

**DEPARTMENT OF HUMAN RESOURCES  
HEALTH DIVISION  
STATE AGENCY COORDINATION PROGRAM**

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## EXECUTIVE SUMMARY

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

The Oregon State Health Division has prepared and developed this coordination plan to fulfill the requirements of ORS Chapter 197 with respect to its land use responsibilities. This state agency coordination plan is intended to supercede the Division's previous agreement which was certified by the LCDC in 1983.

With the assistance of Department of Land Conservation and Development staff, the Division has determined that one of its programs is a program affecting land use. This program is the Plan Review for Public Water Supply Program. The program is described in detail in the following pages.

The Division's SAC Program, as approved by the Administrator of the Health Division consists of two basic elements: Administrative Rules to assure compatibility and compliance (OAR Chapter 333, Division 61-060) and the SAC document itself. The SAC Program document details the procedures the department will follow to assure compliance with statewide planning goals and compatibility with acknowledged comprehensive plans.

Department of Human Resources  
Health Division  
State Agency Coordination Program

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## SECTION I

### Introduction

The Health Division (the Division) is required, under ORS 197.180, to develop and submit to the State Land Conservation and Development Commission a State Agency Coordination (SAC) program to assure that the agency's rules and programs which affect land use comply with the statewide planning goals and are compatible with acknowledged city and county comprehensive plans and land use regulations.

The Health Division prepared and submitted its first SAC program in 1977 and it was approved by the Land Conservation and Development Commission (LCDC) in 1978.

In 1983, the Division's SAC program was revised and certified by LCDC to address new legislative requirements affecting agency coordination (see Appendix A). In both its 1977 and 1983 SAC submittal, the Division identified three (3) programs that affected land use. These were the Recreational Vehicle and Organizational Park program's land review approval, the Drinking Water Program's plan review approval and Health Hazard Annexations.

Since 1983, the requirements for agency coordination under ORS 197 and OAR Chapter 660 have changed substantially as a result of statutory revisions and policy actions by LCDC. Also, changes have occurred affecting the Division's land use programs. It is the Division's intent that upon certification by LCDC, this revised SAC program will supercede the Division's program submitted in 1983.

The Health Division is a division within the state Department of Human Resources. The Division is authorized under ORS 431 with a mission statement to "...protect, preserve and promote the health of the citizens of Oregon." The primary recipient of the agency's services is the community rather than the individual. The organization of public health services also differs from that of many other state programs in that the primary providers are county and district health departments.

The primary goals of the Division are to:

- provide leadership for health promotion in the State;
- work as a partner with local government in planning, developing and providing public health services;
- provide health status information to aid decision making;
- provide those services needed to meet program priorities which cannot or will not be provided in the private sector and to;
- provide services directly to communities lacking local public health agencies or when the service is so specialized that it can best be delivered by a statewide program.

Consistent with its mission statement and goals, the Division continuously seeks to identify factors that put the health of a significant number of Oregonians at risk. Based on that identification, the Division develops and recommends ways to prevent those hazards to health. The focus of public health programs differs from most other health services in that it focuses on prevention rather than primary treatment.

The Health Division consists of the following offices and programs (see organizational charts in Appendix B):

1. **Office of Administration.** The administrator's office is responsible for overall public health policy and direction.
2. **Office of Administrative Services.** This office supplies the Division with management support through its personnel, fiscal, data management and purchasing services.
3. **The Office of Epidemiology.** Gathers, analyzes and distributes health related data and educational materials to planners and providers in both the public and private sectors in both communicable and non-communicable disease issues. It monitors and investigates disease outbreaks, exposures and other risk factors and investigates suspicious or unexplained deaths. It oversees program activity in vital statistics, sexually transmitted diseases, AIDS, communicable and non-communicable diseases and the Medical Examiner's office.
4. **The Office of Environment and Health Systems** administers educational, regulatory and licensing programs in the areas of food service, indoor air quality, shellfish, swimming pools, drinking water systems, travelers accommodations, radioactive materials, health care facilities, and emergency medical services.
5. **The Office of Health Services** supports local health services to assure that client populations receive the quality and timely care that they require. This office targets its services to segments of the population determined to be "at risk" because of age, income or other factors leading to difficulties in accessing health services. This office also provides direct services to individuals in select populations when there are gaps in the preventive services system. The majority of these services are aimed at protecting the health of mothers and children. The programs are in family planning, adolescent health services, the Women, Infants and Children (WIC) nutrition program, immunization, refugee health and field services, offering technical assistance and consultation to local health departments in a variety of public health programs.

6. **The Office of Laboratories** supports and responds to the analytical needs of state and local agencies and private health care providers and assures the quality of testing in clinical, substance abuse and drinking water laboratories throughout the state. The laboratory conducts work in virology/immunology, general microbiology, newborn screening and administers licensing boards for barbers and hairdressers, electrologists, hearing aid dealers and denturists.

## SECTION II

### Health Division Enabling Statutes, Rules and Programs

This section provides a listing of all of the Health Division's enabling statutes and a brief narrative of each as required by OAR 660-30-060(3). The Division's programs which affect land use also will be discussed in this section.

- A. Enabling Statutes: See Appendix C
- B. Administrative Rules: see Appendix D

C. Health Division Programs:

Listed below are brief descriptions of the Division's principal offices and program areas:

1. **Administration.** The Office of the Administrator develops and implements overall public health policy and provides oversight and direction to the various Offices of the Division. The Administrator also provides direct supervision to the management support functions in the areas of fiscal services, data management, and purchasing and personnel services.
2. The **Office of Epidemiology** gathers, analyzes and distributes health related data and educational materials to planners and providers in both the public and private sectors for both communicable and non-communicable disease issues. It monitors and investigates disease outbreaks, exposures and other risk factors and investigates suspicious or unexplained deaths. It oversees program activity in vital statistics, sexually transmitted diseases, AIDS, communicable and non-communicable diseases and the Medical Examiner's office.
3. The **Office of Environment and Health Systems** administers educational, regulatory and licensing programs in the areas of food service, indoor air quality, shellfish, swimming pools, drinking water systems, travelers accommodations, radioactive materials, health care facilities, and emergency medical services.

The shellfish program maintains a satellite office in North Bend (756-3883) and the Drinking Water program and Environmental Services programs share a field office in Pendleton (276-7880).

4. The **Office of Health Services** supports local health services to assure that client populations receive the quality and timely care that they require. This office targets its services to segments of the population determined to be "at

risk" because of age, income or other factors leading to difficulties in accessing health services. This office also provides direct services to individuals in select populations when there are gaps in the preventive services system. The majority of these services are aimed at protecting the health of mothers and children. The programs are in family planning adolescent health services, the Women, Infants and Children (WIC) nutrition programs, immunization, refugee health and field services, which offers technical assistance and consultation to local health departments in a variety of public health programs.

5. The **Office of Laboratories** supports and responds to the analytical needs of state and local agencies and private health care providers and assures the quality of testing in clinical, substance abuse and drinking water laboratories throughout the state. The laboratory conducts work in virology/immunology, general microbiology, newborn screening and administers licensing boards for barbers and hairdressers, electrologist, hearing aid dealers and denturists.

#### **D. Administrative Procedures**

In addition to administrative rules referenced in Appendix D, the Division and its Offices have adopted various internal policies and procedures to guide the conduct of its program activities. These documents are available for public review at the respective offices of the Division.

#### **E. Programs Affecting Land Use**

As previously mentioned, the 1978 certified SAC agreement listed three programs as affecting land use.

1. Plan Review for organizational camps and recreational vehicle parks. (ORS 446.310 to 446.345 and OAR 333-31-058 to 31-085 and OAR 333-3-0-005 to 30-130 respectively).

Subsequent to the 1983 update of the SAC agreement, plan review for organizational camps and recreational vehicle parks has been transferred to the state Building Code Agency and local building permit offices. The Division no longer issues plan review approval and is hereby deleting this program from its list of programs affecting land use (1985 session, HB 2493, effective 9/20/85); see also Building Code Agency state Agency Coordination Program.

2. Plan Review for construction of systems or components of public water supplies (ORS 448.131 and OAR 333-61-060). This program applies to owners or operators of public water systems proposing to construct a new system or to

make major additions or alterations to existing transmission mains, development of new water sources or relocation of treatment or storage facilities.

Under this program, water system operators intending to undertake one or more of the actions listed above, must first submit plans for such actions and receive approval from the Division prior to starting construction.

The Division believes that the provision of water via a public water supply is an action affecting land use as defined in OAR 660-30-005(2) in that such action constitutes provision of Public Facilities and Services as defined in Goal 11. The Division believes that public water supplies are a key facility in the development of urban lands and, as such, their provision should be coordinated with local plans for designation of urban boundaries, urbanizable land, rural uses and for the transition of rural land to urban uses.

To assure that such coordination occurs, the Division had adopted a rule, OAR 333-61-062, that requires the applicant submitting plans for the aforementioned projects, to also submit evidence from the local planning authorities that the proposed project complies with the statewide planning goals and is compatible with local comprehensive land use plans. That rule was amended in May 1990, (see Appendix E) to update the language.

Assurance of compatibility is required of all projects except those where the proposed action is to be taken on federal lands. Such federal actions are exempt from the compatibility requirement.

3. Health Hazard Annexations to Cities (ORS 222.840-915) and to Districts (ORS 431.705-915, OAR 333-12-035-045). Under this program, the Administrator is authorized upon receipt of a resolution from a local government, to require annexation to a city or a special district when conditions related to sewage disposal practices, contaminated drinking water or drainage, create a danger to public health. The two primary actions are: a) a determination upon presentation of evidence, that a danger to public health exists and b) issuance of an Order requiring the appropriate city or district to annex or provide the necessary services to the area.

This program had previously been identified as a program affecting land use. However, a recent opinion by the Attorney General, citing *West Side Sanitary District versus LCDC (#26780)*, 289 OR 393 614 P2d 1141 (1980), determined that health hazard abatement actions are not actions subject to compliance with the statewide planning goals or compatibility with acknowledged comprehensive plans. (See Opinion Request OP-6326, October 3, 1989). A copy of this opinion is provided in Appendix F.

In the West Side discussion, the Court's decision turned on the fact that the Health Division was charged with a single task in its hearing to determine whether or not conditions in the subject area constitute a danger to public health and whether the hazard could be alleviated by the provision of service (water or sewer) facilities. Since land use criteria and the Statewide Goals were of no use to the Division in its fact-finding mission, the Court found no evidence that the legislation intended that the Goals on local comprehensive plans be addressed. The Court thus concluded that the agencies actions did not meet the threshold for application of ORS 197.180(1): they were not actions "with respect to programs affecting land use."

This broad exclusion was tempered by a 1981 amendment to the Health Hazard Abatement Act (222.840) which required that an area be within the urban growth boundary of a city as a pre-condition to consider an area for a health hazard annexation. The UGB designation reflect an application of the Statewide Goals .

In view of the Attorney General's opinion, the Health Division has concluded that the Health Hazard Abatement program would no longer qualify as a program affecting land use.

**F. Division Programs Subject to Permit Compliance and Compatibility Rule (OAR 660-31).**

Drinking Water Plan Review Approval for drinking water systems is the Division's only land use program which involves the issuance of a permit. Permits issued under this program are designated as class B permits under OAR 660-31-012(2) of LCDC's permit compliance and compatibility rule. These permits are specific to a particular project and not subject to renewal.

**Summary**

Of the three programs in the 1978 SAC agreement, only the Plan Review approval for public water supplies (hereafter referred to as the Drinking Water Plan Review Approval Program), meets the current criteria for programs affecting land use under OAR 660-30-005. An analysis of the other programs administered by the Division as listed in C above show that none meet the criteria set forth in the Goals or in OAR 660-30-005(2) to qualify as programs affecting land use.

### SECTION III

#### Health Division Program to Assure Compliance with the Statewide Planning Goals and Compatibility with Acknowledged Comprehensive Plans and Land Use Regulations

This section describes how the Division will assure that its Drinking Water Plan Review Approval Program shall comply with the statewide land use planning goals and be compatible with the acknowledged city and county plans.

#### A. Exempt and Compatible Land Use Programs

The Division's land use program falls into the category of "compatible land use programs." There is no applicable statute, constitutional provision or appellate court decision which expressly exempts the program from compatibility with acknowledged comprehensive plans, but not from compliance with the statewide planning goals.

#### B. Division Rules and Procedures to Assure Compliance with the Statewide Planning Goals

##### 1. Division Rules

The Division's only program affecting land use is Plan Review for Drinking Water Systems (see Section II E above).

The Division has adopted a rule, OAR 333-61-062 (see Appendix E) to assure that its Drinking Water Plan Approval program meets the goal compliance and plan compatibility requirements in ORS 197.180 and OAR 660-30 and 660-31.

OAR 333-61-062(3) establishes the general affirmative finding requirement the Division will follow in reviewing and approving projects under the Drinking Water Plan Review Approval program for Public Water Supplies.

OAR 333-61-062(3) states:

- (3) In order to approve a plan or project listed under OAR 333-61-062(2)(a)-(d), the Division shall find that it complies with the Statewide Planning Goals and is compatible with applicable acknowledged city and county comprehensive plans and land use regulations. To make its goal compliance and plan compatibility findings, the Division shall comply with OAR 333-61-062(1)-(9) and shall also adhere to the procedures in the Division's state agency coordination SAC program which is hereby adopted by reference.

Sections (4) and (5) of OAR 333-61-062 describe how the Division will assure that each project seeking the Plan Review approval shall comply with the statewide planning goals and be compatible with acknowledged comprehensive plans. Sections (4) and (5) state:

- (4) Except where the Division is required to directly address the Statewide Planning Goals, the Division shall make its goal compliance findings for each plan or project listed in OAR 333-61-062(2)(a)-(d) based on the land use compatibility information provided to the Division by the project applicant.
- (5) An applicant seeking approval of a plan or project listed in OAR 333-61-062(2)(a)-(d) shall provide the Division with information documenting the plan or projects compatibility with the applicable acknowledged comprehensive plans and land use regulations. Such documentation shall be submitted in a manner as established by the Division and shall include one of the following:
  - (a) A copy of the local land use permit (e.g. conditional use permit, subdivision approval, zoning clearance, etc.) demonstrating that the plan or project has received land use approval from the jurisdiction; or
  - (b) Written information from an authorized representative of the affected city or county affirming that the proposed plan or project is compatible with the acknowledged comprehensive plan(s) for the area, but does not require specific land use approval by the jurisdiction; or
  - (c) Other written information acceptable to the Division equivalent to (a) or (b) above demonstrating the plan or project's land use compatibility.

## 2. Division Procedures

OAR 333-61-062, cited above, requires the Division to find that each project under the Drinking Water Plan Review approval program complies with the statewide planning goals and is compatible with acknowledged comprehensive plans.

Because all comprehensive plans in the state have been acknowledged, it is the position of the Division that when the Division acts compatibly with an acknowledged comprehensive plan it is acting in compliance with the Statewide Goals.

The Division, therefore, does not anticipate having to adopt findings directly against the statewide goals for the reasons cited above. However, in the event that direct goal findings are required, the Division shall comply with OAR 333-61-062 (5)(c) and the following procedures:

The Division, when reviewing a Drinking Water Plan, shall adopt Statewide Goal findings only for those goals which have not been otherwise complied with by the applicable city or county in its acknowledged comprehensive plan. In fulfilling any obligation to comply with one or more of the goals, the Division shall comply with OAR 333-61-062(4) and the procedures below:

- a. Confirm that a situation actually exists requiring adopting findings against one or more of the Statewide Planning Goals;
- b. Identify the specific Statewide Goal(s) with must be addressed;
- c. Consult directly with the affected city or county about the jurisdiction's compliance with the Statewide Goals in its acknowledged comprehensive plan;
- d. Request interpretive guidance from the Department of Land Conservation and Development and/or the Attorney General's Office,
- e. Rely on any relevant goal interpretation for state agencies adopted by LCDC under OAR Chapter 660;
- f. Adopt any necessary goal findings to assure the project's compliance with the Statewide Planning Goals.

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

1. Division Rules

The Division has adopted OAR 333-61-062 (see II B above) which requires the Division to find that approval of a drinking water plan is compatible with the applicable acknowledged comprehensive plan and land use regulations.

OAR 333-61-062(4) lists the methods and information the Division will rely on to determine a drinking water plan's land use compatibility.

2. Division Procedures

Because OAR 333-61-062(5) lists the types of information and local approvals upon which the Division will base its compatibility findings, no additional compatibility procedures are necessary.

### 3. Dispute Resolution

The Division has adopted the following procedures in the event a land use dispute arises concerning the approval of a drinking water system plan. The procedure states:

In the event that a dispute should arise involving the review of a drinking water system plan, the Division's general approach will be to attempt to resolve the issue by dealing directly with the local land use authorities and/or requesting assistance and mediation from the Department of Land Conservation and Development (DLCD). Specific steps to be followed may include:

- a. Coordinating closely with local land use authorities to identify and resolve any potential land use conflicts at an early stage.
- b. Hold direct meetings with the affected local government(s), DLCD or other affected state agencies and any other parties involved with the dispute.
- c. Identify alternative actions or modifications to the proposed project to avoid or resolve the dispute.
- d. Request, if necessary, informal LCDC mediation or compatibility determination under OAR 660-30-070.

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

The Division has adopted the following procedure to be used to assure that a new or amended Division rule or program affecting land use will comply with the statewide planning goals and be compatible with acknowledged comprehensive plans and land use regulations.

The procedure is as follows:

In the event that the Division acquires a new program or amends an existing program that affects land use following a legislative or judicial directive, the Division shall notify the Department of Land Conservation and Development (DLCD) and amend, as necessary, the Division's state agency coordination program in accordance with OAR 660-30-075.

## SECTION IV

### Coordination with DLCD, Affected State and Federal Agencies and Special Districts

At this time, the Division does not coordinate formally with any federal or state agencies (other than LCDC via the SAC agreement) or special districts on land use programs or issues. The Health Division's program for coordination of its actions with the Goals and comprehensive plans relies on determinations from local (county and municipal) governments as set forth in Section III B above.

Indirect coordination occurs through the Health Division's membership in the Strategic Water Management Group, a consortium of agencies with program interests in water resources issues. Under the provisions of HB 3515 (1989)(now ORS 448.268), either the Health Division or the Department of Environmental Quality (DEQ) can declare an "Area of Groundwater Concern." The Strategic Water Management Group will then develop a strategy to deal with the problems. This may result in the declaration of a Groundwater Management Area which could affect zoning issues in a local jurisdiction.

## SECTION V

### Health Division Program for Cooperation and Technical Assistance to Local Government

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

1. The Health Division does not normally participate directly in city and county planning programs but it does respond to requests for information and assistance from local planning authorities.
2. The Division deals directly with cities, counties and special districts on health hazard area identification and abatement and consolidation of small water utilities--situations within their jurisdictions that may affect land use. Public meetings will often be arranged either by the Division or through coordination with county governments, at which possible solutions are explored and the possible impacts of various solutions on local comprehensive plans are identified. Appropriate solutions that might involve plan amendments and UGB adjustments are identified and carried forth by the local jurisdiction with the Health Division assisting as requested.
3. New amendments to the Safe Drinking Water Act will require the development of wellhead protection programs for public water systems. DEQ has been given responsibility in Oregon to implement that program. The Health Division provides information and consultation to DEQ and local governments and water purveyors in the development of wellhead protection programs that may affect zoning at the local level. At present, activity has been minimal as neither the DEQ or the Health Division has staff dedicated to the function (HB 3515). Recent indications point to a stepped up emphasis in this area by Federal Authorities. This may result in grants to add resources for this activity.

New amendments to the Safe Drinking Water Act also require the development of watershed management programs to assure the safety and integrity of sources of public water systems. The Health Division provides information and consultation to local governments and water system operators in the development of watershed management programs. The Division is currently sponsoring a task force to identify the issues associated with such a program and, when completed, will pass this information on to local governments. Adoption of a watershed management plan may result in limitations on various types of activities in watershed areas. The particulars will depend on local conditions and concerns.

**B. Contact for Cooperation and Assistance:**

The Division's contact for cooperation and technical assistance to local governments is the Manager of the Technical Services Section who can be reached at 229-6302.

**C. Technical Assistance and Information Available from the Division and Methods Used to Provide the Information to Local Governments.**

The Health Division in 1983, conducted an inventory of areas around the state where, in the opinion of local health and septic citing authorities, problems exist on an area-wide basis due to the failure of on-site sewage disposal systems.

The Division has advised local health and septic citing authorities by letter, at conferences and individually, of the importance of assuring that local comprehensive plans reflect, where appropriate, the future need for sewers to these areas. That list is available to local jurisdictions.

The Health Division's regional engineers work directly with small water systems and actively promote the consolidation of small systems into larger ones and assist water purveyors and communities as liaisons to local planning officials as appropriate.

The Strategic Water Management Group (SWMG) has convened a task force to look at barriers to consolidation and regionalization of water supplies. That group will be making recommendations back to the SWMG for possible legislative activity.

**D. Health Division Participation in Periodic Review**

The Health Division provides a Notice under the Non-mandatory Programs section of the Periodic Review Notices to local government. The Notice encourages local government to contact local health and septic citing authorities to identify locales where problems with domestic water systems or area-wide failure of on-site sewage disposal systems may create a public health hazard that might require extension of city or district services or possible formation of special districts (see Exhibit F).

When the Division identifies an area where contaminated water supplies or sewage disposal concerns have been identified, and where such conditions exist outside Urban Growth Boundaries, it advises local government, by letter, of that fact, so that solutions to resolving the problems might be considered in the periodic review process. The Division provides testimony and opinions to local governments (both in person and in writing) based on engineering studies and sanitary survey information as to the nature of the problems and best solutions for resolving them.

E. Cooperation and Technical Assistance to acknowledged coastal cities and counties

Two principal elements comprise the Division's program of cooperation and technical assistance to coastal cities and counties. They are:

1. The department's direct involvement in the planning activities of coastal jurisdictions.
2. Department participation in the Oregon Coastal Zone Management Program (OCMP)

DIVISION INVOLVEMENT IN COASTAL CITY AND COUNTY PLANNING

The Division shall provide upon request technical assistance and planning information to coastal jurisdictions in the same manner as described in Section V A-D above. Requests for assistance from coastal jurisdictions should be made to the manager of the Technical Services Section of the Drinking Water Program - (229-6302).

The Division will work with DLCD and other affected state and federal resource agencies to minimize conflicts or duplication in providing assistance to coastal cities and counties.

DIVISION PARTICIPATION IN COASTAL MANAGEMENT PROGRAMS

The OCMP is part of Oregon's statewide program for coordinated land use planning. The program is a partnership between local governments and state and federal agencies to resolve general and often competing interests through comprehensive plans and land use regulations for all land in Oregon's coastal zone.

The OCMP is based on Oregon's Land Use Planning Act (ORS Chapter 197) and its principal elements, the statewide Planning Goals and acknowledged comprehensive plans. In addition, the OCMP is based upon specific Agency management authorities contained in other Oregon Revised Statutes.

DIVISION AUTHORITIES LISTED IN THE OCMP

The principal statutory authority upon which Division involvement in the OCMP is based is ORS Chapter 622: Shellfish. Other Division authorities referenced in the OCMP are review and approval of water systems, establishing standards for water systems and the Health Hazard Abatement Program. Division's involvement in OCMP activities will be coordinated through the Health Hazard Abatement Program.

## FEDERAL CONSISTENCY WITH STATE COASTAL ZONE MANAGEMENT

Working in close coordination with the DLCD and other affected state and federal agencies, the Division, when requested, will advise DLCD on the consistency of federal actions and activities related to the department which may affect Oregon's coastal zone. In carrying out its responsibilities under the federal consistency process, the Division will adhere to the procedures and requirements contained in LCDC's federal consistency rule (OAR Chapter 660, Division 35).

- F. Technical Assistance Pursuant to ORS 197.712(2)(F) and 197.717(1) and (2)-Local Public Facility Planning, Permit Issuance and Economic Development.

The Division's activities and involvement in this area are the same as identified in the Periodic Review process as described in D above.