association, each of whom has knowledge of and experience in trauma care and systems;

(c) One hospital administrator selected from each health service area district and recommended by the Oregon Association of Hospitals;

(d) Two emergency medical technicians selected from a list recommended by the Oregon State Emergency Medical Technicians Association;

(e) Two nurses selected from a list recommended by the Oregon Emergency Nurses Association, or the Oregon Nurses Association;

(f) Two representatives of the public at large selected from among those submitting letters of application in response to a public notice by the Health Division. These members shall not have an economic interest in any decisions of the board;

(g) One anesthesiologist selected from a list recommended by the Oregon Society of Anesthesiologists; and

(h) One ambulance service owner or operator or both selected from lists recommended by the Oregon Ambulance Association, the Oregon Volunteer Ambulance Association and Fire Medical Administrators Association.

(3) Members shall be appointed for four-year terms.

(4) The board shall meet at least quarterly.

(5) Members of the board shall be entitled to compensation and expenses as provided in ORS 292.495.

(6) A vacancy on the board shall be filled by appointment for the unexpired term.

Sec. 5. Notwithstanding the term fixed by section 3 of this Act, the terms of the first appointees to the State Trauma Advisory Board shall be as follows:

(1) Approximately one-fourth of the members shall serve for one-year terms.

(2) Approximately one-fourth of the members shall serve for two-year terms.

(3) Approximately one-fourth of the members shall serve for three-year terms.

(4) Approximately one-fourth of the members shall serve for four-year terms.

Sec. 9. Section 3 of this Act is repealed January 1, 1990.

431.620 [Repealed by 1961 c.610 §18]

431.625 [1971 c.650 §46; repealed by 1977 c.582 §61 and 1977 c.751 §17a]

431.630 [Repealed by 1961 c.610 §18]

431.640 [Repealed by 1961 c.610 §18]

431.650 [Repealed by 1961 c.610 §18]

431.660 [Repealed by 1961 c.610 §18]

431.670 [Repealed by 1961 c.610 §18]

HEALTH HAZARD ANNEXATIONS OR DISTRICT FORMATION

431.705 Definitions for ORS 431.705 to 431.760. As used in ORS 431.705 to 431.760, unless the context requires otherwise:

(1) "Assistant director" means the Assistant Director for Health.

(2) "Affected territory" means an area that is the subject of a proceedings under ORS 431.705 to 431.760 where there is a danger to public health or an alleged danger to public health.

(3) "Boundary commission" means a local government boundary commission created under ORS 199.410 to 199.430, 199.435 to 199.464, 199.480 to 199.505 and 199.510.

(4) "Commission" means the Environmental Quality Commission.

(5) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:

(a) Impure or inadequate domestic water.

(b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste.

(c) Inadequate improvements for drainage of surface water and other fluid substances.

(6) "District" means any one of the following:

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(a) A metropolitan service district formed under ORS chapter 268.

(b) A county service district formed under ORS chapter 451.

(c) A sanitary district formed under ORS 450.005 to 450.245.

(d) A sanitary or a water supply authority formed under ORS 450.675 to 450.989.

(e) A domestic water supply district formed under ORS chapter 264.

(7) "Division" means the Health Division of the Department of Human Resources.

(8) "Requesting body" means the county court, or local or district board of health that makes a request under ORS 431.715.

(9) "Service facilities" means water or sewer installations or works. [1973 c.361 §1; 1975 c.266 §1; 1981 c.452 §1]

431.710 When division to initiate district formation or annexation. (1) ORS 431.705 to 431.760 shall not apply if the affected territory could be subject to an annexation proceeding under ORS 222.840 to 222.915.

(2) If the division, in accordance with ORS 431.705 to 431.760, finds that a danger to public health exists within the affected territory and that such danger could be removed or alleviated by the construction, maintenance and operation of service facilities, the division shall initiate proceedings for the formation of or annexation to a district to serve the affected territory. If the affected territory is located within a district that has the authority to provide the service facilities, the division shall order the district to provide service facilities in the affected territory. [1973 c.361 §2; 1981 c.888 §3]

431.715 Resolution requesting division to initiate formation or annexation. (1) The county court or the local or district board of health having jurisdiction over territory where it believes conditions dangerous to the public health exist shall adopt a resolution requesting the division to initiate proceedings for the formation of a district or annexation of territory to, or delivery of appropriate water or sewer services by, an existing district without vote or consent in the affected territory. The resolution shall:

(a) Describe the boundaries of the affected territory;

(b) Describe the conditions alleged to be causing a danger to public health;

(c) Request the division to ascertain whether conditions dangerous to public health exist in the affected territory and whether such conditions

could be removed or alleviated by the provision of service facilities; and either

(d) Recommend a district that the affected territory could be included in or annexed to for the purpose of providing the requested service facilities; or

(e) Recommend that an existing district provide service facilities in the affected territory.

(2) The requesting body shall cause a certified copy of the resolution, together with the time schedule and preliminary plans and specifications, prepared in accordance with subsection (3) of this section, to be forwarded to the division.

(3) The requesting body shall cause a study to be made and preliminary plans and specifications prepared for the service facilities considered necessary to remove or alleviate the conditions causing a danger to public health. The requesting body shall prepare a schedule setting out the steps necessary to put the facilities into operation and the time required for each step in implementation of the plans.

(4) If the preliminary plans involve facilities that are subject to the jurisdiction of the commission, a copy of the documents submitted to the division under subsection (2) of this section shall be submitted to the commission for review, in accordance with ORS 431.725, of those facilities that are subject to its jurisdiction. No order or findings shall be adopted under ORS 431.735 or 431.756 until the plans of the requesting body for such facilities, if any, have been approved by the commission. [1973 c.361 §3; 1981 c.888 §4]

431.717 Compelling adoption of resolution. (1) Any person who may be adversely affected by the failure of a county court to adopt a resolution as required by ORS 431.715 (1) may seek to compel the adoption of such resolution through a writ of mandamus under ORS 34.110 to 34.240.

(2) The prevailing party in a proceeding under ORS 34.110 to 34.240 authorized by subsection (1) of this section is entitled to reasonable attorney fees in addition to costs and necessary disbursements. [1981 c.888 §6]

431.720 Commission to review certain plans; approval of plans. (1) Upon receipt of the documents submitted under ORS 431.715 (4), the commission shall review them to determine whether the conditions dangerous to public health within the affected territory could be removed or alleviated by the provision of service facilities that are subject to the jurisdiction of the commission.

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(2) If the commission considers such proposed facilities and the time schedule for installation of such facilities adequate to remove or alleviate the dangerous conditions, it shall approve the part of the plans that are subject to its jurisdiction and certify its approval to the division.

(3) If the commission considers the proposed facilities or time schedule inadequate, it shall disapprove the part of the plans that are subject to its jurisdiction and certify its disapproval to the division. The commission shall also inform the requesting body of its approval or disapproval and, in case of disapproval, of the particular matters causing the disapproval. The requesting body may then submit additional or revised plans. [1973 c.361 §4]

431.725 Division to review resolution; notice of hearing. (1) Upon receipt of the certified copy of a resolution adopted under ORS 431.715, the division shall contact the requesting body within 30 days of receipt of the request and schedule the review and investigation of conditions in the affected territory. The division shall review and investigate conditions in the affected territory in accordance with the agreed upon schedule unless both parties agree to an extension. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order setting a time and place for a hearing on the resolution. The hearing shall be held within the affected territory, or at a place near the territory if there is no suitable place within the territory at which to hold the hearing, not less than 30 or more than 50 days after the date of the order.

(2) Upon issuance of an order for a hearing, the division shall immediately give notice of the time and place of the hearing on the resolution by publishing the order and resolution in a newspaper of general circulation within the territory once each week for two successive weeks and by posting copies of the order in four public places within the territory prior to the hearing. [1973 c.361 §5; 1981 c.452 §2]

431.730 Conduct of hearing. (1) At the hearing on the resolution, any interested person shall be given a reasonable opportunity to be heard or to present written statements. The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory and whether such conditions could be removed or alleviated by the provision of service facilities. It may be conducted by the assistant director or by a hearings officer designated by the assistant director. It

shall be conducted in accordance with the provisions of ORS 183.310 to 183.550. The division shall publish a notice of the issuance of said findings and recommendations in the newspaper utilized for the notice of hearing under ORS 431.725 (2) advising of the opportunity for presentation of a petition under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section, any person who may be affected by the findings, or the affected district, may petition the assistant director according to rules of the division to present written or oral arguments relative to the proposal. If a petition is received, the assistant director may set a time and place for receipt of argument. [1973 c.361 §6; 1975 c.266 §2]

431.735 Assistant Director's authority under ORS 431.705 to 431.760. (1) If the assistant director after investigation finds that no danger to public health exists because of conditions within the affected territory, or that such a danger does exist but the conditions causing it could not be removed or alleviated by the provision of service facilities, the assistant director shall issue an order terminating the proceedings under ORS 431.705 to 431.760 with reference to the affected territory.

(2) If the assistant director finds, after investigation and the hearing required by ORS 431.725, that a danger to public health exists because of conditions within the territory, and that such conditions could be removed or alleviated by the provisions of service facilities in accordance with the plans and specifications and the time schedule proposed, the assistant director shall enter findings in an order, directed to the officers described by ORS 431.740, setting out the service facilities to be provided.

(3) If the assistant director determines that a danger to public health exists because of conditions within only part of the affected territory, or that such conditions could be removed or alleviated in only part of the affected territory by the provision of service facilities, the assistant director may, subject to conditions stated in ORS 431.705 to 431.760, reduce the boundaries of the affected territory to that part which presents a danger or in which the conditions could be removed or alleviated if the area to be excluded would not be surrounded by the territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the danger to public health existing within the territory

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remaining to be annexed. The findings shall describe the boundaries of the area as reduced by the assistant director.

(4) In determining whether to exclude any area the assistant director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the area remaining to be annexed and whether the exclusion would result in an illogical boundary for the provision of services.

(5) The requesting body or the boundary commission shall, when requested, aid in the determinations made under subsections (3) and (4) of this section and, if necessary, cause a study to be made. [1973 c.361 §7; 1975 c.266 §3]

431.740 Notice to boundary commission; service facilities to conform to plans and schedules. (1) If a boundary commission has jurisdiction of the affected territory, the assistant director shall file the findings and order with such boundary commission. If the affected territory is not within the jurisdiction of a boundary commission, the assistant director shall file the findings and order with the county court of the county having jurisdiction of the territory.

(2) The division and the commission shall use their applicable powers of enforcement to insure that the service facilities are constructed or installed in conformance with the approved plans and schedules. [1973 c.361 §8]

431.745 Petition for alternative plan.

(1) At any time after the adoption of a resolution under ORS 431.715, a petition, signed by not less than 51 percent of the electors registered in the affected territory, may be filed with the division. The petition shall suggest an alternative plan to the proposed formation or annexation for removal or alleviation of the conditions dangerous to public health. The petition shall state the intent of the residents to seek annexation to an existing city or special district authorized by law to provide service facilities necessary to remove or alleviate the dangerous conditions. The petition shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities and an estimate of the time required to construct such facilities and place them in operation.

(2) Upon receipt of the petition, the division shall immediately forward a copy of the petition to the commission, if the plan accompanying the petition involves facilities that are subject to the jurisdiction of the commission. The division also shall forward a copy of the petition to the requesting body and to the county court or boundary

commission where the division filed its findings under ORS 431.740 and direct the county court or boundary commission to stay the proceedings pending the review permitted under this section and ORS 431.750. [1973 c.361 §9; 1983 c.83 §84]

431.750 Commission review of alternative plan; certification of alternative plan. (1) If the alternative plan submitted under ORS 431.745 (1) involves service facilities that are subject to the jurisdiction of the commission, the alternative plan shall be submitted to and reviewed by the commission and shall be approved or rejected by the commission within 30 days from the date of filing with the division. In reviewing the alternative plan, the commission shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health. If the commission determines that the original plan provides the better and most expeditious method of removing or alleviating the dangerous conditions, it shall disapprove the alternative plan and inform the division of its decision. The division shall order the proceedings on the finding filed under ORS 431.740 to resume.

(2) If the commission finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners shall be granted six months within which to present to the commission information showing:

(a) That the affected territory has annexed to a city or special district authorized by law to provide the service facilities necessary to remove or alleviate the dangerous conditions, and that the financing of the extension of such facilities to the territory has been assured.

(b) Detailed plans and specifications for the construction of such facilities.

(c) A time schedule for the construction of such facilities.

(d) That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the formation or annexation proposed by the original plans.

(3) The commission shall review the plan presented to it by the petitioners under subsection (2) of this section and shall promptly certify to the division whether the requirements of subsection (2) of this section have been met. If the requirements have been met, the division shall certify the alternative plan to the county court or

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boundary commission having jurisdiction and direct it to proceed in accordance with the alternative plan and in lieu of the plans filed under ORS 431.740. If the requirements of subsection (2) of this section are not met by the petitioners, the division shall certify that fact to the county court or boundary commission having jurisdiction and direct it to continue the proceedings on the plans filed under ORS 431.740. [1973 c.361 §10]

431.755 [1973 c.361 §11; repealed by 1975 c.266 §4 (431.756 enacted in lieu of 431.755)]

431.756 Judicial review. Judicial review of orders under ORS 431.705 to 431.760 shall be as provided in ORS 183.480, 183.485, 183.490 and 183.500. [1975 c.266 §5 (enacted in lieu of 431.755)]

431.760 Certain persons prohibited from participating in proceedings. (1) A person who owns property or resides within affected territory that is subject to proceedings under the provisions of ORS 431.705 to 431.760 shall not participate in an official capacity in any investigation, hearing or recommendation relating to such proceedings. If the assistant director is such a person, the assistant director shall so inform the Governor, who shall appoint another person to fulfill the duties of the assistant director in any investigation, hearing or recommendation relating to the such proceeding.

(2) Subsection (1) of this section does not excuse a member of a county court from voting on the order required by ORS 198.792 (2) or 451.445 (1). [1973 c.361 §12]

RECOMBINANT DNA

431.805 Definitions for ORS 431.805 to 431.815. As used in 431.805 to 431.815:

(1) "Person" includes an individual, partnership, association, corporation, private institution or governmental entity.

(2) "Recombinant DNA research" means research on molecules that consist of segments of deoxyribonucleic acid from different organisms which are joined together in cell-free systems and which have the capacity to infect and replicate in some host cell, either autonomously or as an integrated part of the host genome. [1983 c.358 §1]

Note: 431.805 to 431.815 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 431 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431.810 Recombinant DNA research to comply with federal guidelines. Persons carrying out recombinant DNA research must comply with the recombinant research guidelines adopted by the National Institute of Health and any subsequent modifications thereof. [1983 c.358 §2]

Note: See note under 431.805.

431.815 Registration of organisms used in research; registration information.

(1) A person shall not solicit or accept, directly or indirectly, any organisms containing recombinant DNA or conduct research with such organisms unless registered with the Health Division.

(2) Registration may include such information as the Health Division finds necessary and appropriate to carry out the purposes of ORS 431.805 to 431.815. [1983 c.358 §§3, 4]

Note: See note under 431.805.

PENALTIES

431.990 Penalties. Unless otherwise specifically provided by any other statute, failure to obey any rules of the Health Division, or failure to obey any lawful written order issued by the Assistant Director for Health or any district or county public health administrator is a Class A misdemeanor. [Amended by 1959 c.629 §46; 1961 c.610 §15; 1973 c.408 §34; 1973 c.829 §33; 1977 c.582 §32]

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its charter, annexation by a city under this section shall be by ordinance or resolution subject to referendum, with or without the consent of any owner of property within the territory or resident in the territory. [Amended by 1963 c.444 §1; 1985 c.702 §16]

222.810 [Amended by 1953 c.562 §2; repealed by 1969 c.49 §1]

222.820 [Repealed by 1969 c.49 §1]

222.830 [Repealed by 1969 c.49 §1]

HEALTH HAZARD ABATEMENT

222.840 Short title. ORS 222.840 to 222.915 shall be known and may be cited as the Health Hazard Abatement Law. [1983 c.407 §2]

222.850 Definitions for ORS 222.840 to 222.915. As used in ORS 222.840 to 222.915, unless the context requires otherwise:

(1) "Affected territory" means an area within the urban growth boundary of a city and which is otherwise eligible for annexation to that city and in which there exists an actual or alleged danger to public health.

(2) "Assistant director" means the Assistant Director for Health.

(3) "City council" means the legislative body of a city.

(4) "Commission" means the Environmental Quality Commission.

(5) "Danger to public health" means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:

(a) Impure or inadequate domestic water.

(b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrifying waste.

(c) Inadequate improvements for drainage of surface water and other fluid substances.

(6) "District" means any one of the following:

(a) A metropolitan service district formed under ORS chapter 268.

(b) A county service district formed under ORS chapter 451.

(c) A sanitary district formed under ORS 450.005 to 450.245.

(d) A sanitary or a water supply authority formed under ORS 450.675 to 450.989.

(e) A domestic water supply district formed under ORS chapter 264.

(7) "Division" means the Health Division of the Department of Human Resources. [1967 c.624 §1; 1973 c.637 §1; 1975 c.639 §1; 1983 c.407 §4]

222.855 Annexation to remove danger to public health. In addition to the procedures authorized in ORS 222.010 to 222.750, territory otherwise eligible for annexation in accordance with ORS 222.111 which is within the urban growth boundary of a city may be annexed by passage of an ordinance as provided in ORS 222.900 without any vote in such territory or any consent by the owners of land therein if it is found, as provided in ORS 222.840 to 222.915, that a danger to public health exists because of conditions within the territory and that such conditions can be removed or alleviated by sanitary, water or other facilities ordinarily provided by incorporated cities. [1967 c.624 §2; 1973 c.637 §2; 1975 c.639 §2; 1981 c.888 §7]

222.860 Proposal for annexation. (1) The city council of any city shall adopt a resolution containing a proposal for annexation without vote or consent in the affected territory. The proposal may contain terms of annexation as provided in ORS 222.111 and shall:

(a) Describe the boundaries of the affected territory; and

(b) Describe the conditions alleged to be causing a danger to public health.

(2) The governing body of any district having jurisdiction over the affected territory may adopt a resolution containing a proposal for annexation to the city without vote or consent in the affected territory. The proposal shall:

(a) Describe the boundaries of the affected territory; and

(b) Describe the conditions alleged to be causing a danger to public health.

(3) The local board of health having jurisdiction shall verify the conditions alleged in the proposal to be causing a danger to public health, based upon its knowledge of those conditions.

(4) The council or governing body shall cause a certified copy of the resolution together with verification by the local board of health having jurisdiction, to be forwarded to the division and request the division to ascertain whether conditions dangerous to public health exist in the affected territory. [1967 c.624 §3; 1973 c.637 §3; 1975 c.639 §3; 1981 c.888 §8; 1983 c.407 §5]

222.865 [1967 c.624 §4; 1973 c.637 §4, repealed by 1975 c.639 §18]

BOUNDARY CHANGES; MERGERS & CONSOLIDATIONS 222.883

222.870 Hearing in affected territory; notice. (1) Upon receipt of the certified copy of the resolution, and verification by the local board of health having jurisdiction, the division shall review and investigate conditions in the affected territory. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order for a hearing to be held within the affected territory, or at a place near the affected territory if there is no suitable place within that territory at which to hold the hearing, not sooner than 30 days from the date of the order.

(2) Upon issuance of an order for a hearing, the division shall immediately give notice of the resolution and order by publishing them in a newspaper of general circulation within the city and the affected territory once each week for two successive weeks and by posting copies of the order in four public places within the affected territory. [1973 c.624 §6; 1973 c.637 §5; 1975 c.639 §4; 1983 c.407 §6]

222.875 Purpose and conduct of hearing; written findings of fact. (1) The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory. It may be conducted by one or more members of the division's staff to whom authority to conduct such a hearing is delegated. It shall proceed in accordance with rules which may be established by the division. Any person who may be affected by the finding, including residents of the city, may be heard. Within 60 days following the hearing, the person conducting the hearing shall prepare and submit to the division written findings of fact and recommendations based thereon. The division shall publish a notice of the issuance of such findings and recommendations in the newspaper utilized for the notice of hearing under ORS 222.870, advising of the opportunity for presentation of a petition under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section any person who may be affected by the findings, including residents of the city, or the affected city, may petition the assistant director according to rules of the division to present written or oral arguments on the proposal. If a petition is received the assistant director may set a time and place for receipt of argument. [1967 c.624 §7; 1973 c.637 §6; 1975 c.639 §5; 1983 c.407 §7]

222.880 Health Division order or finding; hearing upon petition; alteration of

boundaries. (1) Within 30 days following the final hearing of any arguments received by petition under the provisions of ORS 222.875 (2) the assistant director shall review the arguments and the findings and recommendations of the person conducting the hearing as provided in ORS 222.875 (2). If the assistant director finds no danger to public health exists because of conditions within the affected territory, the assistant director shall issue an order terminating the proceedings under ORS 222.840 to 222.915 with reference to the affected territory.

(2) If the assistant director finds that a danger to public health exists because of conditions within the affected territory, the assistant director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, with the commission.

(3) If the assistant director determines that a danger to public health exists because of conditions within only part of the affected territory, the assistant director may, upon petition and hearing, reduce the boundaries of the affected territory to that part of the territory that presents a danger if the area to be excluded would not be surrounded by the affected territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the danger to public health existing within the affected territory remaining to be annexed. The findings shall describe the boundaries of the affected territory as reduced by the assistant director. The assistant director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, the commission.

(4) In determining whether to exclude any area the assistant director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the affected territory remaining to be annexed and whether the exclusion would result in an illogical boundary for the extension of services normally provided by an incorporated city.

(5) The city shall, when requested, aid in the determinations made under subsections (3) and (4) of this section and, if necessary, cause a study to be made. [1967 c.624 §8; 1973 c.637 §7; 1975 c.639 §6; 1983 c.407 §8]

222.883 Suspension of proceedings by Health Division; purpose; limit. At any time after the assistant director under ORS 222.880 finds that conditions dangerous to public health

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exist, the division may order further proceedings on the findings filed under ORS 222.880 halted in order to allow a city, district or persons affected by the findings to develop and propose an alternative plan to annexation for the removal or alleviation of the conditions dangerous to public health. Proceedings may be stayed under this section for not longer than 30 days. [1983 c.407 §3]

222.885 Alternative plan by petition or resolution; stay of proceedings. (1) Within 60 days after the assistant director under ORS 222.880 finds that conditions dangerous to public health exist, a petition, signed by not less than 51 percent of the electors registered in the affected territory, may be filed with the division. Such petition shall suggest an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health. The petition shall state the intent of the residents to seek annexation to an existing district authorized by law to provide facilities within the affected territory necessary to remove or alleviate the dangerous conditions or to seek, with the approval of the city or district, extraterritorial extension of a city's or district's sewer or water lines. The petition shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities, and an estimate of the time required to construct such facilities and place them in operation.

(2) Within 30 days after the assistant director under ORS 222.880 finds that conditions dangerous to public health exist, a resolution adopted by the city council or the governing body of any district having jurisdiction over the affected territory may be filed with the division. The resolution shall suggest an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health. The resolution shall be accompanied by a proposed plan which shall state the type of facilities to be constructed, a proposed means of financing the facilities, and an estimate of the time required to construct such facilities and place them in operation.

(3) Upon receipt of such petition or resolution adopted by a district or city council, the division shall:

(a) Immediately forward copies of any petition or resolution to the city or district referred to in the petition or resolution, and, except where the condition causing the danger to public health is impure or inadequate domestic water, to the commission.

(b) Order further proceedings on the findings filed under ORS 222.880 stayed pending the

review permitted under ORS 222.890 and this section. [1967 c.624 §8a (1), (2); 1973 c.637 §8; 1975 c.639 §7; 1983 c.83 §26; 1983 c.407 §9]

222.890 Review of alternative plan.

(1) An alternative plan referred to in ORS 222.885 shall be reviewed by the division in cases where danger to public health is caused by impure or inadequate domestic water and in all other cases by the commission. The plan shall be approved or rejected by the appropriate authority. In reviewing the alternative plan contained in the petition, the authority shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health. If it determines that annexation to the city provides the best and most expeditious method of removing or alleviating the dangerous conditions, the alternative plan shall be rejected and further proceedings on the finding filed under ORS 222.880 shall resume.

(2) If the reviewing authority finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners or appropriate governing body shall have six months within which to present to such authority information showing:

(a) That the territory in which the conditions dangerous to public health exist has received approval for the extension of a city's or district's sewer or water lines within the territory or has annexed to a district authorized by law to provide facilities necessary to remove or alleviate the dangerous conditions, and that financing of the facilities for extension of such facilities to the territory has been assured.

(b) Detailed plans and specifications for the construction of such facilities.

(c) A time schedule for the construction of such facilities.

(d) That such facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the proposed annexation to the city.

(3) The authority shall review the final plan presented to it by the petitioners, city or district and shall promptly certify whether the requirements of subsection (2) of this section have been met. If the requirements have been met, the division shall certify the alternative plan. Further annexation proceedings on the findings filed under ORS 222.880 shall be suspended and the city shall be so notified. If the requirements of subsection (2) of this section are not met by the

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petitioners, city or district or whenever the reviewing authority determines that the requirements of the certified plan are not being satisfied, further proceedings on the findings filed under ORS 222.880 shall resume. [1967 c.624 §8a (3), (4), (5); 1973 c.637 §9; 1975 c.639 §8; 1983 c.407 §10]

222.895 [1967 c.624 §9; 1973 c.637 §10; repealed by 1975 c.639 §9 (222.896 enacted in lieu of 222.895)]

222.896 Judicial review. Judicial review of final orders under ORS 222.840 to 222.915 shall be as provided in ORS 183.480 to 183.500 for judicial review of contested cases. [1975 c.639 §10 (enacted in lieu of 222.895)]

222.897 Study and plan for alleviation of health danger by city; procedure if city fails to act. (1) Upon receipt of a certified copy of the division's findings under ORS 222.880, the city council shall cause a study to be made and preliminary plans and specifications developed for the sanitary, water or other facilities necessary to remove or alleviate the conditions causing a danger to public health. The council shall prepare a schedule setting out the steps necessary to put the plan into operation and the time required for each step in the implementation of the plan. A copy of the plans and specifications and the time schedule shall, in the case where the danger to public health is caused by impure or inadequate domestic water, be submitted to the division and in all other cases to the commission.

(2) If the city within 90 days, fails to complete the requirements in subsection (1) of this section, the division shall conduct the necessary studies and prepare plans and other documents required for the consideration of the proposal and the final determination of the proceedings. The expense of the study and preparation of the plans and other documents shall be paid by the city upon vouchers properly certified by the assistant director. [1975 c.639 §12]

222.898 Determination if health danger can be alleviated; approval of plans; notice to city. (1) Within 60 days of receipt of the preliminary plans and other documents submitted as required by ORS 222.897, the appropriate reviewing authority shall determine whether the conditions dangerous to public health within the territory proposed to be annexed can be removed or alleviated by the sanitary, water or other facilities proposed by the plans and specifications.

(2) If such authority considers the proposed facilities and the time schedule for installation of such facilities adequate to remove or alleviate the dangerous conditions, it shall approve the proposal and certify its approval to the city.

(3) If the authority considers the proposed facilities or time schedule inadequate, it shall disapprove the proposal and certify its disapproval to the city including the particular matters causing the disapproval. The city council shall then submit an additional or revised proposal.

(4) In the event the authority upon review of the plans and other documents submitted under subsection (1) of this section determines that the danger to public health in the area proposed to be annexed cannot be removed or alleviated by sanitary, water or other facilities ordinarily provided by incorporated cities it shall terminate the proceedings upon the proposal and notify the city. [1975 c.639 §13]

222.900 City to adopt ordinance. (1) Subject to subsection (2) of this section, upon receipt of the certified copy of the finding as provided in ORS 222.880 (2) or (3) and certification of approval of plans under ORS 222.898, the city council shall adopt an ordinance which shall:

(a) Contain the legal description of the territory annexed;

(b) Contain the terms of the annexation, if any, made under ORS 222.111;

(c) Adopt the plans, specifications and time schedule as approved by the division or commission; and

(d) Declare the territory annexed to the city in accordance with ORS 222.840 to 222.915.

(2) An ordinance shall not be enacted as provided in subsection (1) of this section until the expiration of the time for appeal under the provisions of ORS 222.896 and, in the event an appeal is filed, following the determination of that appeal.

(3) If the division makes its finding under ORS 222.880 (3), the city shall not annex a greater area than that described in the finding. The recorder, or other officer performing the duties of the recorder, shall transmit a transcript to the Secretary of State, including certified copies of the resolution required in ORS 222.860, the finding of the assistant director, and the ordinance proclaiming annexation of the territory.

(4) If the city council adopts the ordinance of annexation as provided in subsection (1) of this section, it shall within one year thereafter prepare plans and specifications for the sanitary, water or other facilities proposed to be provided in the annexed area, in compliance with ORS 448.115 to 448.285 or 468.742 and shall then proceed in accordance with the time schedule to construct or install these facilities. The commission shall use its powers of enforcement under

222.905**CITIES**

ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.405, 454.425, 454.505 to 454.535, 454.605 to 454.745, and ORS chapter 468 to insure that the facilities are constructed or installed in conformance with the approved plans and schedule. The manner of financing the cost of the facilities shall be determined by the city council. [1967 c.624 §10; 1973 c.637 §11; 1975 c.639 §14; 1983 c.740 §57]

222.905 Application to initiate annexation. (1) The local board of health or the boundary commission having jurisdiction shall, if it believes a danger to public health exists within a territory otherwise eligible for annexation in accordance with ORS 222.111, proceed in the same manner as a city is authorized to proceed under ORS 222.860.

(2) Any 11 residents of territory otherwise eligible for annexation in accordance with ORS 222.111 who believe a danger to public health exists within such territory may apply to the local board of health to initiate proceedings to annex such territory as provided in subsection (1) of this section. The local board of health shall within a reasonable time, but not more than 90 days, investigate the matters alleged in the application and shall either initiate proceedings or certify to the petitioners that the investigation disclosed insufficient evidence to initiate proceedings. [1967 c.624 §11; 1973 c.637 §12; 1975 c.639 §15; 1981 c.885 §9]

222.910 [1967 c.624 §5; 1973 c.637 §13; repealed by 1975 c.639 §16 (222.911 enacted in lieu of 222.910)]

222.911 Participation of interested division assistant director, officer or employe prohibited. No officer or employe of the division who owns property or resides within affected territory that is subject to proceedings under the provisions of ORS 222.840 to 222.915 shall participate in an official capacity in any investigation, hearing or recommendation relating to such proceedings. If the assistant director is such a person, the assistant director shall so inform the Governor, who shall appoint another person to fulfill the duties of the assistant director in any investigation, hearing or recommendation relating to such proceeding. [1975 c.639 §17 (enacted in lieu of 222.910)]

222.915 Application of ORS 222.840 to 222.915. The provisions of ORS 222.840 to 222.915 do not apply to proceedings to annex territory to any city if the charter or ordinances of the city conflict with or are inconsistent with ORS 222.840 to 222.915. [1967 c.624 §12; 1971 c.673 §5]

PENALTIES

222.990 Penalties. Failure to comply with the provisions of ORS 222.010 subjects the city to a penalty of \$100 which may be recovered by an action in the name of the county in which the city is located.

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448.115

Account and such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 448.005 to 448.090. [1961 c.566 §8, 1973 c.427 §10]

448.095 Natural bathing places exempt. No provisions of ORS 448.005 to 448.100 apply to natural bathing places. [1979 c.453 §9]

448.100 Delegation to county to administer ORS 448.005 to 448.060; standards; fees; suits involving validity of administrative rule. (1) The Assistant Director for Health shall delegate to any county board of commissioners which requests any of the authority, responsibilities and functions of the Assistant Director for Health under ORS 448.005 to 448.011, 448.020 to 448.035, 448.040 to 448.060 and this section if the assistant director determines that the county is able to carry out the rules of the division relating to fee collection, licensing, inspections, enforcement and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by the division. Such standards shall be established by the division in consultation with the appropriate county officials and in accordance with ORS 431.345. The division shall review and monitor each county's performance under this subsection. In accordance with ORS 183.310 to 183.550, the assistant director may suspend or rescind a delegation under this subsection. If it is determined that a county is not carrying out such rules or the delegation is suspended, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the division for carrying out the authority, responsibility and functions under this section.

(2) The county may determine the amount of, and retain, any fee for any function undertaken pursuant to subsection (1) of this section or use the fee schedules pursuant to ORS 448.030 and 448.035. The county, quarterly, shall remit 15 percent of the state licensing fee or 15 percent of the county fee, whichever is less, to the division for consultation service and maintenance of the state-wide program.

(3) In any action, suit or proceeding arising out of county administration of functions pursuant to subsection (1) of this section and involving the validity of a rule promulgated by the division, the division shall be made a party to the action, suit or proceeding. [1973 c.215 §9, 1975 c.790 §2, 1983 c.370 §2]

448.110 [Repealed by 1967 c.344 §10]

WATER SYSTEMS

(Generally)

448.115 Definitions for ORS 448.115 to 448.285. As used in ORS 448.115 to 448.285, 454.235, 454.255 and 757.005 unless the context requires otherwise:

(1) "Connection" means the connection between a water system and a customer which enables the customer to receive potable water from the system.

(2) "Construction standards" means criteria for constructing or installing water system facilities.

(3) "Emergency" means a condition resulting from an unusual calamity such as a flood, an earthquake or an accidental spill of hazardous material which can endanger the quality of the water produced by a water system.

(4) "Operational requirements" means requirements which prescribe the manner in which water systems must be operated.

(5) "Permit" means a document issued to a water system which authorizes it to commence or continue to operate in the State of Oregon and lists the conditions the system must meet to continue operating.

(6) "Safe drinking water" means water which is sufficiently free from biological, chemical, radiological or physical impurities such that individuals will not be exposed to disease or harmful physiological effects.

(7) "Sanitary survey" means an onsite review of the source, facilities, equipment, operation and maintenance of a water system, including related land uses, for the purpose of evaluating the capability of that water system to produce and distribute safe drinking water.

(8) "Special master" means the person appointed by the court to administrate the water system.

(9) "Variance" means permission from the agency for a water system to provide water which does not meet water quality standards.

(10) "Water supplier" means any person, group of persons, municipality, district, corporation or entity which owns or operates a water system.

(11) "Water system" means a system for the provision of piped water for human consumption.

(12) "Waterborne disease" means disease caused by chemical, physical, radiological or biological agents epidemiologically associated with infection, illness or disability which is transported to human beings by water which has been ingested or through contact as in bathing or other

SWIMMING FACILITIES; WATER SYSTEMS

448.115

Account and such moneys hereby are appropriated continuously and shall be used only for the administration and enforcement of ORS 448.005 to 448.090. [1961 c.566 §8; 1973 c.427 §10]

448.095 Natural bathing places exempt. No provisions of ORS 448.005 to 448.100 apply to natural bathing places. [1979 c.453 §9]

448.100 Delegation to county to administer ORS 448.005 to 448.060; standards; fees; suits involving validity of administrative rule. (1) The Assistant Director for Health shall delegate to any county board of commissioners which requests any of the authority, responsibilities and functions of the Assistant Director for Health under ORS 448.005 to 448.011, 448.020 to 448.035, 448.040 to 448.060 and this section if the assistant director determines that the county is able to carry out the rules of the division relating to fee collection, licensing, inspections, enforcement and issuance and revocation of permits and certificates in compliance with standards for enforcement by the counties and monitoring by the division. Such standards shall be established by the division in consultation with the appropriate county officials and in accordance with ORS 431.345. The division shall review and monitor each county's performance under this subsection. In accordance with ORS 183.310 to 183.550, the assistant director may suspend or rescind a delegation under this subsection. If it is determined that a county is not carrying out such rules or the delegation is suspended, the unexpended portion of the fees collected under subsection (2) of this section shall be available to the division for carrying out the authority, responsibility and functions under this section.

(2) The county may determine the amount of, and retain, any fee for any function undertaken pursuant to subsection (1) of this section or use the fee schedules pursuant to ORS 448.030 and 448.035. The county, quarterly, shall remit 15 percent of the state licensing fee or 15 percent of the county fee, whichever is less, to the division for consultation service and maintenance of the state-wide program.

(3) In any action, suit or proceeding arising out of county administration of functions pursuant to subsection (1) of this section and involving the validity of a rule promulgated by the division, the division shall be made a party to the action, suit or proceeding. [1973 c.215 §9; 1975 c.790 §2; 1983 c.370 §2]

448.110 [Repealed by 1967 c.344 §10]

WATER SYSTEMS**(Generally)**

448.115 Definitions for ORS 448.115 to 448.285. As used in ORS 448.115 to 448.285, 454.235, 454.255 and 757.005 unless the context requires otherwise:

(1) "Connection" means the connection between a water system and a customer which enables the customer to receive potable water from the system.

(2) "Construction standards" means criteria for constructing or installing water system facilities.

(3) "Emergency" means a condition resulting from an unusual calamity such as a flood, an earthquake or an accidental spill of hazardous material which can endanger the quality of the water produced by a water system.

(4) "Operational requirements" means requirements which prescribe the manner in which water systems must be operated.

(5) "Permit" means a document issued to a water system which authorizes it to commence or continue to operate in the State of Oregon and lists the conditions the system must meet to continue operating.

(6) "Safe drinking water" means water which is sufficiently free from biological, chemical, radiological or physical impurities such that individuals will not be exposed to disease or harmful physiological effects.

(7) "Sanitary survey" means an onsite review of the source, facilities, equipment, operation and maintenance of a water system, including related land uses, for the purpose of evaluating the capability of that water system to produce and distribute safe drinking water.

(8) "Special master" means the person appointed by the court to administrate the water system.

(9) "Variance" means permission from the agency for a water system to provide water which does not meet water quality standards.

(10) "Water supplier" means any person, group of persons, municipality, district, corporation or entity which owns or operates a water system.

(11) "Water system" means a system for the provision of piped water for human consumption.

(12) "Waterborne disease" means disease caused by chemical, physical, radiological or biological agents epidemiologically associated with infection, illness or disability which is transported to human beings by water which has been ingested or through contact as in bathing or other

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domestic uses. [1981 c.749 §2; 1983 c.271 §3; 1985 c.178 §4]

448.119 Application of ORS 448.119 to 448.285 to water systems. Before a water system is subject to regulation under ORS 448.119 to 448.285, 454.235, 454.255 and 757.005, the system must have at least four service connections, or it must serve water to public or commercial premises which are used by an average of at least 10 individuals daily at least 60 days each year. In a housing subdivision of four or more living units where the water service connections of individual units are only two or three per water system, at the discretion of the assistant director, the division may regulate the water systems within the subdivision under ORS 448.119 to 448.285, 454.235, 454.255 and 757.005. [1981 c.749 §3; 1985 c.178 §5]

448.120 [Repealed by 1967 c.344 §10]

448.123 Purpose. It is the purpose of ORS 448.119 to 448.285, 454.235, 454.255 and 757.005 to:

- (1) Assure all Oregonians safe drinking water.
- (2) Provide a simple and effective regulatory program for drinking water systems.
- (3) Provide a means to improve inadequate drinking water systems. [1981 c.749 §4]

448.127 Short title. ORS 448.119 to 448.285, 454.235, 454.255 and 757.005 may be referred to as the Oregon Drinking Water Quality Act. [1981 c.749 §5]

448.130 [Repealed by 1967 c.344 §10]

(Administration)

448.131 Water quality, construction and installation standards; effect on existing facilities. (1) The Health Division shall adopt water quality standards that are necessary to protect the public health through insuring safe drinking water within a water system.

(2) In order to insure safe drinking water, the division shall prescribe:

(a) Construction standards governing the performance of a water system insofar as they relate to the safety of drinking water.

(b) Standards for the operation of water systems in so far as they relate to the delivery of safe drinking water.

(c) Other standards and requirements considered necessary by the division to insure safe drinking water.

(3) The division shall require that construction and installation plans be submitted and

approved before construction begins on new systems or substantial improvements are made to old systems. The division may adopt rules exempting certain water systems from the plan review process.

(4) The division may impose and collect a fee from a water supplier for reviewing construction and installation plans.

(5) Nothing in this section authorizes the division to require alterations of existing facilities unless alterations are necessary to insure safe drinking water. [1981 c.749 §6]

448.135 Variances; notice to customers; compliance schedules; notice; hearing. The division may grant variances from standards if:

(1) There is no unreasonable risk to health;

(2) The water supplier has provided sufficient evidence to confirm that the best available treatment techniques are unable to treat the water in question so that it meets maximum contaminant levels;

(3) The water supplier agrees to notify the customers of the water supplier at appropriate intervals, as determined by the division, why the water system is, or remains, out of compliance with standards;

(4) The water supplier agrees to adhere to a compliance schedule, if the division prescribes one, which outlines how the water supplier intends to achieve compliance with standards. If a schedule is prescribed, it must be reviewed and evaluated every three years; and

(5) The division has announced its intention to grant a variance and has either:

(a) Held a public hearing in the affected area prior to granting the variance; or

(b) Served notice of intent to grant the variance either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the division may grant the variance. [1981 c.749 §7; 1983 c.271 §5]

448.140 Operation on permit. A water system that does not comply with the rules and standards of the division shall be operated only after the water supplier has received a permit for the system from the division if:

(1) The division has not granted a variance from standards as provided under ORS 448.135 to the water supplier; and

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(2) The water system is providing water that does not meet maximum contaminant standards as determined by an investigation conducted by the division under ORS 448.150. [1981 c.749 §8]

448.145 When permit may be issued; compliance schedule; hearing; notice. (1) A permit shall be issued by the division when there are economic or other compelling factors such that the water supplier is unable to install the water treatment facilities or to meet the maximum contaminant levels.

(2) The division shall prescribe a compliance schedule, including interim measures to eliminate the risk to health, which sets a specific time limit for the water supplier operating on a permit to install the water treatment facilities or to meet the maximum contaminant levels.

(3) For so long as the water supplier operates on a permit, it must notify its customers at least once every three months why the water system is, or remains, out of compliance.

(4) When the division announces its intention to grant a permit, it shall:

(a) Hold a public hearing in the affected area prior to granting the permit; or

(b) Serve notice of intent to issue the permit either personally, or by registered or certified mail to all customers connected to the water system, or by publication in a newspaper in general circulation in the area. If no hearing is requested within 10 days of the date that notice is given, the division may finalize the permit.

(5) The document evidencing the permit shall contain a statement of the conditions under which the water system may operate. [1981 c.749 §9; 1983 c.271 §6]

448.150 Duties of division. The division shall:

(1) Conduct periodic sanitary surveys of drinking water systems and sources, take water samples and inspect records to insure the system is not creating an unreasonable risk to health. The division shall provide written reports of such examinations to the local health administrator and to the water supplier.

(2) Require regular water sampling by water suppliers. These samples shall be analyzed in a laboratory approved by the division. The results of the laboratory analysis shall be reported to the division, the local health department and to the water supplier.

(3) Investigate any water system that fails to meet the water quality standards established by the division.

(4) Require every water supplier that provides drinking water that is from a surface water source to conduct sanitary surveys of the watershed as may be considered necessary by the division for the protection of public health. The water supplier shall make written reports of such sanitary surveys of watersheds promptly to the division and to the local health department.

(5) Investigate reports of waterborne disease pursuant to its authority under ORS 431.110 and take necessary actions as provided for in ORS 446.310, 456.337, 448.030, 448.115 to 448.285, 454.235, 454.255 and 757.005 to protect the public health and safety. [1981 c.749 §10]

448.155 Personnel training; public information. The division:

(1) May provide technical assistance and organize, coordinate and conduct training for water system personnel.

(2) Shall conduct a program designed to stimulate public participation in matters relating to water systems through public presentations, dissemination of informational materials and other similar efforts. [1981 c.749 §11]

448.160 Emergency plans. (1) The division shall maintain a plan outlining actions to be taken by the division during emergencies relating to water systems.

(2) The division may require that a water supplier compile an emergency plan if it appears necessary to the assistant director. [1981 c.749 §12]

448.165 Local government water service plans. (1) Counties may develop water service plans. These plans should encourage small water systems to combine management functions and to consolidate where possible. Water service plans must be in keeping with county land use plans.

(2) Cities or counties, whichever have authority to issue building permits, must certify that the division has approved the construction and installation plans of a proposed water system development and the development plan does not violate city or county water service plans before issuing a building permit.

(3) Counties or boundary commissions are authorized to approve the formation, consolidation and expansion of water systems not owned by cities in keeping with county and city plans. In doing so, counties or boundary commissions should consider whether water service is extended in a logical fashion and water systems have a financial base sufficient for operation and maintenance. [1981 c.749 §13]

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448.170 Division agreement to authorize local government to exercise duties. (1)

The division may enter into an agreement with a local governmental unit for the local governmental unit to perform the duties of the division under the Oregon Drinking Water Quality Act. The duration of the agreement, the duties to be performed and the remuneration to be paid by the division are subject to agreement by the division and the local governmental unit.

(2) In any action, suit or proceeding arising out of county administration of functions pursuant to ORS 446.310, 448.030, 448.115 to 448.285, 454.235, 454.255, 456.837 and 757.005 and involving the validity of a rule adopted by the division, the division shall be made a party to the action, suit or proceeding. [1981 c.749 §14]

448.175 Division authority to order compliance. Subject to ORS 183.310 to 183.550, the division:

(1) Shall require that the water suppliers give public notice of violations in the water system.

(2) May refuse to allow expansion of or additional connections to a water system until the water system meets water quality standards and requirements.

(3) May enter an order requiring a water supplier to acquire or construct a water system that provides water meeting division standards. When the order requires a city to acquire a water system, the system must have the majority of its facilities within the city's adopted urban growth boundary. When the order is entered upon a city, the procedure described in ORS 454.235 to 454.255 shall be followed.

(4) May enter an order requiring a water supplier that fails to comply with the schedule prescribed under ORS 448.140 to cease operation of the water system. [1981 c.749 §17]

448.180 Waiver of construction standards. The division may grant waivers on construction standards if the division is satisfied there will be no unreasonable risk to health. [1983 c.271 §2]

448.205 [1973 c.835 §§167, 168; 1975 c.254 §1; repealed by 1981 c.749 §28]

448.210 [1973 c.835 §169; 1975 c.254 §2; repealed by 1981 c.749 §28]

448.215 [Formerly 449.215; 1975 c.254 §3; repealed by 1981 c.749 §28]

448.220 [Formerly 449.223; 1975 c.254 §4; repealed by 1981 c.749 §28]

448.222 [1975 c.254 §17; repealed by 1981 c.749 §28]

448.225 [Formerly 449.220; 1975 c.254 §5; 1979 c.696 §7; repealed by 1981 c.749 §28]

448.226 [1975 c.254 §16; 1979 c.696 §8; repealed by 1981 c.749 §28]

448.228 [1975 c.254 §17a; repealed by 1981 c.749 §28]

448.230 [Formerly 449.225; 1975 c.254 §6; repealed by 1981 c.749 §28]

448.235 [Formerly 449.235; 1975 c.254 §7; repealed by 1981 c.749 §28]

448.240 [Formerly 449.227; 1975 c.254 §8; repealed by 1981 c.749 §28]

448.245 [Formerly 449.237; 1975 c.254 §9; repealed by 1981 c.749 §28]

448.246 [1975 c.691 §2; repealed by 1981 c.749 §28]

448.248 [1975 c.691 §3; repealed by 1981 c.749 §28]

448.250 Remedy when system a health hazard; special master; sale of system. (1)

Whenever a water system or part thereof presents or threatens to present a public health hazard requiring immediate action to protect the public health, safety and welfare, the assistant director may request the district attorney of the county wherein the system is located to institute an action. The action may be commenced without the necessity of prior administrative procedures or hearing and entry of an order or at any time during such administrative proceedings, if such proceedings have been commenced. The action may petition for a mandatory injunction compelling the water supplier to cease and desist operation or to make such improvements and corrections as are necessary to remove the public health hazard or threat thereof.

(2)(a) If the water supplier refuses to comply with the order of the court, in addition to other remedies, the court may appoint a special master to operate the water system. Costs of operation and improvement during operation by the special master are to be charged to the water supplier and may be collected by impounding revenue due to the water supplier from customers of the supplier; or, if those funds are insufficient, from other revenues due to the water supplier.

(b) The court may require sale of a water system under a special master to a responsible party if the water supplier refuses to comply with the standards and requirements of the division.

(3) Cases filed under provisions of this section or any appeal therefrom shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(4) Nothing in this section is intended to prevent the maintenance of actions for legal or equitable remedies relating to private or public nuisance or for recovery of damages brought by private persons or by the state on relation of any

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person. [Formerly 449.247; 1975 c.254 §10; 1979 c.284 §145; 1981 c.749 §15]

448.255 Notice of violation; content; hearing; order; appeal. (1) Whenever the assistant director has reasonable grounds to believe that a water system or part thereof is being operated or maintained in violation of any rule adopted pursuant to ORS 448.115 to 448.285, 454.235, 454.255 and 757.005, the assistant director shall give written notice to the water supplier responsible for the system.

(2) The notice required under subsection (1) of this section shall include the following:

- (a) Citation of the rule allegedly violated;
- (b) The manner and extent of the alleged violation; and
- (c) A statement of the party's right to request a hearing.

(3) The notice shall be served personally or by registered or certified mail and shall be accompanied by an order of the assistant director requiring remedial action which, if taken within the time specified in the order, will effect compliance with the rule allegedly violated. The order shall become final unless request for hearing is made by the party receiving the notice within 10 days from the date of personal service or the date of mailing of the notice.

(4) The form of petition for hearing and the procedures employed in the hearing shall be consistent with the requirements of ORS 183.310 to 183.550 and shall be in accordance with rules adopted by the division.

(5) The assistant director may designate a hearings officer to act on behalf of the assistant director in holding and conducting hearings.

(6) The order shall be affirmed or reversed by the assistant director after hearing. A copy of the assistant director's decision setting forth findings of fact and conclusions shall be sent by registered or certified mail to the petitioner or served personally upon the petitioner. An appeal from such decision may be made as provided in ORS 183.480 relating to a contested case. [1973 c.835 §171; 1975 c.254 §11; 1981 c.749 §16]

448.260 [1973 c.835 §185; 1975 c.254 §18a; repealed by 1981 c.749 §28]

448.265 Prohibited actions; nuisance abatement. (1) It shall be unlawful for any person to do any of the following if the result would be to pollute a source of a water system or to destroy or endanger a water system:

- (a) Establish or maintain any slaughter pen, stock-feeding yards or hogpens.

(b) Deposit or maintain any uncleanly or unwholesome substance.

(2) Violation of paragraph (a) or (b) of subsection (1) of this section is a public nuisance and may be abated as other nuisances under the laws of this state. [Formerly 449.320; 1975 c.254 §12; 1981 c.749 §15]

448.270 [1973 c.835 §170; repealed by 1981 c.749 §28]

(Federal Safe Drinking Water Act Administration)

448.273 Federal Safe Drinking Water Act administration. The Legislative Assembly finds that an agreement between this state and the Federal Government to assume primary enforcement responsibility in this state for the federal Safe Drinking Water Act is in the best interest of this state, subject to the following assumptions:

(1) The Federal Government provides an annual program grant in an amount no less than that allocated for the state in the 1984 fiscal year.

(2) The Federal Government provides technical assistance to this state, as requested, in emergency situations and during outbreaks of waterborne diseases.

(3) The Federal Government must negotiate an annual work plan for the Health Division of the Department of Human Resources, in cooperation with the division, that can be accomplished within the amount of program grant funding available.

(4) The Health Division adopts standards no less stringent than the National Primary Drinking Water Regulations of the United States Environmental Protection Agency.

(5) The Health Division provides engineering assistance through regional offices in at least four geographically distributed areas in this state.

(6) In cooperation with representatives of local health departments, the Health Division develops an equitable formula for distribution of available funds to support local health department water programs.

(7) The primacy agreement may be canceled by the Health Division, upon 90 days notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1).

(8) The Federal Government can impose financial sanctions against this state if the state fails to meet the objectives of the annual negotiated work plan without reasonable explanation

448.277

PUBLIC HEALTH AND SAFETY

by tying the next annual funding to specific state production and by withholding of funds a possibility if continued unexplained failures occur but no sanction exists to interfere with other types of federal funding in this state.

(9) The Federal Government may seek to enforce the safe drinking water standards if this state fails to take timely compliance action against a public water system that violates such standards.

(10) Enforcement under subsection (9) of this section may be by injunctive relief or, in the case of wilful violation, civil penalties authorized by 42 U.S.C. 300g-3 (a) and (b). [1985 c.178 §1]

448.275 [1973 c.835 §173; repealed by 1981 c.749 §28]

448.277 Health Division as administrator. The Health Division is authorized to enter into an agreement with the Federal Government to administer the federal Safe Drinking Water Act in this state. The agreement is subject to the legislative assumption stated in ORS 448.273. The agreement shall remain in effect subject to annual renegotiation of the duties to be performed and the remuneration to be received by the division except that it may be canceled by the division, upon 90 days notice, if at any time the federal requirements exceed the amount of federal funding and the cancellation is approved by the legislative review agency as defined in ORS 291.371 (1). [1985 c.178 §2]

(Civil Penalties)

448.280 Civil penalties; notice. (1) In addition to any other penalty provided by law, any person who violates any rule of the division relating to the construction, operation or maintenance of a water system or part thereof shall incur a civil penalty not to exceed \$500 for each day of violation.

(2) No civil penalty prescribed under subsection (1) of this section shall be imposed until the person incurring the penalty has received five days' advance notice in writing from the division or unless the person incurring the penalty shall otherwise have received actual notice of the violation not less than five days prior to the violation for which a penalty is imposed. [1973 c.835 §174; 1975 c.254 §13; 1981 c.749 §19]

448.285 Penalty schedule; factors to be considered in imposing penalty. (1) The assistant director of the division shall adopt by rule a schedule or schedules establishing the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed \$500 per day.

(2) The assistant director may impose the penalty without hearing but only after the notice required by ORS 448.280 (2). In imposing a penalty pursuant to the schedule or schedules adopted pursuant to this section, the assistant director shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to the water system.

(c) The economic and financial conditions of the person incurring the penalty.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the division considers proper and consistent with the public health and safety. [1973 c.835 §175; 1975 c.254 §14; 1981 c.749 §20]

448.290 When penalty due; notice; hearing; order as judgment. (1) Any civil penalty imposed under ORS 448.285 shall become due and payable when the person incurring the penalty receives a notice in writing from the assistant director of the division. The notice shall be sent by registered or certified mail, shall conform to the requirements of ORS 183.415 and shall include a statement of the amount of the penalty.

(2) The person to whom the notice is addressed shall have 20 days from the date of mailing of the notice in which to make written application for a hearing before the division.

(3) All hearings shall be conducted pursuant to the provisions of ORS 183.310 to 183.550 applicable to a contested case.

(4) Unless the amount of the penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(5) All amounts recovered under this section shall be paid into the State Treasury and credited to the General Fund. [1973 c.835 §176]

(Jurisdiction of Cities)

448.295 Jurisdiction of cities over property used for system or sources. Subject to the authority of the Health Division, for the purpose of protecting from pollution their domestic water supply sources, cities shall have jurisdiction over all property:

SWIMMING FACILITIES; WATER SYSTEMS

448.320

(1) Occupied by the distribution system or by the domestic water supply sources by and from which the city or any person or corporation provides water to the inhabitants of the city.

(2) Acquired, owned or occupied for the purpose of preserving or protecting the purity of the domestic water supply source.

(3) Acquired, owned or occupied by cities within the areas draining into the domestic water supply sources. [Formerly 449.305; 1983 c.740 §170]

448.300 City ordinance authority. Cities may prescribe by ordinance what acts constitute offenses against the purity of the water supply and the punishment or penalties therefor and may enforce those ordinances within their corporate limits and on property described in ORS 448.295. [Formerly 449.310]

448.305 Special ordinance authority of certain cities. (1) Subject to subsection (2) of this section, by ordinance a city may prohibit or restrict access for purposes of fishing, hunting, camping, hiking, picnicking, trapping of wild animals or birds, harvesting of timber or mining or removal of minerals or carrying on any other activity in its watershed area, or by ordinance may permit any such activity in its watershed area upon conditions specified in the ordinance. However, no ordinance passed under authority of this section shall prohibit the hunting or trapping of fur-bearing or predatory mammals doing damage to public or private property or prohibit the hunting or trapping of any bird or mammal for scientific purposes, as defined in ORS 497.298 (3).

(2) Subsection (1) of this section applies only to cities with respect to watershed areas which are the subject of an agreement between the city and the United States or any department or agency thereof, which agreement authorizes such action by the city.

(3) An ordinance adopted by any city pursuant to this section shall include a penalty clause providing for a penalty upon conviction of a fine of not more than \$100 or imprisonment for not more than 30 days, or both such fine and imprisonment.

(4) After adoption of an ordinance pursuant to subsection (1) of this section, a city shall post the area with suitable signs setting forth the prohibition of access or the conditions of limited access imposed by the ordinance. Failure to post the area as required in this subsection shall be a defense in any prosecution under an ordinance adopted by any city under authority of this section. [Formerly 449.327]

448.310 Investigation of complaints.

The officer in charge of the domestic water supply source or the community water supply system serving the city shall investigate complaints made concerning purity of the source or system and if the complaint appears to be well founded, file a complaint against the person violating ordinances of the city and cause arrest and prosecution. [Formerly 449.335]

448.315 Special police to enforce ORS 448.295. The mayor or authorities having control of the community water supply system supplying the city may appoint special policemen who:

(1) After taking oath, shall have the powers of constables.

(2) May arrest with or without warrant any person committing, within the territory described in ORS 448.295, for:

(a) Any offense against the purity of the domestic water supply source or the community water supply system under state law or an ordinance of such city; or

(b) Any violation of any rule of the division or the authorities having control of the city water system for the protection of the purity of the domestic water supply source or the community water supply system.

(3) May take any person arrested for any violation under this section before any court having jurisdiction thereof to be proceeded with according to law.

(4) When on duty, shall wear in plain view a badge or shield bearing the words "Special Police" and the name of the city for which appointed. [Formerly 449.315]

448.320 Jurisdiction over violations of city ordinances. The municipal or recorder's court of any city passing an ordinance under authority of ORS 448.300 or 448.305 and the justice of the peace court or district court of the county wherein such city is located or in which the watershed area is located shall have concurrent jurisdiction to try and determine any prosecution brought under such ordinance. If prosecution is had in a justice of the peace court or a district court, the court shall remit to the city, after deducting court costs, the amount of any fine collected, except as otherwise provided by ORS 46.045 (2). If a jail term is imposed, the convicted person shall be confined in the city jail or in the county jail and if confined in the county jail the county shall be entitled to recover from the city the actual costs of such incarceration. [Formerly 449.328]

448.325

PUBLIC HEALTH AND SAFETY

448.325 Injunction to enforce city ordinances. In cases of violation of any ordinance adopted under ORS 448.300 or 448.305 any city or any corporation owning a domestic water supply source or the community water supply system for the purpose of supplying any city or its inhabitants with water may have the nuisance enjoined by civil action in the circuit court of the proper county. The injunction may be perpetual. [Formerly 449.340]

(Water Pipes and Fittings)

448.330 Moratorium of pipe and fittings for potable water supply; acceptability criteria; exceptions. (1) The Assistant Director for Health may prohibit the sale of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in this state and the installation or use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings in any private or public potable water supply system or individual water user's lines until such time as the assistant director determines that adequate standards exist and are practiced in the manufacture of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings to insure that the pipe and solder do not present a present or potential threat to the public health in this state.

(2) The Assistant Director for Health shall adopt, by rule, product acceptability criteria for water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for water supply purposes which insure that the pipe and solder do not present a threat to the public health in this state. The Health Division shall be responsible for the monitoring of the sale and use of water pipe used to carry potable water and solders, fillers or brazing material used in making up joints and fittings for compliance with the product acceptability criteria. The Department of Commerce

shall cooperate with, and assist, the Health Division in its monitoring efforts.

(3) No water pipe used to carry potable water or solders, fillers or brazing material used in making up joints and fittings which does not conform to the product acceptability criteria adopted under subsection (2) of this section shall be sold in this state or installed in any part of any public or private potable water supply system or individual water user's lines.

(4) Notwithstanding subsection (1) or (3) of this section, the Assistant Director for Health may grant exemptions from any prohibition of the sale or use of water pipe used to carry potable water for the emergency repair or replacement of any existing part of a water supply system, or for the necessary use by a well driller in the installation of a well. The assistant director may require any person using water pipe used to carry potable water under this subsection to notify the Health Division of the date and location of that use. [1979 c.535 §1]

PENALTIES

448.990 Penalties. (1) Violation of ORS 448.005 to 448.090 by any person, firm or corporation, whether acting as principal or agent, employer or employe, is punishable, upon conviction, by a fine of not less than \$25 nor more than \$500 or by imprisonment in the county jail not exceeding six months, or by both. Each day that the violation continues is a separate offense.

(2) Violation of any of the following is punishable as a Class A misdemeanor:

(a) Any rule of the Health Division adopted pursuant to ORS 448.115 to 448.330.

(b) Any order issued by the Health Division pursuant to ORS 448.175.

(c) ORS 448.265 or 448.315 (2)(a). [Amended by 1967 c.344 §8; subsections (2) to (5) enacted as 1973 c.335 §177; 1975 c.254 §18; part renumbered subsection (5) of 468.990; 1983 c.271 §4]

LISTING OF ACKNOWLEDGED COMPREHENSIVE PLANS
(as of May 1, 1987)

<u>Jurisdiction</u>	<u>Population (1986)</u>	<u>LCDC Acknowledgment</u>	<u>Routine Program Implementation</u>
<u>CLATSOP COUNTY</u>	32,900	05/31/84	12/27/85 ²
ASTORIA	9,800	03/11/83	02/10/84
CANNON BEACH	1,235	06/05/80	09/23/83
GEARHART	1,080	08/25/83	07/24/84
HAMMOND	550	07/08/82	11/15/83
SEASIDE	5,580	07/19/84	06/18/84 ²
WARRENTON	2,510	07/14/83	07/24/84
<u>COOS COUNTY</u>	57,500	09/12/85	
BANDON	2,380	05/31/84	11/22/85
(COASTAL AREA		10/11/84)	
COOS BAY	14,330	10/06/83	04/30/86
(COOS BAY ESTUARY		06/14/84)	
(ESTUARY/SHORELANDS		07/20/84)	
(EASTSIDE ¹		11/16/83)	
COQUILLE	4,045	08/19/82	11/15/83
LAKESIDE	1,395	01/29/81	09/23/83
MYRTLE POINT	2,580	12/10/81	09/23/83
NORTH BEND	8,770	11/16/83	04/30/86
(COOS BAY ESTUARY & SHORELANDS		07/20/84)	
POWERS	740	04/15/82	11/15/83

<u>Jurisdiction</u>	File page 405 Population (1986)	Green Book Appendices (Library holding).pdf LCDC <u>Acknowledgment</u>	Routine Program <u>Implementation</u>
<u>CURRY COUNTY</u>	16,900	02/03/84	11/16/85
(COASTAL GOALS		09/13/84)	
BROOKINGS	3,500	01/27/83	03/29/85
(CHETCO RIVER EST.		10/11/84)	
GOLD BEACH	1,585	01/27/83	03/29/85
(GOALS 16 & 17		10/11/84)	
PORT ORFORD	1,035	11/04/77	05/14/80
<u>DOUGLAS COUNTY</u>	92,700	12/21/82	06/18/86 ²
(COASTAL		03/16/84)	
(GOAL 3 COASTAL		05/23/85)	
(UMPQUA RIVER COVE		03/07/85)	
REEDSPORT	4,915	04/26/84	07/02/85
<u>LANE COUNTY</u>	261,650	09/13/84	
DUNES CITY	1,145	10/12/79	01/03/88
FLORENCE	4,955	06/02/83	07/24/84
<u>LINCOLN COUNTY</u>	36,900	12/10/82	12/27/85
(GOALS 16-18		12/21/82)	
(YAQUINA BAY EST.		04/22/83)	
(RIVIERA SHORES		11/15/84)	
DEPOE BAY	810	07/08/82	11/15/83
LINCOLN CITY	6,035	07/19/84	12/27/85
NEWPORT	8,305	06/01/84	12/16/85
SILETZ	1,015	05/21/82	11/15/83
TOLEDO	3,215	04/21/83	02/10/84
(YAQUINA BAY ESTUARY		04/22/83)	
WALDPORT	1,570	01/27/83	02/10/84
(GOALS 16-18		03/11/83)	
YACHATS	560	10/11/84	

File page 406

<u>Jurisdiction</u>	<u>Population (1986)</u>	<u>Acknowledgment</u>	<u>Library holding program Implementation</u>
<u>TILLAMOOK COUNTY</u>	21,300	03/16/84	12/15/84
BAY CITY	1,095	01/30/80	05/14/80
GARIBALDI	1,040	11/15/84	10/31/86 ²
(EXCEPT MIAMI COVE		04/18/85)	
MANZANITA	495	07/10/80	09/23/83
NEHALEM	240	03/16/84	10/28/85
ROCKAWAY	1,215	04/21/83	07/24/84
TILLAMOOK	3,830	06/01/84	01/25/85
WHEELER	345	12/05/80	09/23/83

1. City of Eastside is now consolidated with City of Coos Bay.
2. Routine Program Implementation action was for part of the plan. Typically a small geographic area was segmented to be incorporated at a later date.

ROBERT W. STRAUB
GOVERNOR



OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310

January 14, 1977

The Honorable Juanita Kreps
Secretary of Commerce
Washington, D.C.

Dear Secretary Kreps:

It is with great pleasure that I forward to you Oregon's Coastal Management Program for your review and approval pursuant to Section 306 of the Federal Coastal Zone Management Act of 1972.

Oregon initiated efforts to plan and manage its coastal resources in 1971. We have worked diligently to develop a sound management program which will preserve, protect, develop and, where appropriate, restore the resources of Oregon's coastal zone.

Oregon's Coastal Management Program is founded on the statewide land use planning statutes which established the Oregon Department of Land Conservation and Development. This department, under the direction of the Land Conservation and Development Commission, has effectively built upon the base provided by the former Oregon Coastal Conservation and Development Commission, expanding it to provide a comprehensive, coordinated management program. I have designated the department as the responsible state agency for developing, coordinating, and administering the Coastal Management Program.

I have reviewed the Oregon Coastal Management Program, and, as Governor of Oregon, approve it. Under the statewide land use planning statutes and other specific state statutes, the State and the Department have the authority necessary to administer this program. The Executive Department will fully support the Oregon Coastal Management Program.

The Honorable Juanita Kreps
January 14, 1977
Page 2

Accordingly, I request that you approve this Program.

We appreciate the cooperation and assistance provided by your staff in the Office of Coastal Zone Management, and look forward to a strong and productive relationship between Oregon and the Federal Government in administering a sound coastal management program.

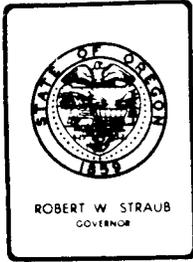
Please contact Mr. Harold F. Brauner, Director of the Oregon Department of Land Conservation and Development, if you have any questions or need assistance.

Sincerely,



Robert W. Straub
Governor

RWS/db



Department of Environmental Quality

1234 S.W. MORRISON STREET, PORTLAND, OREGON 97205 Telephone (503) 229- 6484

January 14, 1977

Mr. Harold F. Brauner, Director
Department of Land Conservation and Development
1175 Court Street, N.E.
Salem, Oregon 97310

Dear Hal:

This letter is in regard to the requirement of the Coastal Zone Management Act that a state's coastal management program be consistent with the Federal Clean Air Act and Water Pollution Control Act, and amendments, as implemented by the State of Oregon.

Oregon's Coastal Management Program does not appear to conflict with the policies and plans developed and implemented pursuant to the above acts by our Department. Rather, a great deal of coordination exists between our programs, as follows.

First, the applicability of the requirements of the Clean Air and Water Pollution Control Acts is direct. Statewide Planning Goal No. 6 explicitly mandates that air, water and land quality considerations be addressed in local comprehensive plans which are the primary implementing vehicle for Oregon's Coastal Management Program.

Secondly, ORS 197.180 stipulates that state agencies also develop plans and programs in accordance with the statewide planning goals. In essence, then, this reinforces both our own statutes and the provisions of Goal No. 6 and will require our cooperative and coordinated involvement in development of local comprehensive plans and other state level programs. Also, these provisions extend to other requirements of the Water Pollution Control Act and its amendments, such as Section 208 which deals with nonpoint pollution sources. As you know, Oregon's 208 Program is in the early stages of development and is being closely coordinated with local governments and state and federal agencies. The 208 Program particularly applies to controlling sedimentation in coastal waters.

Mr. Harold F. Brauner
January 14, 1977
Page 2

Finally, the provisions of the recently adopted statewide planning goals for coastal resources speak specifically and directly to utilizing the authorities of other state agencies, such as those of our Department, in implementing Oregon's Coastal Management Program. As you know, this has particular relevancy in the Estuary and Ocean Resources Goals and appears to fulfill the intent expressed in the Coastal Zone Management Act for according more effective management and protection of coastal waters and resources.

Sincerely,



WILLIAM H. YOUNG
Director

RDJ:cs

OREGON COASTAL ZONE INVENTORY OF FEDERAL LANDS

FEDERAL AGENCY	MAP LEGEND	APPROXIMATE ACREAGE	JURISDICTIONAL STATUS <u>1/</u>
DEPARTMENT OF TRANSPORTATION			
<u>U.S. COAST GUARD</u>			
Cape Arago Light Station	1	15.9	1
Cape Blanco LORAN Station	2	47.3	4
Cape Meares Light Station	3	2.0	1
Coos Bay Cutter Moorage	4	no data	no data
Coos Bay Safety and Rescue Station (Charleston)		no data	no data
Coos Bay Helicopter Station		no data	no data
Depoe Bay Safety and Rescue Station	5	.5	4
Empire Electric Repair Shop (Coquille)	6	.4	4
Port Orford Safety and Rescue Station	14	5.2	4
Coquille River Safety and Rescue Station	15	1.5	1
Coquille River Moorage		no data	no data
Chetco River Safety and River Safety and Rescue Station	16'	2.7	no data
Nehalem River Safety and Rescue Station	17	no data	no data
Roque River Safety and Rescue Station	18	no data	no data

OREGON COASTAL ZONE INVENTORY OF FEDERAL LANDS

FEDERAL AGENCY	MAP LEGEND	APPROXIMATE ACREAGE	JURISDICTIONAL STATUS <u>1/</u>
Yaquina Bay Safety and Rescue Station	7	7.6	4
Yaquina Head Light Station		24.8	4
Point Adams Light Station	8	.6	1
Fort Stevens Antenna Site		no data	no data
Tillamook Bay Safety and Rescue Station (Barview)	9	5.0	1
Astoria Tongue Point Safety and Rescue Station	10	5.0	1
Astoria Air Station (Astoria)		18.8	no data
Umpqua Safety and Rescue Station (Winchester Bay)	11	88.8	no data
Heceta Head Light Station	12	2.0	1
Siuslaw Safety and Rescue Station	13	5.3	1

FEDERAL AVIATION ADMINISTRATION

<u>FACILITY</u>	<u>LOCATION*</u>	<u>COORDINATES*</u>	<u>JURISDICTIONAL STATUS <u>1/</u></u>
Localizer		North Bend Airport	
Glide Slope		North Bend Airport	
RTR		North Bend Airport	4
FSS		North Bend Airport	
DF	North Bend Airport		
REIL	North Bend Airport		
OM/LOM	North Bend Airport	LAT 43°23'41.9"N LONG 124°18'32.W	
MM	North Bend	LAT 43°24'47.8"N LONG 124°15'56.0"W	4
VORTAC	North Bend	LAT 43°24'56/3"N LONG 124°10'02"W	4
FM	Fort Stevens	LAT 46°12.5"N LONG 123°57.8"W	4

FEDERAL AVIATION ADMINISTRATION (Cont.)

<u>FACILITY</u>	<u>LOCATION*</u>	<u>COORDINATES*</u>	<u>JURISDICTIONAL STATUS</u> 1/
REIL VOR		Astoria Airport Astoria Airport LAT 46°09'43"N LONG 123°52'46"W	
VORTAC	Newport	LAT 44°34'31.8"N LONG 124°03'34.2"W	4
SALEM RADAR	Laurel Mountain	LAT 44°55'24"N LONG 123°34'23"W	4
RML	Mary's Peak	LAT 44°30'25"N LONG 123°34'03"W	4
LRCC	Cape Blanco	Same site as USCG LORAN Station	4

<u>FEDERAL AGENCY</u>	<u>MAP LEGEND</u>	<u>APPROXIMATE ACREAGE</u>	<u>JURISDICTIONAL STATUS</u> 1/
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DEPARTMENT OF DEFENSEU.S. NAVY

Coos Head Navy Facility*	19	132.0	1
U.S. Navy Facility (Empire)		8.0	2

U.S. AIR FORCE

761 Radar Squadron (North Bend Air Force Station)*	20	73.0	4
689 Radar Squadron (Mt. Hebo Air Force Station)*	21	no data	no data

OREGON COASTAL ZONE INVENTORY OF FEDERAL LANDS

FEDERAL AGENCY	MAP LEGEND	APPROXIMATE ACREAGE	JURISDICTIONAL STATUS <u>1/</u>
<u>U.S. ARMY CORPS OF ENGINEERS</u>			
Clatsop Spit Area	22	948.0	1
Fort Stevens Area		1321.0	no data
Tillamook Bay South Jetty Areas	23	130.0	4
Yaquina Bay North and South Jetty Areas	24	20.0	no data
Siuslaw River North and South Jetty Areas	25	131.0	4
Umpqua River South Jetty Area	26	76.0	4
Coos Bay North Peninsula Area	27	2300.0	4
Coos Bay South Jetty Area		8.0	4
Coquille River North and South Jetty Areas	28	37.0	4

OREGON COASTAL ZONE INVENTORY OF FEDERAL LANDS

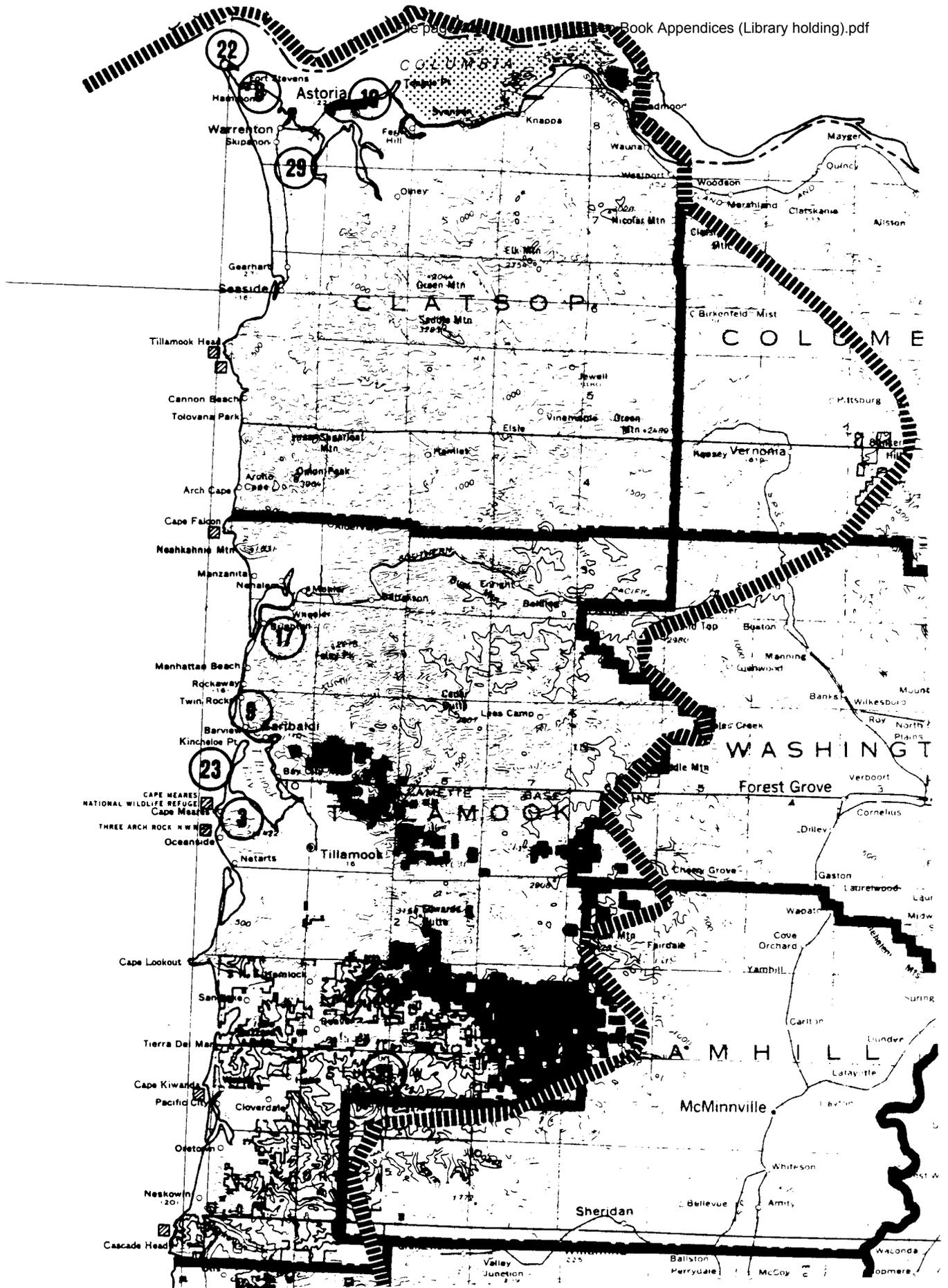
FEDERAL AGENCY	MAP LEGEND	APPROXIMATE ACREAGE	JURISDICTIONAL STATUS <u>1/</u>
U.S. DEPARTMENT OF AGRICULTURE			
<u>U.S. Forest Service</u>			
Siuslaw National Forest		557,804.0	1
Siskiyou National Forest		687,291.0	4
U.S. DEPARTMENT OF INTERIOR			
<u>Bonneville Power Administration*</u>			
Astoria Substation		3.5	4
Westport Substation		1.5	4
Tillamook Substation		3.0	4
Mohler Substation		5.0	4
Burntwood Substation		2.5	4
Toledo Substation		9.0	4
Alvey Substation		80.0	4
Florence Substation		3.0	4
Mapelton Substation		4.0	4
Walton Substation		1.0	4
Reedsport Substation		3.0	4
Bandon Substation		3.5	4
Coos Substation		4.0	4
Fairview Substation		12.0	4

OREGON COASTAL ZONE INVENTORY OF FEDERAL LANDS

FEDERAL AGENCY	MAP LEGEND	APPROXIMATE ACREAGE	JURISDICTIONAL STATUS <u>1/</u>
Hauser Substation		4.5	4
Norway Substation		1.0	4
McKinley Substation		2.0	4
Gold Beach Substation		1.0	4
Langlois Substation		1.5	4
Port Orford		1.0	4
<u>Bureau of Land Management</u>			
O & C Lands and other Natural Resource Lands		479,634.0	4
<u>U.S. Fish and Wildlife Service</u>			
Lewis and Clarke NWR		35,500.0	4
Columbia Whitetail Deer NWR		5,200.0	4
Three Arch Rock NWR (Wilderness Status)		17.0	4
Oregon Islands NWR		367.0	4
Cape Meares NWR		138.0	4
<u>National Park Service</u>			
Fort Clatsop National Memorial	29	125.0	4

*BPA Substations and FAA facilities too small and numerous to map.

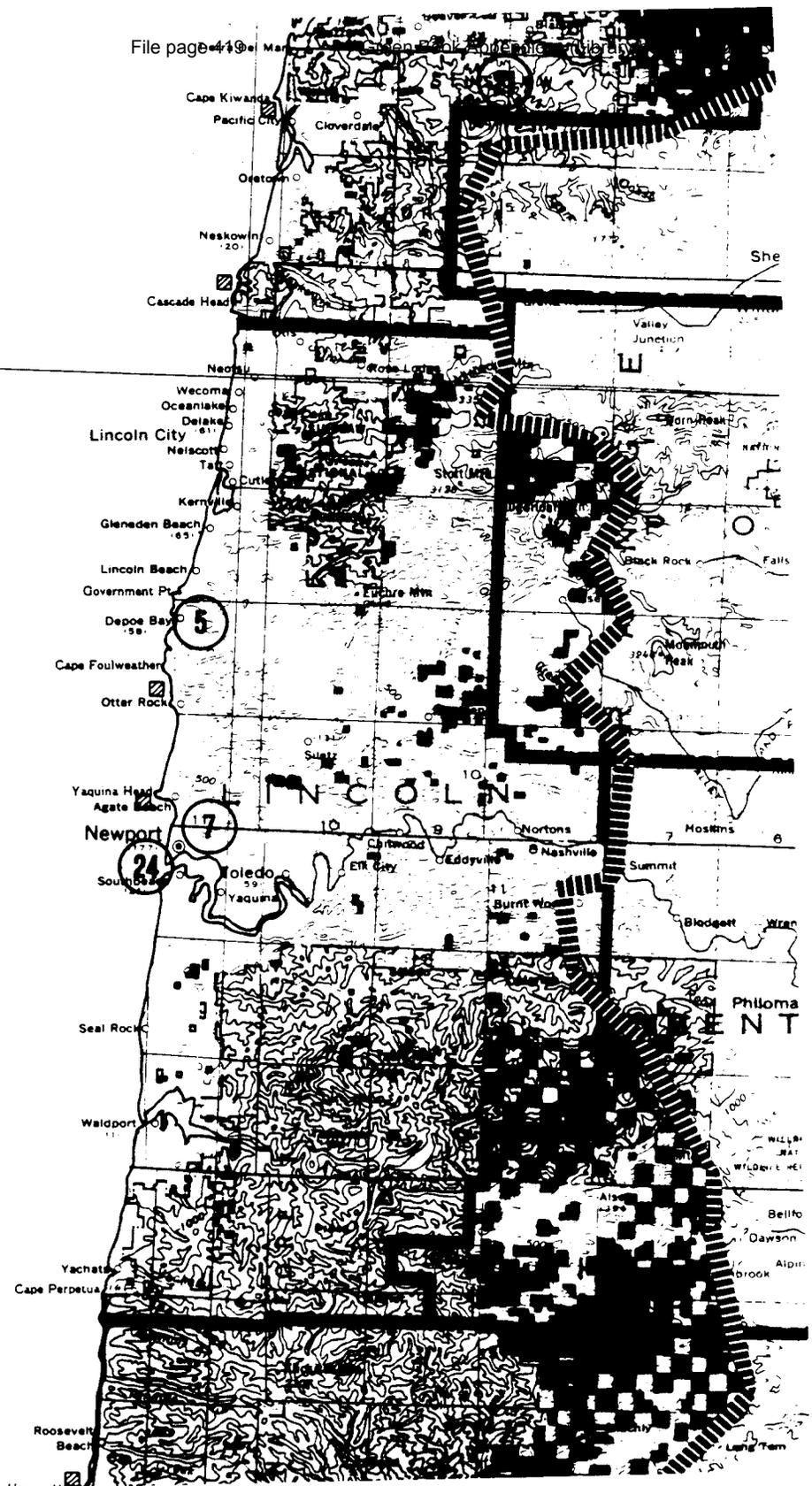
1/Jurisdictional Status refers to the manner in which the federal government holds land in the Oregon coastal zone: 1-exclusive jurisdiction; 2-concurrent jurisdiction; 3-partial jurisdiction; and 4-proprietorial interest only.

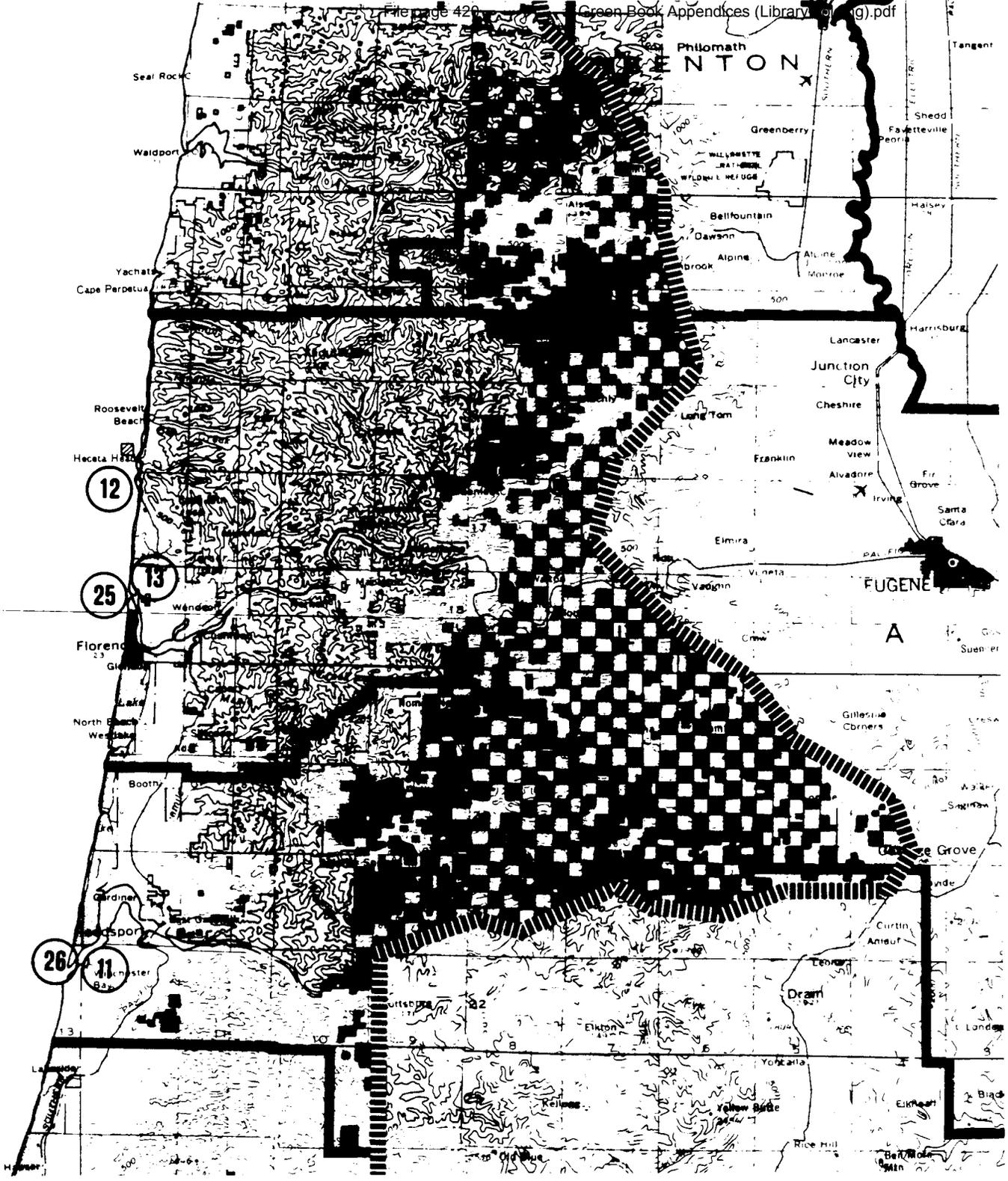


INVENTORY OF FEDERAL LANDS

Clatsop-Tillamook Counties

C
E
A
N

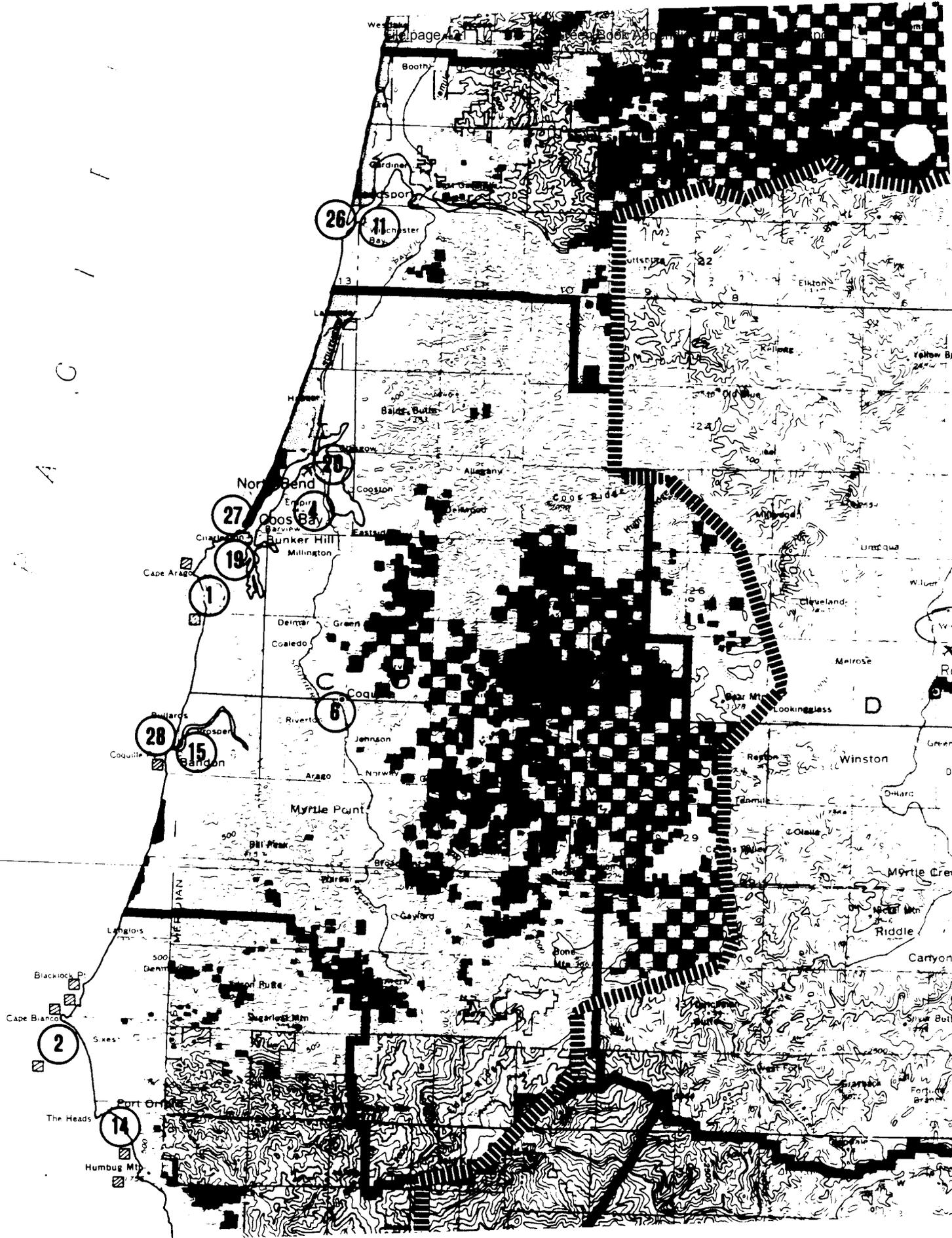




INVENTORY OF FEDERAL LANDS

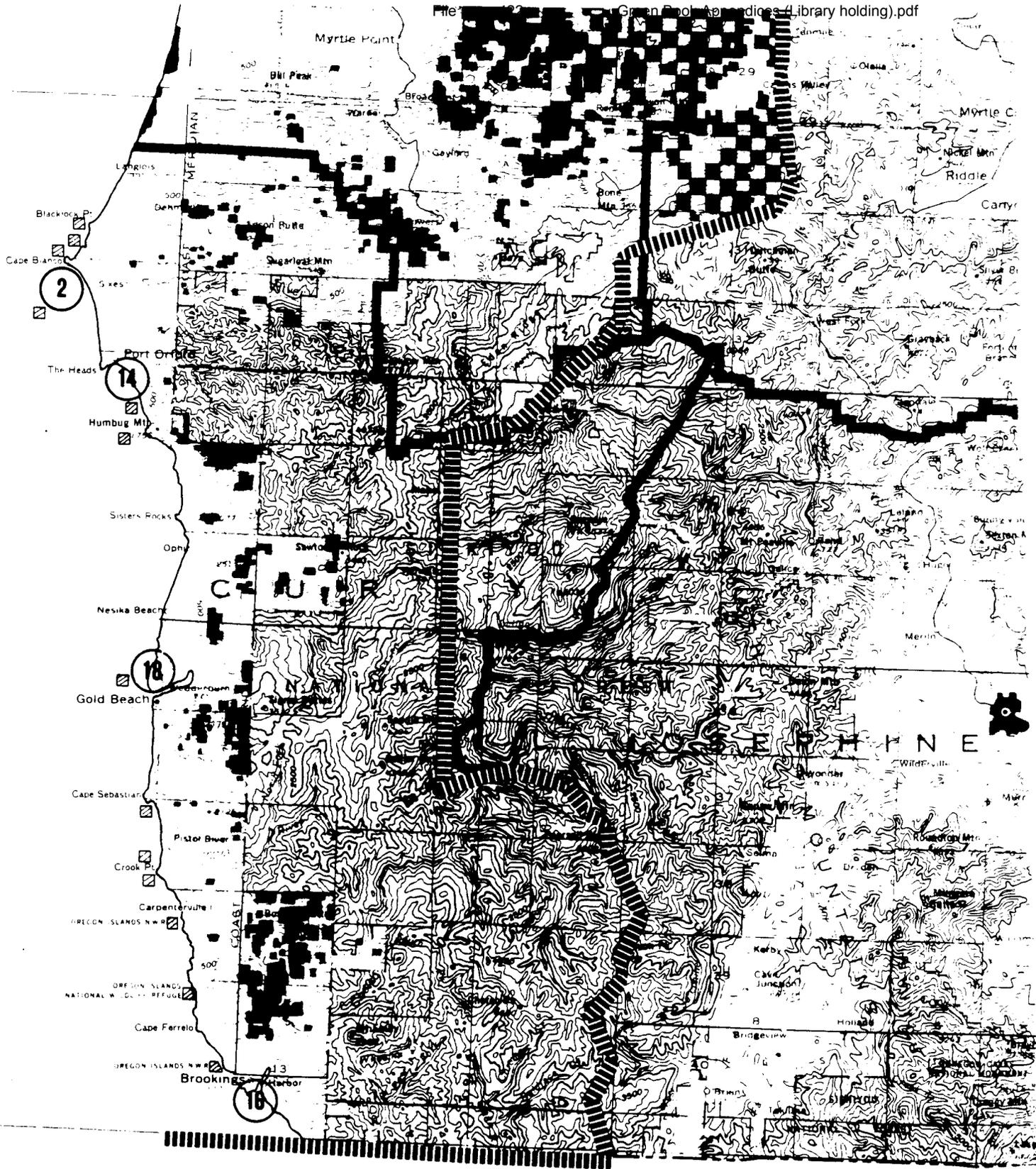
Lane-Douglas Counties

A
C
T



INVENTORY OF FEDERAL LANDS

Coos County



INVENTORY OF FEDERAL LANDS

Curry County

